

Between Justice and Politics

The Competition of Storytellers in the Eichmann Trial

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"History" contains the word "story," and every historian is also a storyteller. When history is put on trial, who is the storyteller then?

The case of the state of Israel against Adolf Eichmann was brought to trial in Jerusalem in 1961 and was concluded with the judgment of the court.¹ The judgment was pronounced unanimously—the court spoke with one voice, providing the official (hi)story. Judges, however, are not the only storytellers in trials. Lawyers have their own share of storytelling. Their stories are built mainly upon choosing the framework of the trial's narrative and upon deciding who will tell it.²

Gideon Hausner, the attorney general in Eichmann's trial, took it upon himself to be the master storyteller. He claimed to speak with the voice of six million victims, six million accusers.³ Hannah Arendt, who came as a reporter for the *New Yorker*, was also a storyteller of the Eichmann trial. However, Arendt was not an official actor in the legal drama, and she deliberately took it upon herself to provide a counternarrative, the story that was not told but should have been told in the courtroom.

If ever there was a "competition of storytellers," it was strongly evident here. Arendt rewrote the attorney general's accusations, challenged his choice of witnesses, objected to the direction in which he led the trial, reinterpreted the crime, and, finally, could not resist the temptation to produce her own judgment.⁴

In *Eichmann in Jerusalem*, Arendt criticizes Hausner's decisions time

and again. Hausner, for his part, mentions Arendt only once in *Justice in Jerusalem*. He cites an article that criticizes "Miss Arendt" and adds in a footnote that her book was refuted by many reviewers; hence it does not deserve a further discussion in his book.⁵ In their zeal to produce the "correct"⁶ story, both, at times, forgot the limits of storytelling and sought to occupy the position of the sole author.⁷ It is for this reason that I conduct an imagined dialogue between Arendt and Hausner that will explore their views about the relation between story, history, and judgment as exemplified in the Eichmann trial.

I will focus on two aspects of their respective stories. One might be called the "framework" of the narrative, its temporal and spatial boundaries. With respect to temporal boundaries, Hausner's story stretches to include the whole of Jewish history, while Arendt begins her story in the nineteenth century. With respect to spatial boundaries, Hausner's story focuses on the Jewish people, while Arendt's concern is humanity.⁸ The second way in which I will compare their narratives concerns the question of who is to tell the story—that is, whether the story will be told through written documents or through the oral testimonies of survivors.

THE MISSING CHAPTER

The two storytellers, Hausner and Arendt, came into direct confrontation over the exclusion of one particular chapter from the Eichmann trial.

"After fifty sessions, we reached the chapter on Hungarian Jewry," Hausner writes in his book. "The shadow of another [earlier] trial now fell over our courtroom."

Hausner is referring to the Kastner affair, which was brought to court in 1952 as a libel trial against Malchiel Gruenvald, a Hungarian Jew who imputed collaboration and treason to Dr. Rudolf (Rezso) Kastner.⁹ During 1943–44, while Kastner negotiated with Eichmann over his proposal to exchange "trucks for lives," approximately four hundred thousand Hungarian Jews were led in trains to Auschwitz. At the same time, Kastner managed to rescue a train with 1685 Jews, including many of his friends and relatives. The defense attorney, Samuel Tamir, managed to turn the libel trial against his client Gruenvald into a political trial of the behavior of the Labour Party (MAPAI) during the war. In his verdict, Judge Halevi of the trial court condemned Kastner's collaboration with the Nazis, using the infamous phrase "Kastner sold his soul to the devil."

Subsequently, the appellate court cleared Kastner's name, but it was too late for Kastner, who was assassinated while the appeal was proceeding.¹⁰

Thus, the first time an Israeli court had to confront the Holocaust, it was a Jewish leader who was put on trial, not the Nazi perpetrators.¹¹ The later trial of Adolf Eichmann was carefully separated from the previous trial of Kastner. The prosecution tried to create an acoustic separation between the trials. This, however, could not conceal the fact that many of the main actors in the trials (judges, attorneys, and witnesses) were repeat players.¹² In fact, so clearly interwoven were the trials that the attorney general had to approach his witnesses in advance and ask them, for the sake of national unity, not to drag the bitter controversy over the Kastner affair into the trial of Eichmann. As Hausner recalls: "I had appealed to everyone to abstain from internal reckoning, since this was the trial of the exterminator and not of his victims."¹³

Traces of the Kastner affair still infiltrated into the Eichmann trial. Hansi Brand, who was Kastner's partner in the rescue committee in Budapest and in the negotiations with Eichmann, testified at Eichmann's trial. Judge Halevi, who sat in judgment in both trials, questioned her whether the Aid and Rescue Committee considered the possibility of assassinating Eichmann. Brand rejected the implicit accusation in the judge's question (Why didn't you rebel?), answering him: "We were a rescue committee and none of us was a hero. Our goal was to try and save these people. We did not know if killing Eichmann would bring relief . . . we were sure . . . that someone else would replace him and the system will keep on moving, maybe even faster."¹⁴

This answer brought back the public controversy that erupted around Kastner's trial about the legitimacy of negotiating with the Nazis. Likewise, during the testimony of Pinchas Freudiger, one of the leaders of the Orthodox community in Budapest and a member of the *Judenrat* (Jewish council), a spectator from the audience stood up and shouted at the witness in Hungarian: "You soothed us so that we should not run away while you were saving your families." Traces of this incident did not find their way into the official transcript of the testimonies in the trial.¹⁵

Hannah Arendt was quick to notice this staged silence. What was erased from the official transcript quickly found its way into her report.¹⁶ Indeed, she devoted twenty-two pages of her book, its most controversial pages, to discussing the cooperation of the Jewish leadership in general and the cooperation of Kastner in particular with the Nazis, even though the issue was never raised during the trial.¹⁷

Arendt was right on target, as can be gleaned from Hausner's report

of a conversation that he had prior to the trial with the leaders of the Jewish resistance of the Warsaw ghetto, Yitzhak Zuckerman and Zvia Luvetkin Zuckerman: "'What will you say about the Jewish Councils?' Yitzhak asked me. . . . 'This is going to be the trial of the murderer, not of his victims,' I replied. 'But you will not be able to avoid the issue,' Zvia said. . . . 'No,' I replied, 'and what we shall bring forth will be the truth. No embellishments.' 'That is good,' said Yitzhak. 'The whole truth must be told.'"¹⁸

Hausner did not keep his promise. This may well be because in the early 1960s, Israeli society was just recovering from the painful stage of accusing the victims for their own disaster and moving on to blame the victimizers. The 1950s atmosphere of pointing a blaming finger at the survivors, culminating in the Kastner trial, contributed to their effective silencing.¹⁹ The Eichmann trial can be understood as an organized attempt to use the legal system to facilitate this move.²⁰

Why was Arendt so strongly opposed to this attempt? Why was it so important to her to include the Kastner affair and the behavior of the Jewish leadership in the trial of the "exterminator," as Hausner called him? Arendt provides an explanation for including this chapter in the report in a private letter to Karl Jaspers: "I'm afraid that Eichmann will be able to prove . . . to what a huge degree the Jews helped organize their own destruction. That is, of course, the naked truth, but this truth, if it is not really explained, could stir up more anti-Semitism than ten kidnappings."²¹ However, this explanation cannot stand closer scrutiny because when Eichmann's attorney decided *not* to raise the issue in the trial, Arendt went on and raised it on her own initiative.

At the time of the publication of her report, Arendt was harshly criticized for including this chapter.²² She chose not to answer her critics. Yet Arendt does have an answer to which she refers in a letter to Mary McCarthy dated October 1963.²³ She tells McCarthy that she intends to write an essay about "truth and politics" as an implicit answer to her critics. Indeed, she published this essay in the *New Yorker* in February 1967. The essay will serve as a basis for my discussion of Arendt's position on the role of the trial and of her reasons for including this chapter in her report.

JUSTICE VERSUS POLITICS

The essay's title, "Truth and Politics," points to its topic, a study of their ancient conflict. In her earlier report, Arendt presented the Eichmann

trial as a dramatic struggle between the two age-old antagonists, politics and justice, personified in the characters of Gideon Hausner and Justice Moshe Landau. She accused Hausner of serving the dictates of politics instead of searching for truth and justice. Arendt argued that justice demanded that the trial concentrate on the acts of Adolf Eichmann the accused, while politics called for opening the stage to the testimonies of survivors about the "suffering of the Jewish people." Arendt herself did not remain an impartial spectator. Instead, she claimed to take the side of justice. Hausner's divergences from the narrow framework of a criminal trial in his constant attempts to "draw the big picture" of the Jewish tragedy were, therefore, criticized by Arendt as signs of his political agenda.²⁴ In her criticism of Hausner we witness an inversion of roles: Arendt, the historian, took the side of justice and accused Hausner, the prosecutor, for adopting the role of the historian.

A closer reading of *Eichmann in Jerusalem* reveals that the opposition between justice and politics might be a misleading clue to understanding the controversy between Arendt and Hausner. It is apparent that Arendt herself did not obey the "dictates of justice" when she decided to "enlarge the picture" of the trial and discuss the Jewish cooperation with the Nazis. Indeed, Arendt offers an entirely different explanation for bringing up this issue in the Eichmann book. She writes: "I have dwelt on this chapter of the story, which the Jerusalem trial failed to put before the eyes of the world in its true dimensions, because it offers the most striking insight into the totality of the moral collapse the Nazis caused in respectable European society—not only in Germany but in almost all countries, not only among the persecutors but also among the victims."²⁵

This is a very different explanation from the one she initially gave to Jaspers for including this chapter. What is conspicuously missing from Arendt's explanation is the simple "demand of justice" to concentrate on the acts of Eichmann. It indicates that the real controversy between Arendt and Hausner was about which "big picture" to draw, about the proper historical framework of the trial's story. Both Arendt and Hausner understood that Eichmann's trial could not be contained within the scope of narrow legalistic considerations. They tried to supply the historical narrative as the basis for judging Eichmann's acts. The trial was important for both of them because they understood that it occupied the no-man's land between past and future, a place where human beings are called to reflect back upon their common past and try to comprehend it.²⁶ Their historical narratives, however, differed in substantial ways. Before

I proceed to examine the two contrasting narratives, I would like to turn first to theory about the relation between story, history, and judgment.

THEORY: STORY, HISTORY, JUDGMENT

Since the beginning of the 1980s, we have witnessed the growth of a new movement in legal scholarship known as the law and literature movement.²⁷ The topics that the proponents of the movement study range from the art of storytelling in the courtroom, to structuralist analysis of courtroom decisions, to the production of "counterstories" that unmask the racial and gendered faces of legal discourse. A similar development can be traced in historiography.²⁸

Notwithstanding the interesting parallels that can be drawn between these legal and historiographical movements, I will not pursue this line of inquiry here. I would like to explore, instead, the juncture between the two disciplines as it occurred in the trial of Adolf Eichmann. Historic trials, which are also trials of history, stand at the crossroads where law and history meet. Indeed, this was the perception of the Eichmann trial from its beginning.²⁹ The judges, who were aware of public expectations that their judgment would provide the "official history" of the Holocaust, warned against this tendency and carefully delimited their jurisdiction.³⁰ However, no one, not the judges, the lawyers, or the public at large, could divorce history from the courtroom altogether. The crucial questions turned out to be "What kind of history?" and "Who will tell this (hi)story?"

In order to understand the relations between law, history, and narrative, let us divide the issue into three smaller questions. What is the relation between story and judgment? What is the relation between historical narratives and judgment? And finally, what is the relation between law and narrative? I turn to three writers from the three disciplines involved (literary criticism, historiography, and legal scholarship) who attempted to answer these questions. Surprisingly, a common theme emerges from their writings.

Walter Benjamin offers his reflections on the connection between story and judgment in *The Storyteller*, an essay about the disappearing art of storytelling: "All this points to the nature of every real story. It contains, openly or covertly, something useful. The usefulness may, in one case, consist in a moral; in another, in some practical advice; in a third, in a proverb or maxim. In every case the storyteller is a man who has counsel for his readers."³¹

Stories, for Benjamin, far from being merely a pleasurable pastime, are practical devices that provide their listeners with orientation and direction in the world. This is so because each story contains a moment of judgment that is shared by the storyteller and her listeners. The advice, the proverb, or the maxims that can be discerned in the story are all instances of judgment. Benjamin chose to use the term "advice" to stress the practical aspects of such judgments. According to Benjamin, the counsel that the story provides "is less an answer to a question than a proposal concerning the continuation of a story, which is just unfolding." As human beings, our judgments are not mere reflections on things past; they are important precisely because they can also guide us into the future.³² The disappearing art of storytelling in our modern age is taken by Benjamin, therefore, to be a sign of a loss of way and direction for humanity.

Hayden White examines a special kind of story, the kind that offers a historical account of past events. White explains that today, for a historical account to acquire the highest status of history telling, it has to be formulated as a narrative, rather than, say, as a collection of annals or a chronicle. White asks, therefore, what additional value a narrative form gives to a historical account in comparison with these other forms. He suggests that it is the value of moral judgment. "The demand for closure in the historical story is a demand . . . for moral meaning, a demand that sequences of real events be assessed as to their significance as elements of a moral drama."³³

Although the narrative form offers closure, White argues that reality itself does not display the formal coherence of a narrative with well-defined beginning, middle, and end. For this reason, to represent reality in the form of a narrative requires the introduction of another order of things—a normative order implicit in every historical narrative. In other words, it is the presence of judgment implicit in the form of the historical narrative that provides it with closure.

The narrative form offers normative closure to a historical account but also introduces the problem of authority because "Insofar as historical stories can be completed, can be given a narrative closure . . . they give to reality the odor of the *ideal*. This is why the plot of a historical narrative is always an embarrassment and has to be 'found' in the events rather than put there by narrative techniques." Thus, narrative is shown by White to be both a solution to a problem (the desire for closure) and a source of a new problem (undermining the authority of the historian). We will return to this subject later, when we examine how the nar-

rative form was both a solution and an embarrassment for Hausner and Arendt.

Robert Cover's description of the relation of a legal system to the social narratives surrounding it is the mirror image of White's formulation: "In this normative world, law and narrative are inseparably related. Every prescription is insistent in its demand to be located in discourse—to be supplied with history and destiny, beginning and end, explanation and purpose. And every narrative is insistent in its demand for its prescriptive point."³⁴

Cover argues that as a body of prescriptions, law is made meaningful only with the help of stories in which it is embedded and in light of the human experiences from which it springs. Recognizing the thick embeddedness of the normative world of law in a web of communal narratives points to the central problem that occupies Cover. He studies the contest of narratives among different social groups for recognition by the state's law and the contest of different groups over the meaning of that law. This understanding of the presence of the social group in the production of law's stories has important ramifications for understanding the contest between Hausner and Arendt. Their contest might reflect the fact that Hausner and Arendt imagined different social groups when they told their narratives about Eichmann's crimes.³⁵

We can now try to bring together the three perspectives: the need for a form (literature), the search for meaning (history), and the duty to judge (law). White explains the relations among them in the following way: "we cannot but be struck by the frequency with which narrativity . . . presupposes the existence of a legal system against which the typical agents of a narrative account militate. . . . The more historically self-conscious the writer of any form of historiography, the more the question of the social system and the law which sustains it, the authority of this law and its justification, and threats to the law occupy his attention."³⁶

The Nazi regime turned this formulation into the hardest problem confronting the storyteller, the historian, and the judge. They all had to grapple with a reality of discontinuity—a sense of a growing abyss separating the past from the present. Judging the unprecedented could not be left to the tools of traditional criminal law, which presupposes human experiences radically different from the ones under consideration. In order to construct new laws adequate to the new social reality under Nazi totalitarianism, one had to formulate a historical narrative of the period. In order to formulate such a narrative, however, one had to presup-

pose a common normative world that could provide the tools for judgment. But this normative world collapsed under the Nazi regime. Thus, we are caught in what seems to be a vicious circle. This circle, however, is not the result of a logical paradox. It instead stems from the reality of a "limit experience." It was indeed the experience of the limit produced by the Holocaust that challenged novelists, historians, and judges alike.³⁷

This problem made the courtroom a great challenge but also a possible solution. A trial forces us to judge a past event, to formulate the historical narrative on which to base our judgment, and to reflect on the precedent to take with us into the future. Arendt, who was preoccupied with these questions, wrote in a letter to Jaspers: "It seems to me to be in the nature of this case that we have no tools except the legal ones with which we have to judge and pass sentence on something that cannot even be adequately represented within legal terms or in political terms. That is precisely what makes the process itself, namely the trial, so exciting."³⁸

Arendt realized that traditional frameworks of judgment, social narratives, and historical accounts were missing when we tried to judge the Holocaust. Eichmann's trial confronted us with the problem of judging "without banisters," as Arendt's vivid phrase would have it. The need to judge past events by putting their disorder under the well-ordered categories of law was strongly felt in this trial, as it is in all trials. Only in this trial, the legal categories were deficient and the historical narratives that locate them were not yet formulated. The Eichmann trial, however, offered a great opportunity for the lawyer and the historian precisely because it functioned as a meeting place where the need to tell the story, to judge the criminal, and to offer the history all coincided. It forced the participants, as well as the audience, to begin the painful process of articulating the story and judging the past in order to continue into the future. Let us turn now to examine how Arendt and Hausner confronted this challenge.

TWO CONTRASTING HISTORICAL FRAMEWORKS

Hausner advocated bridging the abyss between past and future with the tools of traditional Jewish historiography. His narrative was based on a structure of a repetition: Jews have always been persecuted for anti-Semitic reasons; every generation has its own Pharaoh.³⁹ Hausner sought to connect the latest catastrophe to anti-Semitic persecutions of Diaspora Jews over the ages. He also linked the Holocaust to the enemies

of today, namely, to the Palestinian leader Haj Amin Hussein.⁴⁰ For this purpose, Hausner had to demarcate clearly the line between victims and perpetrators. Adolf Eichmann was depicted as the incarnation of the persecutors of old, Pharaoh and Haman. The frame of the story was the long history of victimization and persecution of the Jews, and it was meant to illuminate the Jewish story that was largely missing from the Nuremberg trials.⁴¹ Accordingly, the prosecution chose to focus its case on the legal category of "crimes against the Jewish people."⁴² In Hausner's clear-cut division of victims and victimizers there was no place for dwelling on the murky category of Jewish cooperation with the Nazis, the phenomenon of the *Judenräte*. Arendt criticized this historical narrative: "It was bad history and cheap rhetoric; worse, it was clearly at cross purposes with putting Eichmann on trial, suggesting that perhaps he was only an innocent executor of some mysteriously foreordained destiny, or, for that matter, even of anti-Semitism, which perhaps was necessary to blaze the trail of 'the bloodstained road traveled by this people' to fulfill its destiny."⁴³

For Arendt, traditional Jewish frames of meaning could not supply the needed explanation for the new phenomena because they sought to highlight present-day analogies to the old story of anti-Semitism. Instead, she wanted to understand Eichmann's actions with the tools of modern historiography, in terms of the immediate historical circumstances, and not in terms of the relation between God and a chosen people. She suggested locating the modern catastrophe within the European context of the rise of the totalitarian state. Her tools were not analogies, but distinctions. Indeed, she was careful to distinguish Eichmann the man from the mythical figures of Pharaoh and Haman. Eichmann was depicted in her book as the product of his own age—the age of bureaucracy, science, and ideology.

AUTHOR AND AUTHORITY

Contrasting the historical frameworks of Hausner and Arendt helps expose their narrative element. Both accounts offer coherence and structure to the "facts" by supplying them with narrative closure. However, the narration of the facts also introduces the problem of authority that I mentioned before.⁴⁴ If Arendt and Hausner are storytellers of sorts, whose story is to be preferred as the "true" story? Both shy away from confronting this problem. Hausner relies on the legal tools for endowing his account with "objectivity."⁴⁵ Arendt, being an outsider to the

legal drama, relies on her position as a reporter of facts to minimize her presence as the narrator of facts. Indeed, this stance can explain her choice to subtitle the book a "report" on the banality of evil. The same attitude is also manifested in a letter to McCarthy in which Arendt writes: "As I see it, there are no 'ideas' in this Report, there are only facts with a few conclusions, and these conclusions usually appear at the end of each chapter."⁴⁶

This circumvention of the problem later proved to be unsatisfying to Arendt, who returned to the problem of narrative authority in "Truth and Politics." This time, she elaborated her views on historiography as narration. Arendt argues that there is no necessary conflict between "factual truth" and "narrative" as long as the historian respects the facts while acknowledging the importance of ordering them into a narrative form. Arendt thinks that there are "facts" independent of opinions and interpretations, though she also thinks that facts in themselves do not determine the historical narrative. Her solution to the problem is that "facts" function as limits on our historical narration. They are the "ground on which we stand" and the "sky that stretches above us." Arendt explains that "even if we admit that every generation has the right to write its own history, we admit no more than that it has the right to rearrange the facts in accordance with its own perspective; we don't admit the right to touch the factual matter itself."⁴⁷ This subtler formulation, however, is not of much help for our purposes, because the controversy was precisely on how to rearrange the facts, under which framework, and from what perspective. Arendt and Hausner did not offer the reasons for preferring one narrative framework to the other. They chose to circumvent the problem by stressing their position as fact finders and minimizing their role as narrators. In order to evaluate their choices as storytellers, we need to reconstruct their reasons for choosing their respective historical frameworks. To this end, I suggest we examine Arendt and Hausner's views about the role of the trial in relating the past to the future.

WAYS OF RECONCILIATION IN THE COURTROOM

With very different stories, both Arendt and Hausner hoped that the trial would bring about reconciliation. Hausner writes, "only through knowledge could understanding and reconciliation with the past be achieved."⁴⁸ And Arendt explains that "to the extent that the teller

of factual truth is also a storyteller, he brings about that 'reconciliation with reality.'"⁴⁹ In other words, reconciliation can be achieved only when the facts are placed into a humanly comprehensible narrative.⁵⁰ In Arendt's view reconciliation with the past through storytelling also provides a solid basis for judgment.⁵¹ Arendt and Hausner strongly disagree, however, about the way in which this reconciliation should take place.

Hausner's choice of frame can be understood in light of what happened in the trial of Kastner.⁵² The district court's infamous phrase, that "Kastner sold his soul to the devil," did not bring about closure or catharsis.⁵³ The Kastner trial was like a traumatic repetition of the past, a reopening of the wound that could not bring about reconciliation. One of the purposes of Eichmann's trial was to use the structure of the trial in order to invert the past symbolically, turning the persecuted victims into the prosecutors, and by this to offer a resolution to that painful past.⁵⁴ For this purpose, the line between victims and perpetrators had to be clearly demarcated.⁵⁵ And for this reason, the attorney general appealed to the witnesses to "abstain from internal reckoning."

Arendt sought to bring about reconciliation with the past in a very different way. She worried about the omission of the story of the *Judenräte* in Eichmann's trial. In her report, she admits that these were not simple lies, since she did not expose any new facts that were previously unknown to Israeli society: "these issues . . . are discussed quite openly and with astonishing frankness in Israeli schoolbooks."⁵⁶ But this was precisely the reason why the omissions in the trial seemed all the more dangerous to Arendt. As she explained in "Truth and Politics," even though the facts she insisted on discussing were "publicly known . . . yet the same public that knows them can successfully, and often spontaneously, taboo their public discussion and treat them as though they were what they are not—namely, secrets."⁵⁷ In other words, Arendt's understanding of the collective aspects of memory made her fear that the omissions in Eichmann's trial will produce in the Israeli collective memory what she had called "holes of oblivion" in *The Origins of Totalitarianism*. She traces this danger back to the fragility of factual truth that we encounter in trials: "it is established by witnesses and depends upon testimony; it exists only to the extent that it is spoken about."⁵⁸

Arendt's concern with collective self-deception can be linked to her political philosophy. Arendt is a philosopher of action—she opposes all determinist schools of history because she believes in human natality, in

the possibility to begin anew. In "Truth and Politics," Arendt writes that the fact of human natality, the immanent "it might have been otherwise" that is inherent in any factual event, is what frustrates historians who try to master the story once and for all. But it is precisely this understanding of human natality that convinces her to include what she calls the "darkest chapter of the story," the chapter on the Jewish *Judenräte*. Arendt writes: "Not the past—and all factual truth, of course, concerns the past—or the present, insofar as it is the outcome of the past, but the future is open for action."⁵⁹ By this she means that our only hope for learning and changing (and here she is also thinking as a daughter of the Jewish people) is to confront the past as it was, without defense mechanisms, but with an understanding that the future is still open for change: "If the past and present are treated as parts of the future—that is, changed back into their former state of potentiality—the political realm is deprived not only of its main stabilizing force, but of the starting point from which to change, to begin something new."⁶⁰

We are thus offered two different forms of reconciliation with the past. Hausner advocates splitting the story in two and focusing on the story of the victims in judging Eichmann. He adopts this approach because of what happened in Kastner's trial, where the blaming of the victim ended in a political assassination with no sense of resolution. Arendt does not believe in this solution of "collective forgetfulness" of the "darkest chapter." She argues that it is precisely such an attitude that condemns us to reiterations.⁶¹ Instead, she advocates communication and storytelling of the ways in which Jews (and others) were led to cooperate with the Nazi system, so that this painful experience will acquire a permanent place and hence become part of the nation's history.

These differences in approach are connected to a larger view of history. For Hausner, the persecution of Jews throughout the ages is a historical constant, the product of historical determinism, that can be changed only with the establishment of a Jewish state. The lesson that he draws from the Holocaust is, therefore, the particularistic lesson of empowering the Jews by protecting their state. Indeed, the trial of Eichmann by the sovereign state of Israel serves as the embodiment of this lesson. For Arendt, on the other hand, the persecution of the Jews is taken as a warning sign to humanity at large of the dangers of the totalitarian state. In her story, there are no nations that are protected from these dangers a priori. The horror of the totalitarian system is precisely its ability to implicate perpetrators, bystanders, and victims. Because she believes that these experiences might be repeated in the future, she draws

the lesson of the need to strengthen the international community by developing a new legal category of "crimes against humanity."

LAW FRAMES HISTORY

The opposition between the narratives of Arendt and Hausner is also shaped by their choice of legal categories. Hausner's narrative stresses continuity and repetitions by pointing out historical precedents to Nazi crimes against the Jews. The legal framework of "crimes against the Jewish people" that he advocates emphasizes the unique victimhood of the Jewish people. His story also suggests a direction for the future—the way to overcome the Jewish fate—is to establish a lasting Jewish state that will have the jurisdiction to prosecute these crimes. Arendt, on the other hand, offers a historical narrative that highlights the lack of historical precedents. Instead of focusing on the victims, she directs our attention to the crime, thus decentering the issue of anti-Semitism in the trial. She replaces the thesis of Jewish uniqueness with the proposition that "the physical extermination of the Jewish people, was a crime against humanity, perpetrated upon the body of the Jewish people." She adds a rebuttal to Hausner's narrative, saying, "only the choice of victims, not the nature of the crime, could be derived from the long history of Jew-hatred and anti-Semitism."⁶² In confronting the future, Arendt seeks to construct a *legal* precedent that will withstand the very real possibility that such crimes will be repeated in the future on other people and in other places.⁶³ Her preferred legal category is therefore "crimes against humanity."

The question of frame turns out to be a question of center and periphery. The frame that Hausner advocated puts anti-Semitism and the Jewish victims at the center, while Arendt's frame puts totalitarianism, and Eichmann as its typical actor, at the center.⁶⁴ This difference is often understood as stemming from the opposition between particularism on Hausner's side and universalism on Arendt's side. However, if we read Arendt's historical narrative in conjunction with her choice of legal category, this explanation will prove to be insufficient. In my view, Arendt sought to integrate the two perspectives of universalism and particularism. She espoused bridging the two by offering a universalistic approach while speaking within the particularity of the Jewish experience. The dichotomy between universalism and particularism dissolves once we examine the choice of legal category against the choice of a narrative framework.

The mistake lies in the attempt to evaluate Arendt's historical narrative under the framework of the legal category of "crimes against the Jewish people" that she has rejected. Only under Hausner's legal framework, which highlights the uniqueness of Jewish victimhood, could the introduction of a chapter on the behavior of the Jewish leadership, as suggested by Arendt, have carried anti-Semitic implications. Under this legal framework, a chapter discussing the cooperation of Jewish leaders with the Nazis would tend to reflect on the nature of the Jewish people, instead of on the general circumstances under Nazi regime. This is so because the legal framework of "crimes against the Jewish people" does not call for comparisons with the behavior of other people under the Nazi rule. In contrast, Arendt's choice of the legal category of "crimes against humanity" shaped her historical narrative. It allowed her to introduce the chapter on the Jewish councils into her narrative in a way that encourages comparisons with the behavior of different nations and groups under Nazi totalitarianism. We can see that the choice of "crimes against humanity" does not, necessarily, call for abstracting away the particularities of the Jewish story. On the contrary, it could help put the behavior of Jewish leaders in context by showing the totality of the moral collapse all over Europe in all occupied nations. Accordingly, Arendt writes that "the deliberate attempt at the trial to tell only the Jewish side of the story distorted the truth, even the Jewish truth."⁶⁵ On the universalist side, Arendt's legal framework allowed her to tell the story of the Jewish people in order to draw from it implications for international law. In particular, her story exposed the weakness of an international system established on the protection of individuals' rights without providing real protections to groups.

VICTIMS AS STORYTELLERS: VOICES VERSUS DOCUMENTS

The discussion of the legal and historical framework of the Eichmann trial has led us back to an earlier trial. We saw how the shadow of the Kastner trial shaped, to a large degree, the positions taken by Arendt and Hausner about the proper framework, legal and historical, for Eichmann's trial. A crucial question remains to be decided—Who should tell the story? In answering this question, we confront the shadow of another legal precedent—that of the Nuremberg trials.

Nuremberg set a precedent of letting the documents tell the story. Arendt strongly recommends this way for the Eichmann trial, as well. For

the purposes of a trial, documents seem to provide a more reliable source. There is no need to depend on the memory of witnesses many years after the event. A document cannot be broken down in cross-examination. It speaks in a steady voice that cannot be silenced or interrupted. Moreover, Arendt fears that oral testimonies by survivors will open the door to the suffering of the victims—a suffering that has no measure and cannot be comprehended. She came to Eichmann's trial with the hope that the legal categories would provide some measure of understanding.⁶⁶ The only hope of achieving such understanding, Arendt wrote, is by concentrating on the acts of the accused, not on the immeasurable suffering of the victims.⁶⁷

Hausner was well aware of these difficulties. He wrote in his book that by choosing to build the case of the prosecution on the oral testimony of survivors, he risked weakening its position.⁶⁸ Moreover, in preparing the witnesses to give testimony in trial, he confronted their difficulties of telling a story with a beginning, middle, and ending. In particular, the witnesses found it difficult to impose on their past experiences a temporal frame of continuity between past and present. He faced the phenomenon that Lawrence Langer calls "deep memory."⁶⁹ Hausner wrote: "At a pretrial conference they would sometimes stop conveying facts in an intelligible manner and begin speaking as if through a fog. The narrative, which had been precise and lucid up to this point, became detached and obscured. They found it difficult to describe in concrete terms phenomena from a different world."⁷⁰

Indeed, one of the most famous testimonies in the trial, that of Yehiel Dinur, who used the pen name K-Zetnik, which means "camp inmate" in German, had this character about it, just before the witness collapsed on the witness stand.⁷¹ Notwithstanding these difficulties, Hausner decided to tell the story of the Jewish Holocaust through the testimonies of survivors.⁷²

How are we to understand this disagreement? We can take our cue from the metaphors of "hearing" and "seeing" as signaling two ways to get to the truth. What could bring law closer to justice—an auditory or a visual approach? In arguing their different views Hausner and Arendt were reenacting the old conflict between Jewish and Greek traditions.⁷³ Hausner's decision to prefer the human voice is compatible with the Jewish tradition that gives priority to voice and hearing over sight. Arendt's preference for sight, for written documents, is in accord with the Greek tradition that privileges seeing. In *The Life of the Mind*, Arendt articulates the difference between the two traditions: "The Hebrew God can

be heard but not seen, and truth therefore becomes invisible: 'Thou shalt not make unto thee my graven image or any likeness of any thing that is in heaven above or that is on earth beneath.' The *invisibility* of truth in the Hebrew religion is as axiomatic as its ineffability in Greek philosophy from which all other later philosophy derived its axiomatic assumptions."

In her philosophical writings, Arendt advocated the sight metaphor as the safer road to truth and objectivity. This is because "seeing" inscribes a distance between subject and object, thus ensuring the "independence" of judgment. In contrast, she thought that "in hearing, the percipient is at the mercy of something or somebody else."⁷⁴ If we try to translate this insight to the context of the Eichmann trial, we can say that Arendt feared that the oral testimonies of human suffering will destroy the crucial distance between speaker and listener. This distance is needed for objective judgment, and without it the audience is overwhelmed with emotions.

When Arendt turned to examine more closely the human faculty of judgment under the influence of the Eichmann trial, she came to reject the metaphor of seeing as insufficient to explain its operation.⁷⁵ However, in her Eichmann report, Arendt still upheld the epistemic paradigm for judgment and equated justice with the search for the objective truth. No wonder that she opposed so strongly the use of the oral testimony of victims and preferred the objectivity of documents. Indeed, looking at the matter within an epistemic framework, Hausner's decision seems questionable. However, I suggest that the epistemic framework was not the only one that guided Hausner.

As an experienced legal practitioner, Hausner brought to the courtroom an understanding of the performative aspects of a trial. Every lawyer knows that trials are rarely an accurate representation of the past. More often, they provide a reenactment of events of the past in a concentrated and dramatized form.⁷⁶ The performative aspects of a trial can help reveal a truth about the past that might otherwise remain detached and obscured. But they also can contribute to the symbolic reenactment of the original crime within the courtroom.⁷⁷

Hausner understood that the role of Eichmann's trial was not exhausted by the need to tell the truth about an untold story. He sought to create legal procedures that would reveal the nature of the new crimes. The novelty of the Nazis' crimes was not only in their plan to eliminate a nation, an entire human group, from the face of the earth in their crimes against the human status of diversity, as Arendt called it, but

also in their efforts to produce a crime without a witness. For this purpose, a whole system of distancing and concealment was erected, from walls and fences to language rules.⁷⁸ This is what she had called "the holes of oblivion." Paradoxically, however, her insistence that the court establish the truth through the more objective tools of documents could have served to repeat the silencing that was intended by the Nazis, the erasure of the human voice as a reliable witness.⁷⁹

In Nuremberg, the court allowed the testimony of the camera, showing a film about the liberation of the concentration camps.⁸⁰ But the camera depicted the victims as voiceless *Figuren*—as horrific figures that do not speak.⁸¹ Arendt was one of the first to expose this aspect of concentration camps. The camps, she wrote, were not just factories of death, but were also meant to supply living "proofs" of Nazi ideology, proofs that some people are subhuman. This was accomplished by starving and torturing the prisoners until they lost their capacity for action. Disconnecting the bond between action and speech produced an essential part of this dehumanization process.⁸² If Hausner had chosen to rely solely on documents and pictures, he would have denied the voice of the victims once again. In this sense, giving the stage to the testimonies of victims carried an ethical message of "giving voice." Hausner was willing to take the legal risks and open the stage to the victims in order to transform them from statistical figures into human beings with a voice and a story. It was largely as a result of this procedural decision that the Eichmann trial "created" the Holocaust in the consciousness of the world.

VICTIMS AS STORYTELLERS: STORYTELLING IN A LEGAL SETTING

The moral obligation to bear witness was strongly felt by the survivors themselves, and the need to give their testimonies a public stage is beyond dispute. The difficult question is whether the courtroom is the proper forum for such an endeavor. What is the added value of a courtroom to the testimony of survivors? Is this value worth the risks of turning the trial into a political trial, risks that Arendt was so careful to expose? I do not think that we can offer a general answer to this question that is derived from the nature of trials as such. In my view, the answer has to be a combination of an understanding of the structural characteristics of a trial together with an understanding of the specific historical and social context in which it unfolds.⁸³ I would, therefore, limit my

reflections about the value of courtroom testimonies of Holocaust survivors to the historical and social circumstances surrounding the Eichmann trial.

Eichmann's trial provided a public stage for testimonies of survivors that was qualitatively different from films and books. A trial has the function of authorizing the movement from private to public by weaving the private story into the web of communal stories that are then authorized by the judgment of the court. This aspect of a trial was especially important in the Eichmann trial, given the nature of the reception of Holocaust survivors in Israel during the 1950s. Israeli society during that time perceived the survivors who did not belong to the Jewish underground resistance as suspect ("What did you do in order to survive? *Judenrat? Kapo?*"). Survivors had the negative images of people who were morally corrupted under the Nazi regime or people who were psychologically disturbed. This mode of pointing a blaming finger at the victims can be gleaned from the debate in the Israeli parliament about the enactment of the Law of Punishment of Nazis and their collaborators and from the various criminal trials that were held against survivors under this law.⁸⁴ The Kastner trial was a culmination of these attitudes. As a result of this public atmosphere, the survivors chose not to tell their stories in public. To change such negative public images and to break the silence that followed, it was not enough to provide a public stage for survivors' testimonies in the media or in political forums. The whole conceptual framework under which survivors were seen as suspects had to be changed in order to begin to listen to what they had to tell.⁸⁵ The Eichmann trial, with its well-defined roles of accuser and accused, could facilitate this change because for the first time, the survivors were linked with the accusing party and not with the accused. Moreover, for the first time, the survivors were standing side by side with Israelis against a common enemy—Adolf Eichmann. Hausner's opening statement exemplified this change. This structural change could help survivors develop a positive self-image that was needed in order to overcome the shame and begin to talk in public. Moreover, by offering a metanarrative in terms of chronology and geography, the victims could better understand the meaning of their own experiences. By basing the case of the prosecution on the testimonies of survivors, the trial presented the victims as reliable witnesses and conferred authority on their words.⁸⁶ Finally, because each trial is also a communal endeavor of taking responsibility in the literal sense, of responding to testimonies with a legal judgment, the Eichmann

trial offered a double gesture of imputing responsibility to the perpetrator by responding to the words of the victims.

By deciding to prove Eichmann's guilt through the testimonies of Holocaust survivors, Hausner offered a unique interpretation of the meaning of justice, an interpretation that insists not only on telling the untold story, but also on the importance of who will tell the story. This procedural decision is perhaps the lasting contribution of Eichmann's trial to the development of international law, which today tries to make more room to hear the stories of individual victims within legal proceedings. The theoretical questions that the issue of giving voice to victims in trials raise are only now beginning to be addressed. One of the most important questions, I believe, is how to rethink the role of a courtroom in enhancing the recognition of silenced groups such as victims of atrocities as part of the process of "doing justice."⁸⁷

Arendt eventually began to change her mind in respect to the role of victims' testimonies,⁸⁸ and it might well be that this change was induced by Hausner's procedural decision. We witness this change in her report when she exclaims after the testimony of Zindel Grynspan, contrary to all her previous warnings, that "everybody should have his day in court,"⁸⁹ meaning—every victim! I believe that at this point, Arendt suddenly realizes the significance of a trial as a public forum where human action receives its name and story. It is at this point that she abandons the epistemic framework into which she tried to fit the trial and is reminded of her own ethics of storytelling.

CONCLUSION

Aware of the dangers to the collective memory of a society presented by "holes of oblivion," Arendt opposed the legal framework that was provided by Hausner because it excluded the chapter on the *Judenräte*. However, in relation to the question of who should tell the story, it was Hausner who insisted on giving voice to the victims, precisely because of his awareness of an existing hole of oblivion in Israeli collective memory. Arendt's conclusion of the chapter called "Evidence and Witnesses" seems to acknowledge the importance of this move: "The holes of oblivion do not exist. Nothing human is that perfect, and there are simply too many people in the world to make oblivion possible. One man will always be left alive to tell the story."⁹⁰

I would add that it is more likely that we need at least two people to

tell *this* story, with different frames and distinct voices. The two frameworks employed by Arendt and Hausner are incompatible, and therefore they allow us to see (and hear) different things. We should not look for the meaning of this period and for the definitive judgment of Eichmann in either Hausner's narrative or Arendt's. Instead of choosing between them, we should learn to recognize the importance of the contest of narratives as such to the possibility of judgment in the wake of the Holocaust.

A Generation's Response to *Eichmann in Jerusalem*

Richard I. Cohen

No single study of the Holocaust has come close to attracting the kind of public attention *Eichmann in Jerusalem* received, although the sales of Daniel Goldhagen's *Hitler's Willing Executioners* have far exceeded those of Hannah Arendt's provocative work.¹ From its original publication in the *New Yorker* magazine in 1963 until today, *Eichmann in Jerusalem* continues to arouse interest, disagreement, and controversy. Though its historical value as a study of the events of the Holocaust is seriously questioned today by historians and totally dismissed by some, most prominently by Raul Hilberg,² it continues to be regarded as a landmark in the writing on the period. A generation and more have passed since its original publication. That generation witnessed the penetration of the Holocaust into academic and public discourse and the emergence of schools of interpretation that emphasized, on the one hand, the high degree of consistency in Nazi anti-Semitic policies driven by Hitler's "blueprint" (the "intentionalist" view), and, on the other, a "functionalist" view that stressed the lack of a master anti-Semitic plan and a far more "twisted" route to the Final Solution. That generation also faced the historical debates that have become known as the *Historikerstreit*, disagreements over whether and how to compare ("relativize," some claimed) Auschwitz and Nazism with other phenomena in history and whether there was a particular German historical road to such phenomena. Notwithstanding, *Eichmann in Jerusalem* has reappeared in English and German editions, has been the subject of special issues of academic journals, and