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FORENSIC MEMORIES: AFTER TESTIMONY

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ABSTRACT

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FORENSIC MEMORIES: AFTER TESTIMONY

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INTRODUCTION

In the introduction to their book *After Testimony* (2012) Jakob Lothe, Susan Suleiman and James Phelan ask the question whether the disappearance of the last witness will affect the way the public discourse deals with the Holocaust. This article attempts to address that question and suggests a mode of writing that might in fact come “after” testimony. I will not be discussing literature about the Holocaust specifically but will rather suggest that a more general tendency to address past transgressions other means than testimony can be observed in contemporary literature.¹ As Lothe, Suleiman and Phelan argue, the word “after” in their title refers both to the fact that in relation to the Holocaust we are nearing an age without witnesses to the Holocaust, *and* to artistic creation, where “after” suggests that “all works dealing with the Holocaust must in some way come to terms with the historical reality that the accounts of survivors have tried to communicate” (Lothe et al., 2012, p. 2) and to the artistic legacy of the witnesses. In the following, I will attempt to describe a mode of writing in contemporary literature on memory and history, which allows later generations to address historical events to which they did not bear witness, challenging the testimonial mode while bearing its strategies and strengths in mind - “after” in both senses of the word.²

The central argument is that just as the legal concept of testimony was introduced into the cultural sphere to describe a particular genre or mode of writing, the legal concept of *forensics* will serve as a useful term for describing a number of contemporary literary works that take up the responsibility of addressing past events after testimony. In suggesting this shift of emphasis from testimony to forensics I pursue the argument made by Eyal Weizman in his book *The Least of All Possible Evils*

¹ Our historical position in relation to the Holocaust is central to this development (as the witnesses are passing away finding other ways of writing this heritage becomes vital) but as I will argue in the following, other historical factors ought to be considered as well.

² Taking the Holocaust as a starting point explicitly places the works that I am describing in relation to this artistic and historical legacy.

(2011) and by Thomas Keenan and Eyal Weizman in their essay *Mengele's Skull* (2012) and in the following I will briefly discuss a few of the main points of their arguments, commenting particularly on their, to my mind, too clean dismissal of testimony. The shift they describe has consequences in law making, human rights discourse and transcultural memory politics – but also, as I will argue, for literature where transgressions of the past are urgently questioned in reflexive and increasingly transmedial forms. I explore two hypotheses: First, that a shift from testimony to forensics can be observed in culture in general, but also, and more specifically, in contemporary literature on memory and the past. I will discuss Javier Cercas' *The Anatomy of a Moment* (2009) as an example of what I suggest calling *forensic literature*.

The second hypothesis, which I will address through my reading of Cercas' novel, is that this forensic literary mode through its particular use of “evidence” (testimony as well as visual evidence) may provide a corrective to the assumption inherent in the forensic sciences that the scientific analysis of objects could (and should) leave behind the human subjectivity and bias (usually associated with testimony) when the past and its meanings are negotiated.

FROM TESTIMONY TO FORENSICS

In the last decades conceptual frameworks of testimony and trauma have been prominent in the field of cultural memory studies and in negotiations of difficult heritage across the world. The Holocaust was (and largely still is) the paradigmatic case within the field and since the Eichmann trial inaugurated what Annette Wieviorka has called the Era of the Witness (Wieviorka, 2006); testimony has stood at its (vulnerable, even vanishing) center. While many stories from camp survivors were written and published before that, the central position of the witnesses in the courtroom in Jerusalem established the witness as a pivotal figure in interpreting the Holocaust. Testimony came to be considered an inherently ethical practice (as opposed to a solely epistemic one) of establishing oneself as a legal and autonomous subject and witness rather than simply the silenced victim of violence (Givoni, 2009). A hesitant, stumbling voice and a vulnerable body testifying to trauma and transgression even more persuasively than sober juridical and political speech. Thus in the early 90s literary critic Shoshana Felman and psychoanalyst Dori Laub examined the function of testimony between aesthetic and therapeutic practice and described the last part of the 20th century as “the era of testimony” (Laub and Felman, 2002). In the literary field writers such as Imre Kertesz, Primo Levi, Jorge Semprun and many others have created extraordinary literary works that testified to the atrocities of the Holocaust and addressed its meanings and consequences for human experience in

aesthetic form. In the political field testimony became an important factor in the wave of truth commissions, human rights discourse and humanitarian work (Weizman, 2011).

On the threshold between the 90s and the 2000s Andreas Huyssen published his collection of essays (originally published from 1996 to 2001), *Present Pasts – Urban Palimpsests and the Politics of Memory* (2003). In the introduction Huyssen writes that “too much of the contemporary memory discourse focuses on the personal – on testimony, memoir, subjectivity, traumatic memory – either in poststructuralist psychoanalytic perspective or in attempts to shore up a therapeutic popular sense of the authentic and experiential” (Huyssen, 2003, p. 8). Taking Huyssen as a symptom of a shift in contemporary memory culture, there seems to be a detectable weariness with the personal experience of trauma and the therapeutic value of narrative and (faltering) linguistic representations. “If the 1980s were the decade of a happy postmodern pluralism, the 1990s seemed to be haunted by trauma,” Huyssen writes. “It was energized [...] by the intense interest in witness and survivor testimonies, and it merged with discourses about AIDS, slavery, family violence, child abuse, recovered memory syndrome, and so on.” “Surely,” Huyssen continues, “the prevalence of the concern with trauma must be due to the fact that trauma as a psychic phenomenon is located on the threshold between remembering and forgetting, seeing and not seeing, transparency and occlusion, experience and its absence in repetition. But trauma cannot be the central category in addressing the larger memory discourse [...]” (Huyssen, 2003, p. 8) Trauma cannot be the master trope of memory (anymore) even though traumatic histories exist and must be recognized: “The focus on trauma is legitimate where nations or groups of people are trying to come to terms with a history of violence suffered or violence perpetrated. But the transnational discourse on human rights may give us a better handle on such matters than the transfer of psychoanalysis into the world of politics and history.” (Huyssen, 2003, p. 9) Or as Weizman states, “the psychological framework of trauma and the call for compassion rather than for political action tends to depoliticize historical processes.” (2011, p. 113).

Keenan and Weizman show that just as the Eichmann-trial inaugurated the Era of the Witness, the exhumation of the infamous Nazi doctor Josef Mengele in 1985 inaugurated the forensic shift that we see today: forensic anthropologist Clyde Snow who participated in the identification of Mengele later trained the team that conducted the exhumations of the “disappeared” in Argentina, which started a process of turning mass graves around the world into epistemic resources for the legal processing of war crimes as well as places of mourning. In 1998, the “legalization” of human rights that followed from the establishment of the International Criminal Court finally led to a notable shift as the ethical

over-determination of testimony became a potential liability in the legal battles of the international tribunals. Instead, forensics and expert testimony became dominant as not only guilt or victimhood in general terms but also criminal liability in specific cases and the identity of individual victims had to be established. While testimony has always been suspect in the courtrooms, the growing integration of international memory politics and legal practice and the extraordinary interactions of forensic scientist and living communities around the mass graves and scenes of atrocity has led to a forensic shift in memory culture as well.

Developments in the forensics sciences (technical and technological) are noteworthy reasons for their growing importance. The forensic sciences have more to offer now in terms of establishing the identity of victims and in ascertaining what happened and who did what. Another reason is that memory's procedural and relational character has become common knowledge. While the vulnerability of testimony has been central to its cultural importance (and while the plasticity of memory is in all probability essential to our everyday survival and to the workings of our society) it remains a juridical problem. In addition, I would suggest that a more general turn towards the materiality of places, bodies and objects can be observed in contemporary culture. Perhaps a post-postmodern insistence that the factual past – while never immediately available – can in fact be approached through its traces could also be at stake.

In recent years, then, archeology and forensic sciences have come to play a dominant role in the aftermath of human made disasters around the world. In the negotiations of the cultural memory of francoist Spain in the last decade forensics has played a pivotal role. In the clearing of Ground Zero in New York (Sturken, 2007; Gould, 2007) and in the subsequent debates about memorials, museums and rebuilding, archaeology and forensics also played an important part. New facets are even added to our understanding of World War 2 and the Holocaust as mass graves in Eastern Europe are opened. Rather than just providing facts about ruins, bodies and the events that created them, forensics provide an important interpretational framework that connects the juridical establishment of responsibility and guilt with politics of rebuilding and rehabilitation as well as with personal experiences of loss as scientist encounter families of victims by (mass) graves and in the places where atrocities and disasters have taken place (Gould, 2007).

TESTIMONY AND MATERIAL EVIDENCE

There is a shift, then, but the difference between testimony and material evidence is not very clear-cut. On the surface it seems to be that “subjects can misremember or skew their testimonies in relation to their political self-interest while an evidentiary truth seems to linger, fossilized in the object, ready to be unpacked by science.” (Weizman, 2011, p. 104) A central detail in this quote is of course the word “seems”. While the rhetorical force of the object, the body and the place, not speaking from procedural and unreliable memory but simply there to be looked at and evaluated in scientific processes of analysis and peer review may have gained prominence, Weizman argues that the forensic sciences end up facing questions that are perhaps surprisingly similar to the ones asked of testimony: as the witness is asked to approximate objectivity and the material evidence is subjected to cross-examination and interrogation, the distinction is blurred. When an object is presented in a courtroom it may in many ways seem to “speak for itself” (and may be presented as if it does so by either prosecution or defence), but it is always presented in a particular way and at a particular time by human actors (usually the expert witness) in support of a particular narrative. “Because objects do not speak for themselves, there is always a need for ‘translation’ or ‘interpretation’ – forensic rhetoric requires a person (or set of technologies) to mediate between the object and the forum: to present the object, interpret it and place it within a larger narrative.” (Weizman, 2001, p. 105) Objects when presented in the courtroom do not automatically speak objectively.

The object, then, provides its own testimony, one that does not entirely do away with the problems associated with human witnesses. In addition, I would add that one of the things the Eichmann trial and the scholarship on testimony demonstrated was that the witness is also a material presence, a body and a voice, which depend on various juridical framings and technological devices of recording and replay that must also be considered. I would make the reverse move, then, and add that just as the forensic practices of analysis and presentation of objects in the courtroom does not solve the problem of biased testimony; testimony itself is a kind of forensic evidence (evidence presented into “the forum” of the court) and is often treated as material as well as linguistic evidence. Rather than being replaced by forensics, then, testimony should be reconsidered as a particular kind of forensic evidence that can be (and often is) subjected to expert analysis and evaluation. Forensics and testimony do not replace one another, rather the recent emphasis on forensics reveals that the two work on different levels: forensics is a method (or several methods), “the art of the forum”, while testimony is a genre or mode of speech that may be used forensic argumentation or subjected to analysis.

I would also add that (eyewitness) testimony is still central to juridical proceedings as well as a dominant cultural discourse and valuable currency in the cultural sphere. Testimony still carries

authority in and outside the courtroom – and (as Weizman inadvertently shows) influences the way other modes of forensic speech is understood. Testimony is a type of evidence within a broader range of forensic media and genres, whose claims to authority and authenticity are intricately linked to those of testimony.

Central to Weizman’s argument is that the practice of forensics is not just about the analysis of a piece of evidence but also the presentation of it into a forum. This forum consists not only of the courtroom or even of the laboratories where the analysis takes place but also of a broader cultural and political arena in which they are received and made sense of³. Weizman’s study of the relationship between these different areas addresses the intimate connection between the analysis of ruins and the *design* of them taking place in the organization of military action calculated to minimize civilian losses (Weizman, 2011). He raises the question whether these processes do not serve to legitimize violence and exploitation rather than to save lives, arguing that mechanical calculations must never be the sole foundation of political or juridical decisions. Rather, they *must* depend on the assessment of data and on values, ethics, precedent and politics. “Decision is necessary precisely because calculation cannot (and should not) provide a definite answer. Decision relies on *aesthetic operations* – that is, on the way and order by which things and events appear to us.” (Weizman and Keenan 2012, 23, my emphasis) Thus conviction comes from the creation, narration and evaluation of evidence as it is performed within the courtroom.

FORENSIC LITERATURE

Weizman argues that the forensic shift can be observed not only within the courtroom where technological developments have made increasingly detailed analysis and convincing representations of evidential material possible but also in the cultural arena. This is evident in popular culture where detective novels and sitcoms abound in which DNA strands, aged bones, crime scenes inhabited by white clad forensics teams take center stage. It can also be seen in the many Sherlock Holmes remakes and a renewed fascination with Jack the Ripper that in very different ways refer to the early developments in forensic science and criminology in the late 19th century. I take this cultural interest

³ Thus the forum in which the forensics functions is intricately and necessarily connected with that space in which (forensic) literature is read and distributed. In the case discussed by Keanan and Weizman, that is the identification of the infamous Nazi war criminal Josef Mengele, the connectedness of forensic practice and cultural representations of the crimes with which he was involved has obvious implications for one another.

in forensics as my point of entry but as I will argue in the following, it is not only in cultural productions that explicitly address forensics thematically that this development can be observed but also in the formal strategies of literary works on memory and the past.

Just as the term “testimony” was borrowed from the juridical sphere to describe a particular literary mode, I borrow the term “forensic” to describe works that address past conflicts and transgressions through the narrative performance of evidence or traces of the past to a forum of readers. These works do not deal with the forensic establishment of facts but with the complicated processes of their creation, interpretation and evaluation. They are *literary* (that is artistic) works of fiction, non-fiction or something in between that include traces of the past next to the author’s text and that address their interpretation and meaning in the present. While clearly inspired by earlier works of historiographical metafiction in their careful negotiations of fact, fiction and reflection on the nature of historical knowledge, these works insist on the existence and essential importance of actual historical truth that may not be available, but which can (and should) be approached and addressed with sincerity or even with analytical authority. Javier Cercas’ *The Anatomy of a Moment* (2009) will be my main example in the following, but Aleksandar Hemon’s *The Lazarus Project* (2008), Daniel Mendelsohn’s *The Lost* (2007), Orhan Pamuk’s *Istanbul* (2005), Ignacio Martínez De Pisón’s *To Bury the Dead* (2005), Dave Eggers’ *Zeitoun* (2009), clausbecknielsen.net’s *The Suicide Mission* (2005), Göran Rosenberg’s *A Short Stop on the Road from Auschwitz* and many others are (even though they are very different) also relevant to consider within this framework.

These works do not deal with the forensic establishment of facts but with the complicated processes of their creation, interpretation and evaluation. They are *literary* (that is artistic) works of fiction, non-fiction or something in between that include traces of the past next to the author’s text and that address their interpretation and meaning in the present. While clearly inspired by earlier works of historiographical metafiction in their careful negotiations of fact, fiction and reflection on the nature of historical knowledge, these works insist on the existence and essential importance of actual historical truth that may not be available, but which can (and should) be approached and addressed with urgency, intense scrutiny or even with analytical authority. The forensic mode of writing, then, is concerned with the historically real and uses “evidence” of that reality addressing it and scrutinizing it explicitly, often inviting the reader to take part.

The forensic mode might (and often does) include testimony (eye-witness testimony or expert testimony, the author’s, a character’s or as intertextual reference etc.) and often relies on or challenges testimonial claims to authenticity, but does so carefully well aware of the cultural

conventions that are bound to this mode of writing. They address past events claiming a level of serious engagement with its historical material that matches that of testimony but inherits a level of self-awareness and critical engagement with the narration of history from historiographical metafiction.

In a literary work evidence is of course not presented to a judge and jury but to a forum of interpreters that evaluate the evidence - and pass judgment: While no crime is to be punished on the back of the reader's evaluation of the evidence, the judgment of historical transgressions and circumstances are still very much at stake. Conviction after all is not just a legal term, but also one that applies more broadly in communicative acts - even in the case of fictional narratives. By suggesting that forensics can also be a productive term for describing literary works, I don't mean to suggest, then, that the works in question try in any scientific way to establish the actual facts about past events (this is hardly literature's main concern), but rather that they rely on a similar understanding of the piece of evidence as marked by past conditions and events and being able to somehow reveal some of what it "knows" into a forum. Thus in *To Bury the Dead* Ignacio Martínez de Píson presents photographs of the protagonists in his narrative as well as drawings made by José Robles, whose disappearance in the early days of the Spanish Civil War is the focus of the book. While the photographs seem to serve as evidence of the events in question, the drawings both illustrate the narrative and visualize the traces of Robles' actual manual gestures on the page. While these drawings do not *prove* anything about past events, their presence acknowledges a character and a particular point of view that is otherwise - and essentially - missing from the narrative: That of José Robles.

A similar strategy can be observed in clausbeck-nielsen.net's *The Suicide Mission* (2005), a book that describes the journey of Nielsen and Rasmussen carrying the democracy (a metal box with "The Democracy" written on its side) into Iraq. The book is narrated from a position in the future and includes material from Nielsen's journals and newspaper articles as well as pencil drawings of the spatial lay outs of the fora established around The Democracy in which political debates take place throughout the journey. As the positioning of the narration in the future suggests, this book, while intensely political and concerned with controversial contemporary events, hardly aims to establish particular facts about the past. Instead the book addresses the political and moral question of forcing democratic processes on other countries by performing the fundamentally strange experience of entering a Middle Eastern war zone as a naïve and well-meaning westerner with a political mission, staging the traces of the journey among them the penciled traces of the transitive political spaces that the artistic project establishes along the way.

When the interpretation or presentation of evidence takes place in a literary work instead of in the courtroom it is interpreted according to a different logic: In the courtroom interpretation aims for an exact understanding of the particular facts about the event and the motivations and consequences related to it. In the forum surrounding the artwork the more general meanings raised by the particulars of the representation are exercised by the reader, felt, considered and evaluated not in relation to immediate consequences to the people involved (criminal liability, conviction, reparations etc.) but in relation to the reader's personal world view and set of values. Literature, then, establishes a forum of interpreters, a *forum of art* in which interpretation and evaluation takes place.

THE ANATOMY OF A MOMENT

In the remaining part of this article, I will discuss an example of the forensic mode of writing that I have suggested above. I aim to show how a piece of contemporary literature, Javier Cercas' *The Anatomy of a Moment* from 2009, addresses a historical event, describing and analyzing it in the minutest detail, dissecting, if you will, its complex anatomy. This analysis is presented to the reader in the careful prose of non-fictional history writing, yet with a great sensibility for the aesthetic potential of the material in question. This material consists of interviews, documents and recorded images, oral and written testimony as well as other kinds of archival material.

In *The Anatomy of a Moment* Javier Cercas' dissects the attempted *coup d'état* in Spain on 23 February 1981 taking as his starting point the available documentary evidence; the recorded images of the storming of the Cortes. In his detailed analysis each sound, gesture and facial expression available is given urgent attention as every political maneuver, motivation and possible alliance behind the scenes is explored, always trying to explain that particular piece of visual evidence and particularly the central gesture of Adolfo Suárez: Suárez does not obey the military as they shoot their guns telling everybody to get down, but remains seated, an ex-francoist becoming at that moment a lonely defender of democracy. Cercas' book cannot, of course, include the filmed material, but depends instead on detailed ekphrasis, a literary description of visual material, which introduces each of the five main parts of the book. The ekphrasis describes (in the present tense) how a viewer (identified as Cercas himself) freezes and unfreezes the image, scrutinizing it and including the reader in his observations.

The book includes one photograph, which is *not* from the coup, but which shows an uncannily similar situation. Stretching across the top of two pages (Cercas, 2012, pp. 114-115) Suárez can be seen, seated furthest to the right, while the remaining 90 per cent of the image shows the empty row of

benches. The photo is placed in the beginning of chapter 4 which addresses the period of time between the two pieces of visual evidence: the photo from September 25th 1979, when Suárez was “at the height of his power”, yet “privately finished as a politician”, and the film from 23 February 1981, when the coup took place. “The image was taken on 25 September 1979, but, if we ignore certain differences of colour and framing, it could be confused with that of 23 February 1981, as if, instead of photographing Suárez, the photographer had been photographing the future.” (Cercas 2012, 113) Chapter 4 overall addresses the fact that, at the time of the coup, Suárez was politically all alone. This point is *illustrated* by the image, which cannot possibly serve as proof since it was taken a lot earlier. With a characteristic awareness of pattern and symmetry Cercas, then, quite explicitly chooses *not* to provide any visual evidence of the coup, but frames and highlights its absence through emphasis and visual similarity, adding to the spectacular and enigmatic staging of the moment that is otherwise so carefully dissected.

In the prologue, called “Epilogue to a novel” Cercas states that the book is “more than anything else [...] the humble testimony of a failure: incapable of inventing what I know about 23 February, illuminating its reality with fiction, I have resigned myself to telling it.” (Cercas, 2012, p. 14) This confessional mode, with which Cercas apologetically leaves fiction behind, resigning himself to reality, frames the narrative as the epilogue (entitled “Prologue to a novel”) in the same confessional tones addresses Cercas’ personal relationship to the story of Adolfo Suárez. In the epilogue Cercas connects Suarez’ situation and character to those of his father, the book turning into a story of generational conflict and reconciliation on its final pages, as Cercas approaches a slow understanding of his father’s politics in the post-francoist years.

This framing of the story places the unwritten novel outside the narrative, the missing half of a circular structure, where fiction and non-fiction mirror each other. As the circle is cut in half and the hidden or unwritten novel is left in shadow, the reader is invited to imagine that other half, which cannot, or so it is argued, compete with the potency and power of reality itself. Through its imagined fictional shadow, the story as it is told asserts itself even more. That is, through the evocation of a non-existing fictional work, the present narrative is once again, through a strategy of absence and suggestion, given another layer of potency.

Cercas’ work, then, is not a work of fiction. Trying to understand Suárez’ gesture and the image “without the powers and the liberty of fiction” is according to the prologue “the challenge this book sets itself” even while it won’t “entirely renounce being read as a novel.” (Cercas, 2012, p. 15) This ambiguous classification of the novel by the author himself is quite precisely reflected in the book

itself. Depending on interviews with the witnesses and protagonists of the *coup d'état* as well as extensive research, the book includes “a minimal bibliography” and “a few notes” marking it through paratextual features as a work of non-fiction and the meticulous analytical work certainly reflects how “liberties of fiction” are avoided. However, it *does* at times read almost as a novel. Partly because, being otherwise a writer of fiction, Cercas has the reader in a state of ambiguity from the outset. And even the carefully critical, reflexive analytical sections that form the main body of the book shows a great sense for highlighting shifting patterns, spotting unlikely symmetries and narrating the inherent dramas and complex shapes of the historical events. Moreover, as we have seen, where “demonstrative evidence” is included in the form of a photograph it refuses to prove as it is detached from the appropriate historical circumstance.

The forum of readers asked to pass judgment of these particular historical events is appealed to both by Cercas’ confessional mode, by his analytical meticulousness and aesthetically as the historical circumstances are shaped and presented in handsome patterns. Yet judgment remains difficult as each layer of the narrative complicates the picture showing how the pieces of the puzzle fit, but also how, by a slight change of perspective, the image shifts. Thus, the book seems to question any mechanical evaluation of the recent history of Spain (that tends to distinguish clearly between good and bad, left and right) performing instead different modes of address demanding nuanced interpretation, evaluation and judgment of the complicated political situation in Spain after francoism.

CONCLUDING REMARKS

Testimony has in memory culture often been treated as an ethical act rather than as an epistemic resource primarily giving legal space to a vulnerable body and a hesitant voice. Thus, rhetorically, it hardly invites counter-argumentation and critical scrutiny. Evidence on the other hand should allow violence to be soberly considered and rationally discussed, questioned and debated. It is, however, not that simple: Testimony is a central part of forensic argumentation and one that is not all that different from other genres or media. The silent object or piece of evidence presented in court seems to speak for itself, but this speech is presented and often interpreted by expert witnesses. No part of the forensic argument be it either testimony or material evidence mechanically establish what past events should mean to us today or how we should consider them and pass judgment when engaging in memory politics and law-making.

The forensic literary works, while sharing an understanding of the material presence of history with the forensic sciences and while being intimately concerned with the past as historical fact, provide a corrective to the forensic paradigm as they highlight human interpretation, judgment and sensory experience as a necessary part of understanding how the past and its traces are interpreted and negotiated. Thus the works devote themselves to political and historical reality while demonstrating that our understanding of past events cannot depend on the automatic decoding of evidence alone.

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