Book Review


Reviewed by Hannah Starman

Shoshana Felman’s *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* is a gripping read, a painstakingly researched and substantiated argument and a marvelous example of interdisciplinary scholarship. Drawing on variety theoretical resources from psychoanalysis, history, law, literature and political history, Felman seeks to reveal and analyze the link between trials and trauma that was conceptually articulated, as she argues, in the second half of the twentieth century in the wake of the Nuremberg trials. Observing that the emergence of this tight relationship between justice and trauma results from three interrelated twentieth-century occurrences: discovery of psychoanalysis, unprecedented number of disastrous events on a mass scale, and unprecedented and repeated use of instruments of law to cope with the traumatic legacies and the collective injuries left by these events (p. 2), the author engages in a fascinating exploration of two of the most celebrated trials of the twentieth century – the 1961 trial of Adolf Eichmann and the 1995 O.J. Simpson trial.

Against the background of these two paradigmatic legal cases Felman sets out to develop the main features of the interaction of the law and trauma. She argues that when trauma is confronted in a courtroom, it is often inflicted with a particular judicial blindness that inadvertently repeats the trauma and reenacts its structures. Great historical trials are defined not only by the fact that they address (and redress) traumas, but even more so because they constitute traumas of their own right (p. 62). However, Felman goes a step further arguing that the encounter of law with trauma impacts the structures of the law and transforms that legal procedure, thereby giving to the trial a new jurisprudential dimension. She furthermore argues that the introduction of the dimension of trauma into the legal procedure unsettles the commonsensical division between the public and the private and demands a radical rethinking of the relationship between private and collective trauma. Felman’s focus on O.J. Simpson and Eichmann trials convincingly shows how a structural dichotomy between private and collective trauma trials collapses in the face of what the author called “the indivisibility and the reversibility between private and collective trauma” (p. 7).

The Simpson trial set out to address a private trauma and redress a private injury. As Feldman correctly observes the trial that was supposed to be the trial of an intimate violence that ultimately led to (private) murder engendered such an immense collective echo and provoked such an intense collective identification with the injuries under dispute (persecutions, abuses, murders suffered by African Americans on the one hand, and persecutions, abuses, murders suffered by women, on the other hand) that the initially private traumas gradually came to represent archetypal societal traumas in confrontation: race persecution and gender persecution. Inversely, the Eichmann trial was a trial of collective crime of the persecution and murder of Jews during the Holocaust. It was set out to deal with collective injury and collective memory, but it did so by way of transforming a multitude of fragmented, hitherto unarticulated private stories and traumatic memories into a coherent legal narrative of a national catastrophe. The legal process of transformation of individual into collective trauma and the parallel process of legal translation of the ‘private’ into ‘public’ that characterized the
Eichmann trial again abolished the dichotomy between private and public and thereby, as Felman argues, “anticipated by several decades legal developments to come” (p.7).

*The Juridical Unconscious* opens with a reading of Walter Benjamin. Felman turns to Benjamin’s Judgment Day to examine his thought about the relationship between history and justice. She reformulates Benjamin’s concept in a secular manner as the day when civilization confronts its violent history, the day when history itself is put on trial and when the court provides a stage for the expression of what historically has been expressionless (p. 12). Noting that a fundamental displacement occurred in the relationship between history and trials in the wake of the Nuremberg trials, Felman argues that reparation of historical injustices – and consequently, the trial of both history and law – has become part of the function of all paradigmatic legal cases that followed. In Felman’s reading of Benjamin, the Third Nuremberg trial (the Justice Case), in which the Nazi judges, prosecutors, and officials of the Ministry of Justice were put on trial and convicted, exposed the contradiction inherent in the nature of the law itself: the law, and potentially every trial, is both redemptive and oppressive. It is the very impossibility of redemption that engenders the demand for justice – “one longs for justice and one hopes in legal justice because the only secular redemption comes from the law” (p. 18). Benjamin is silent for the rest of the text as if to enact Felman’s theoretical point: at the heart of trauma trials lies the impossibility of telling.

Armed with her reformulation of Walter Benjamin’s Judgment Day, Felman proposes a theory of legal repetition, based on a comparative structural interpretation of a legal case (the Simpson trial) and of a fictional story (Leo Tolstoy’s *The Kreutzer Sonata*). She argues that the ‘trials of the century’ are subject to traumatic repetition, “in which a trial unexpectedly reveals itself to be the post-traumatic legal reenactment, or the deliberate historical reopening, of a previous case or of a different, finished, previous trial” (p. 62). In an entirely original analysis, Felman reads the Simpson trial through the lens of Tolstoy’s classic *The Kreutzer Sonata*, a story of a man who murders his wife in an outburst of jealousy and is acquitted of the crime. Felman’s approach is rewarding because she goes beyond adding yet another commentary on a much commented-on case. Stating that the law remains professionally blind to the phenomenon of cultural or collective trauma with which is nevertheless decisively and indissociably tied up. It is precisely this judicial blindness, Felman argues, that constitutes a legal trauma of its own right and “is therefore bound to repeat itself through a traumatic legal repetition” (p. 57). Legal memory is therefore constituted not only by the repetition of precedents but also by “a forgotten chain of cultural wounds and by compulsive or unconscious legal repetition of traumatic, wounding legal cases” (p. 57). A landmark trial of historic significance is therefore characterized by “its complex traumatic structure, its cross-legal nature, or the repetition it enacts of another trial and its attempt to define legally something that is not reducible to legal concepts” (p. 59).

Felman shows how these three features played itself out during the Simpson trial. The trial’s traumatic structure was determined by the way in which two traumas were pitted against each other: the prosecutorial story of sex abuse and the defense’s narrative of race abuse. The two traumas mobilized the collective anger and pain seeking “to overpower one another and to silence each other’s outcry” (p. 60). The defendant’s act of murdering his wife diminished as he was cast as the victim of black persecution, the history of which was brought to the trial. The Simpson trial, argued Felman, repeated the relatively recent Rodney King first trial (1992) and even a more remote Dred Scott case (1857) rendering invisible the relation between domestic violence and marriage to which we remain culturally blind. Felman now turns to Tolstoy to explore the “inherent cultural invisibility of the battered face” (p. 79),
locating striking resonances between the descriptions of Pozdnyshev’s description of his murdered wife’s face and the bruised, swollen and disfigured face of Nicole Brown-Simpson. The jury’s “looking through the beaten body” (p. 79) despite the existing visual evidence constitutes the very blow that inflicts the legal trauma. Law thus becomes the very vehicle of the abuse for gender, “a tacit, indirect, seeming legitimation of gender abuse that aggravated, ratified the trauma through the channels of a vehicle of law” (p. 91).

Although Felman’s analysis of the Eichmann trial casts no doubt on her conviction that the trial of the infamous Nazi criminal was a ‘trial of the century’, she refrains from discussing the three features of a landmark trial that she proposed as an entry point into the Simpson trial. This leads to some omissions that would have been both interesting and important to explore. The complex traumatic structure of the trial could, for example, be examined by means of discussing the confrontation of the trauma of the European Holocaust and the traumas generated by the Middle East conflict. Whereas the trauma engendered by the Simpson trial resulted from a confrontation of two societal traumas – racial and gender abuse – the Eichmann trial streamlined several traumas into the unifying traumatic narrative of the Holocaust. Its constitutive traumas were thus silenced. For example: Oriental Jews, who had suffered persecution in their Arabic / Muslim host countries as a result of the creation of Israel were reduced to second-class citizens upon their arrival to Israel and this bitter disappointment led them to revolt against the government policy in the 1950s. The Eichmann trial included Oriental Jews into the narrative of the Holocaust in order to silence the original trauma of their failed integration to the predominant Ashkenazi society by emphasizing the connections between the Nazis and the Arabs, thereby reframing the Middle East conflict in the Holocaust trauma. The consequences of this traumatic displacement are still with us today.

Furthermore, missing is the reference to the 1954 Kastner trial, in which Rudolf Kastner, a Hungarian Zionist leader who negotiated with the Nazis and eventually managed to save 1685 Hungarian Jews was accused of collaboration with the Nazis. Rudolf Kastner was assassinated before the Supreme Court reversed the judgment in 1955. If the first Rodney King trial determined the outcome of the Simpson trial, the Kastner trial certainly dictated the structure and the content of the Eichmann trial. Because the Kastner trial so much divided the Israeli public, the Eichmann trial had to avoid the potentially contentious issues (namely the behavior of the Jewish leadership during the Nazi regime) in order to unify the country around a common tragedy.

Felman’s discussion of the Eichmann trial is nevertheless a fascinating piece of first-class scholarship. Her engagement with Hannah Arendt’s controversial account of the trial in Eichmann in Jerusalem is shrewd and captivating, although certain aspects of Felman’s reading of the trial contra Arendt sometimes fall short of being entirely convincing. Felman’s main contention against Arendt is her objection to the narrative perspective that puts the victims instead of the perpetrator and his crimes in the centre of the trial. Felman claims that it is precisely the focus on the victims that allows for a “legal process of translation of thousands of private, secret traumas into one collective, public and communally acknowledged one” (p. 124). The trial provided, Felman argues, the dead the chance to speak and to become the accusing voice. This ambition to speak for the dead was unequivocally articulated by the Attorney General Gideon Hausner when he started his opening speech with the words: “When I stand before you here, Judges of Israel, to lead the Prosecution of Adolf
Eichmann, I am not standing alone. With me are six million accusers.”¹ Arendt’s insistence that the focus of the trial should be on the perpetrator and his deeds rather than the victims and their suffering was, as Felman would put it, jurisprudentially conservative (p. 122). Felman argues that the importance of the Eichmann trial lies precisely in the conceptual revolution of the victims (p. 126) that for the first time in history write their own history. She corroborates this observation with a statement that “the emotional explosion triggered by the Eichmann trial and by the revolution in the victims it dramatically and morally affected publicly unlocked this silence [about the Holocaust].” (p. 127). Yet, Felman does not engage with Arendt’s very accurate and legitimate contention that the focus on the victim was unmasterable and that the way in which the trial was conceived and conducted resulted in a traumatisation of the Israeli society that has been discussed at length elsewhere. The emphasis on the history of Jewish suffering, the distinction between crimes against humanity and crimes against the Jewish people, and the whole architecture of the drama that was the Eichmann trial served a certain number of clearly delimited political and societal goals² but as Arendt put it: “Manipulations of opinion insofar as they are inspired by well-defined interests, have limited goals; their effect, however, if they happen to touch upon an issue of authentic concern, is no longer subject to their control and may easily produce consequences they never foresaw or intended.”³ Felman’s otherwise brilliant engagement with Arendt that includes several truly creative twists fails to address the failure of the Eichmann trial that – to paraphrase Felman – at the heart of the unmastered past failed to master an abyss.

But Shoshana Felman has to be given credit for advancing a bold and engaging argument that what Arendt calls the failures of the trial were necessary failures that exploded the legal framework to legally say something that is not containable precisely by the concepts and the logic of the legal and furthermore, that “great trials are perhaps specifically those trials whose very failures have their own necessity and their own literary, cultural, and jurisprudential speaking power” (p. 166).

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¹ Rosenne, Shabtai. 1961. 6,000,000 accusers. Israel's case against Eichmann. The opening speech and legal argument of Mr. Gideon Hausner, Attorney-General. Jerusalem: The Jerusalem Post, p. 29.