

MARCELO GALUPPO, MÔNICA SETTE LOPES,  
KARINE SALGADO, LUCAS GONTIJO, THOMAS BUSTAMANTE  
*Editors*

**Human Rights, Rule of Law and the Contemporary  
Social Challenges in Complex Societies**  
*Proceedings of the XXVI World Congress of Philosophy  
of Law and Social Philosophy of the Internationale  
Vereinigung für Rechts- und Sozialphilosophie*

INITIA VIA  
EDITORA

Belo Horizonte  
2015

Human Rights, Rule of Law and the Contemporary Social Challenges in Complex Societies:  
Proceedings of the XXVI World Congress of Philosophy of Law and Social Philosophy of  
the Internationale Vereinigung für Rechts- und Sozialphilosophie

Marcelo Galuppo  
Mônica Sette Lopes  
Lucas de Alvarenga Gontijo  
Karine Salgado  
Thomas Bustamaente

*Editors*

1<sup>st</sup> Edition [E-book]– 2015 – Initia Via  
Copyright © [2015] Initia Via Editora Ltda.  
Rua dos Timbiras, nº 2250 – sl. 103-104 - Bairro Lourdes  
Belo Horizonte, MG, Brasil, 30140-061  
www.initiavia.com

Editor-in-Chief: Isolda Lins Ribeiro  
Review: Editors and authors  
Graphic project: Ana Caroline Azevedo, Agda Torquato,  
Olímpia Martins, Tomás Cirino.  
Cover design: Eduardo Furbino  
Cover image: Tiles at Church of Saint Francis of Assisi,  
designed by Oscar Niemeyer, at Pampulha, Belo Horizonte, MG, Brazil.

ALL RIGHTS RESERVED. This book contains material protected under International Copyright Laws and Treaties. Any unauthorized reprint or use of this material is prohibited. No part of this book may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, without express written permission from the publisher.

Human Rights, Rule of Law and the Contemporary Social Challenges in  
Complex Societies: Proceedings of the XXVI World Congress of Philosophy of  
Law and Social Philosophy of the Internationale Vereinigung für Rechts- und  
Sozialphilosophie / editors: Marcelo Galuppo, Mônica Sette Lopes, Lucas Gontijo,  
Karine Salgado, Thomas Bustamanete. - Belo Horizonte : Initia Via, 2015.

3159 p.

ISBN 978-85-64912-59-5 [E-book]

1. Law - Philosophy. 2. Human Rights. 3. Rule of Law. I. Galuppo,  
Marcelo. II. Sette Lopes, Mônica. III. Gontijo, Lucas de Alvarenga. IV.  
Salgado, Karine. V. Bustamante, Thomas. VI. Título.

CDU: 34(082)

# Schlink's "Der Vorleser" and the concept of Truth

Maria Clara Calheiros<sup>1</sup>

*Abstract: Schlink's novel, "Der Vorleser", constitutes the starting point from which the author wishes to examine the recent debate on historical research and writing generated by the law approved by the French parliament that punished denial that the 1915-16 killing of Armenians was genocide. The fact is that nations worldwide, including those having democratic and authoritative governments, appear to be interested in exerting some kind of control on the historical narrative of past events. Therefore, this paper aims to engage in a comparative study of the meaning of the concept of truth used both in the legal and the historical fields.*

*Keywords: Schlink Truth History Memory Freedom of Speech*

## I. Introduction

In early 2012, I followed the press coverage of the lawsuit filed against Judge Baltazar Garzón, accused of having initiated a procedure to investigate crimes committed during the Spanish Civil War, covered by an amnesty law, and simultaneously followed the debate on the passing of a law by the French National Assembly on the Armenian genocide perpetrated by Turkish forces in 1915. To an external observer there was some paradox on these two events: while Spanish courts were trying to cope with legally mandatory oblivion, French legislators were ensuring the perennity of past events narrative through legal ruling.

What I found interesting was noticing that, in both events, there were obvious tensions between Law and History, with very different scenarios, motivations and interests. Eventually, I became especially interested in memorial laws and tried to understand its aim. And so, a question emerged, for which I have sought to find an answer: can law

---

<sup>1</sup> Associate Professor of law. University of Minho (Portugal) Law School. claracc@di-reito.uminho.pt. Unless otherwise noted, translations are mine.

legitimately establish a historical truth? And even if it can, is there any benefit to gain from it?

In my analysis, for the sake of brevity, I will be focusing on the main arguments submitted in the debate around the laws of historical memory, so that I can, at a later stage, approach the issue through the contribution that I believe can be extracted from Schlink's work *The Reader*. This can be of use for two reasons: one internal, or substantial to the work itself, concerning what it can tell us about the truth of Law and the truth of History; and one external, related to the controversy ultimately generated by the work (revived by its film adaptation a few years ago) and the legitimacy or illegitimacy of the interpretation it proposes of Nazi Germany and, especially, of the issue of managing the problem of guilt by the second post-war generation.

Let us recall, only briefly and in very general terms, the plot of this novel: a teenage boy, Michael Berg falls, in love with a woman, Hanna Schmitz, who is old enough to be his mother, with whom he lives an intense relationship, which is abruptly ended by her, without any explanation. This causes him a certain emotional trauma. Years later, now a law student, the protagonist of this account, told in the first person, discovers, while following the trial of a group of former Nazi guards, that the woman who had been his lover was among those accused of a crime of mass murder of women who were prisoners in a concentration camp. This event generates a set of contradictory feelings in the protagonist, who cannot help loving this woman but simultaneously feels the need to repudiate and distance himself from her.

## II. Law, History and Truth

It is after this disturbing discovery and faced with the need to deal with the consequences it entails, on a personal level, that the protagonist is confronted with the need to choose his legal profession. This is a choice that he will postpone for a long time, until indecision becomes unbearable. What I intend to take as a starting point for my analysis of the intersection between History, Law and Truth, are the pages of Chapter 4 of Part III of the book, where Michael describes his thoughts about the choice he has to make, his doubts and anxieties.

I didn't see myself in any of the roles I had seen lawyers play at Hanna's trial. Prosecution seemed to me as grotesque a simplifica-

tion as defence, and judging was the most grotesque oversimplification of all. [...] That did not leave many legal careers, and I don't know what I would have done if a professor of legal history had not offered me a research job. Gertrud said it was an evasion, an escape from the challenges and responsibilities of life, and she was right I escaped and was relieved that I could do so. [...]

Now escape involves not just running away, but arriving somewhere. And the past I arrived in as a legal historian was no less alive than the present. It is also not true, as outsiders might assume, that one can merely observe the richness of life in the past, whereas one can participate in the present. Being a historian means building bridges between the past and the present, observing both banks of the river, taking an active part on both sides. One of my areas of research was law in the Third Reich, and here it is particularly obvious how the past and present come together in a single reality. Here, escape is not a preoccupation with the past, but a determined focus on the present and the future that is blind to the legacy of the past which brands us and with which we must live."

Thus, in this excerpt, dominated by an intense feeling of guilt and by a pressing need to understand Hanna's actions, we find the protagonist at a crossroads, in which he seems forced to opt between a life in service to the truth of law (which corresponds to a simplification of the truth - especially in what concerns the role played by the judge, as the character concludes) or the truth of history, presented as the perspective of the legal historian, one that he ultimately ends up choosing (perhaps because it liberates him from having to issue a final decision: to not take sides, to not judge? That which he is unable to do?) But surely because it appears to him as broader, more profound, less reductive. But even then, Michael realizes that he will always be too far from any point of arrival on his search for an explanation. After all, is this not an escape again?

Back to the present and to reality, keeping in mind the previous considerations, let us, thus, analyse the issue of memory laws and, in particular, the case of the controversial French law that gave rise to this reflection.

### III. Truth and memory laws

States have often shown an interest in establishing an official version of history. This has been an old concern throughout the history of mankind and it has had several manifestations. European monarchies have had official chroniclers and, even before that, the writing of history had already been ordered from certain individuals. Therefore, the State's interest in history is not new and it continues to have different expressions. The Democratic States that emerged in Europe after the Second World War took on different roles as guardians of history: preserving vestiges and historical documents, ensuring the proper teaching of history, promoting historical research.

One of the most peculiar expressions of this guardianship of history by the States took the form of the so-called "historical memory laws." These have been present in different legal systems for decades, born as a result of some peoples' need for reconciliation with dark episodes of their past and the inherent sense of guilt. Not intending to be exhaustive, I recall the cases of Germany, Spain or France.

Despite the good intentions that, one may initially assume, rule these initiatives, the fact is that there is no consensus concerning them. It is true that what is often at stake is the protection of historical truth, in face of all kinds of denial concerning the serious crimes against humanity perpetrated in the twentieth century. However, it is equally evident that the immediate consequence - we should, in fact, say the only consequence - is restrictions on freedom of expression.

One of the disputed aspects of the recent French law of 2011 (which established punishments of one year in prison or a 45,000 euro fine for anyone who denied the Armenian genocide), eventually considered unconstitutional by the Conseil Constitutionnelle on 28 February 2012, has to do with the fact that it addresses an issue that did not even relate directly to French history. Historian Gilles Manceron wondered whether France would create a law for every crime in the world, such as those of communism in Russia or the Indian genocide in America. For historians, highly critical of this kind of legislative initiatives, the real reasons that compel these lawmakers fall outside the scope both of historiography and law: it has ties to the political agenda.

Even after the decision of the French *Conseil des Sages* deeming the new law unconstitutional, although based on arguments related to the issue of separation of powers and disproportionate limitation of

freedom of expression, the controversy remains and some have even considered it an opportunity to re-question other historical memory laws, in force in France.

But are all memory laws questionable? The opinions of historians are divided, as some admit that they can make sense in preventing the emergence of dormant anti-Semitic movements, for example, while others go as far as condemning all legislative interference in this field. There is, in the past, at least one example of trial and conviction of an historian (Bernard Lewis, professor at Princeton, tried by a Paris Court in 1995) for a crime of opinion.

The very *Gayssot Act*, of 1990, had already been subjected to trenchant criticism by historians such as Pierre Vidal-Naquet, condemning attempts to establish official truths and, in 2006, a petition was signed by 19 historians, demanding the repeal of the *Gayssot Act*, the *Taubira Law* on slavery and also the law demanding the inclusion of references to the positive aspects of the French colonization into school textbooks.<sup>2</sup>

The adoption of “historical memory laws” that intend to establish certain versions of the past and prevent, or at least restrict, their discussion was the subject of a lively dispute by historians, who prepared a manifesto whose terms are worth remembering:

History is not a religion. The historian accepts no dogma, respects no prohibition, knows no taboos. [...] History is not the moral. The role of the historian is neither to praise nor to condemn but to explain. The historian is not a slave to the present. The historian does not tack onto the past modern ideological formulations or introduce today’s sensitivity into bygone events. History is not memory. The historian, in scientific steps, gathers people’s memories, compares them with each other, juxtaposes them with documents, objects, traces and establishes facts. History takes memory into account but is not reduced to it. History is not a legal object. In a free state, neither the Parliament nor the judicial courts have the right to define historical truth. State policy – even driven by the best of intentions – is not the policy of history”.<sup>3</sup>

But it was not just historians who felt, with discomfort, that a tendency to pass memory laws was emerging. Obviously, the debate

---

<sup>2</sup> RAIM; Laura, Génocide Arménien: les historiens ne veulent pas la loi, Le Figaro, 21.12.2011, electronic edition

<sup>3</sup> Available at [www.ldh-toulon.net/spip.php?article1086](http://www.ldh-toulon.net/spip.php?article1086)

goes on (with particular interest to us in this respect) also among jurists.

In fact, 56 legal experts from all over France signed an manifesto against the adoption of memory laws, considering that what is at stake is the free communication of thoughts and opinions. While taking into account the need to punish racist behaviours, it is believed that memory laws go too far, for, in them, under the guise of the indisputable heinous nature of the crime thus recognized, the legislator prevails over the historian in defining historical reality and issuing criminal sanctions based on that definition, which prevents not only the most simple and basic denial but also the very scientific debate around reality, determining the conditions of its development.

More recently, according to BADINTER(2012), in the absence of a judicial ruling with *res judicata* (as happened in the case of the genocide of the Jews, through the judgments of the International Military Tribunal at Nuremberg - a jurisdiction created by the London Agreement, of August 1945, and ratified by France), it would not fall to French legislature to replace the action of the courts. On the other hand, it is stated: *“le Parlement français n’a pas reçu de la Constitution compétence pour dire l’histoire. C’est aux historiens et à eux seuls qu’il appartient de le faire.”* (“the French parliament has not been vested by the Constitution with the power to write history. Such is the exclusive role of historians.”)<sup>4</sup>

#### IV. Truth of History and Truth of Law

So far, we have simply summarized the arguments presented within the debate sparked by historical memory laws, largely focused on issues related to freedom and its legitimate or illegitimate restriction. We should now adopt another angle for the analysis, which is that resulting from the ongoing discussion about the truth of law and the truth of history. We thus wonder if there are, after all, many similarities between the roles of lawyers and historians?

In truth, it must be said that the comparison and the search for similarities between the roles of jurists, especially judges, and historians is recurrent in the legal field. Those who have engaged in this endeavour generally emphasized that both these players were tasked with ascertaining the truth of past events through a set of means, clues or evi-

---

<sup>4</sup> Badinter, Badinter: “le Parlement n’est pas un tribunal”, Le Monde, 14/01/2012, electronic edition available at [www.lemonde.fr/idees/article/2012/01/14/le-parlement-n-est-pas-un-tribunal-par-robert-badinter\\_1629753\\_3232.html](http://www.lemonde.fr/idees/article/2012/01/14/le-parlement-n-est-pas-un-tribunal-par-robert-badinter_1629753_3232.html),



dence, that only provide indirect access to them. A judge would, thus, also be involved in a historical research of bygone events, albeit less free (mainly limited to the contributions of the parties in the proceedings..., and with the leeway permitted by the law of evidence), but still with the same contours, assumptions and goals.

Criticism of this view seems necessary and obvious and many have expressed it before, so I will also present it here: the goal pursued by the historian is broader and, in truth, of a different nature, as he seeks not only to establish the singular facts, but rather explain them and frame them within their proper context.

In the words of the Portuguese historian José MATTOSO (1997, 38,39):

In fact, History is no longer, as such, a literary discipline. It does not interpret any texts. The past is not a collection of human facts that memory retains or imagines, but the sum of those that can be deduced from concrete traces, materially imprinted by man on the surface of the Earth. [...] Now, without establishing a precondition for the critical objectivity of data and their association in scientific terms, History, made into a mere narrative, is no different from fiction. With the disadvantage, in that case, of violating the rules of the game, that is, denying its fictional nature.

However, the quest for positiveness in History must not lead us to forget that its contact with the past is made through signs and representations that mediate reality, and not by a direct examination of reality itself. Those signs are the marks left by the passage of Man, but they are also the very verbal or mental representations that allow us to choose which of them are considered representative. History is, therefore, a representation of representations. It's not exactly science, but knowledge.

The role of history as knowledge and, consequently, the function performed by its communicability, paves the way for the examination of History as art."<sup>5</sup>

Thus, it seems we must<sup>6</sup> agree with those who advocate that the similarity between the roles of judges and historians is more apparent (and even illusory) than actual. A comparison between the two inevita-

bly leads to an unacceptable simplification of the epistemological and methodological issues inherent to historiography<sup>7</sup> and to the judicial application of law.

This is the moment to go back and recall the excerpt we have transcribed from “*The Reader*” and the character’s dilemma pictured there. It seems to us that the above mentioned simplification is precisely what the protagonist wants to avoid by choosing the profession of historian of law.

More than anything, the truth of law is never dissociated from the truth of the lawyer. Therefore, it can never have the same nature as historical truth. As we know, in Law, a fact is never sufficient in itself; instead, they are always hopelessly juridical. Let us recall the lesson of Professor CASTANHEIRA NEVES concerning the relationship between matter of fact and matter of law:

When considering the matter-of-fact, the matter-of-law is implicitly present and relevant; when considering the matter-of-law, the joint influence of the matter-of-fact is indispensable. Or in a much more expressive formulation: “To tell the truth, “pure fact” and “pure law” are never found in legal affairs: fact does not exist but from the moment it becomes a matter of application of law, and law is moot if there is no application of fact; so when the lawyer thinks of fact, he thinks of it as a matter of law, and when he thinks

---

<sup>7</sup> In fact, historians have been questioning the nature of historical truth for some time. There can be identified three different lines of attack on truth of history. The first one is based on the recognition of the constraints of evidence, meaning that historians have to find evidence which will enable them to draw inferences about the facts that interest them. The second one consists of the acknowledgement of the constraints of culture. In fact, historians have started to question whether their descriptions and inferences were not somewhat tainted by their own cultural circumstances. The last one is based on the constraint of language and was essentially drawn by postmodern philosophers like Roland BARTHES, Jacques DERRIDA and Jean-François LYOTARD. Barthes, for instance, argued that historians’ description of past events represent a serious of concepts about the past but not the past itself. As historians don’t generally recognize that they are just describing their ideas about the past, they generate a misleading effect on readers, convincing them that they are reading descriptions of reality. Furthermore, words do not refer to things in the world but just to concepts. In that sense, the truthfulness of any description depends on the meaning of the words in a certain culture and time. DERRIDA also pointed out that historical descriptions are in fact based upon others texts, mainly reports of people’s experiences. Cfr. MCCULLAGH, C. Behan, *The truth of History*, London/New York: Routledge, 1998, pp. 13-42.

of law, he thinks of it as the form intended for fact”<sup>8</sup>

Note that we are not addressing the issue of debating the truth of norms, where ontological and epistemological arguments are wielded (is there a normative reality? is normative knowledge possible?), <sup>9</sup>but whether the establishment of a historical truth can legitimately be the object of a law. It seems undeniable that there is a certain historicity in the role of the jurist, especially the judge, inasmuch as legal proceedings recurrently entail a retrospective analysis of legally relevant events (as we have mentioned before). To put it simply, in this case, the goal is to extract certain legal consequences that follow from the establishment that certain events have occurred in the past. And that will make all the difference.

Let us frame the question within the scenario we were initially considering. In the case of historical memory laws, one might rightly argue that it is not only the matter of the knowledge - in and by itself - of the truth that is in question, but rather the establishment of guilt in the production of certain events and crimes against humanity. But, then, should it fall to the legislator or the judge to rule on those same events? Moreover, shouldn't it be up to an international body, rather than a third country, to play the role of arbiter?

Although a legitimate concern over the resurgence of radical movements, with racist, xenophobic and others of an equally discriminatory nature may deserve some understanding, we are forced to objectively recognize that, by giving legislature a say in the establishment of historical truths, we allow Law to invade the field of history and crys-

---

<sup>8</sup> Castanheira Neves, *Questão (...)*, p. 55-56. In conclusion, the author advocates that: “Law is not an element, but a synthesis; not a premise for validity, but fulfilled validity (...); not prius, but posterius, not data, but a solution; not a starting point, but an outcome; it is not in the beginning, but in the end. (...) Thus, the methodological nonsense of the normative-substantive scheme becomes evident. It is not “law” that is set apart from “fact”, as law is the normative-material synthesis in which “fact” is also an element, the very synthesis that is critically prepared and supported by the problematic distinction. And if we want to refer law to its previously accomplished objectifications (norms, institutions, precedents), then it must be taken into account that we can only think in juridical terms if we reestablish, within these objectifications of established legislation, that same constitutive problematic (and that same distinction).” Castanheira Neves, *Questão (...)*, p. 586.

<sup>9</sup> On this debate, summarized, PINTORE, Anna, *El derecho sin verdad*, Madrid: instituto Bartolomé de las Casas, Dykinson, 2005, pp. 40 e seq.

tallize a necessarily simplified version thereof, leaving no room for nuances and deep insights, be it in History itself or in Art (as is also the case of fictional works such as *The Reader*).

In the case of memory laws, what seems worth pointing out is that legislature fixes an image of the past from which there are no concrete legal consequences, other than the prohibition to deny the interpretation given to the events in question, in the future. The only visible immediate result is produced in the jurisdiction of each individual, imposing restrictions on freedom of expression.

What kind of truth is that? It is certainly not one that is recognized as legal (it's extra-procedural, and oblivious to the adversarial nature of fact-finding in legal procedures contradiction), nor as historical (it is immutable and oblivious to the scrutiny of sources). Truths established by memory laws seem to serve neither Law nor History.

## V. Memory laws: misunderstandings and risks

We further insist on the need to approach the issue from a different perspective: is there a protection of History here? Of its incorruptibility?

In our opinion, only apparently. The exercise seems to entail a betrayal or at least a misunderstanding of the very spirit of historiography. Moreover, currently, the real problem of researchers' freedoms and of the boundaries imposed on them seems to reside in much subtler aspects than the protection of official versions of History by legislature. Indeed, the very freedom of research and the ensuing reflection are essential elements for greater historical objectivity. The real problem, once again, has to do with the market. Judith SHULEVITZ tells us that today, in the United States, who decides the topics that students must write about "are the customers of Barnes and Noble".<sup>10</sup> Perhaps it is this market dictatorship, and its harmful effects on investigations, that we (or legislature) should be worried about.

Stiina LOYTOMAKI<sup>11</sup> has correctly pointed out the dangers of

---

<sup>10</sup> Apud Noiriel, Gérard, *Sobre la crisis de la historia*, Madrid: Ed. Cátedra, 1997, p.199

<sup>11</sup> Cfr. Law and memory, *The Politics of Victimhood*, 21 Griffith L. Rev. 1 2012, p. 18. We agree with the author when she states that "legal engagements in memory and identity politics tend to give rise to competition between victims and to heightened tensions concerning identity politics, leading to further polarisation of particular groups against each other and the state". *Ibidem*, p. 19.

manipulating memory and history through law. *“The law turns private memories into public narratives”, she says and adds “However, resorting to identity politics through the law is particularly efficient because the law, as noted above, forces particular groups’ narratives to be recognized in universal terms. In historical discourse, there is no equivalent universal vocabulary to the one existing within law. Consequently, voices or narratives of particular agents, although celebrated for their particularity, can also be dismissed because of their ‘subjectivity’ and perspectivity.”* Law is, therefore, being used in a battle for recognition of past injustices. Memory constitutes often the basis of group identities based on victimhood.

On the other hand, there are obvious risks involved in an attempt to condition or restrict historical readings. One of them is a chance of it leading to aimless control that intends to establish itself as the censor of the very exercises of human creativity, namely Art and, particularly, literature.

Let us return once more to *The Reader*, this time, to analyse a few external aspects, namely, the controversy that surrounded it.

“*The Reader*” triggered widespread academic controversy surrounding the issues of guilt and shame. Even refraining from entering the dispute over the true interpretation of the text, and its possible hidden agenda, the work also seems to be easily associated with what some call secondary anti-Semitism. This can be defined as a backlash against the Jews, which feeds on the fact that the German Holocaust reminds the Germans of their guilt and prevents the full assimilation of the German identity<sup>12</sup>.

---

<sup>12</sup> MUELLER, Agnes, *Forgiving the Jews for Auschwitz? Guilt and Gender in Bernhard Schlink’s Liebesfluchten* 2007, 511-513. The summarizes the reasons that sustain current ongoing scholarly debate on Schlink’s work: “Bernhard Schlink’s international bestseller *Der Vorleser* (1995) sparked an important scholarly discussion on guilt, shame, and the so-called “Vergangenheitsbewältigung.” In this debate, the text received praise for candidly taking on the subject of post-WWII German guilt and shame (Bartov, Niven, and Schmitz), yet was criticized for reintroducing familiar or tainted clichés and for affording Germans an easy way out of their feelings of guilt by turning them into “victims” of the Nazi regime (Schlant, Arnds, Donahue, Metz). These debates have not reached any definite conclusions for two reasons. First, they are intrinsically connected to how we read and how we identify with literary texts, urgent questions when it comes to literature dealing with the Holocaust, as Dominick LaCapra’s work on writing trauma reveals convincingly. Secondly, and perhaps more importantly, if we understand literature to be the turf on which important matters of memory and identity are teased out and negotiated, and the interpretation of literature (by scholars and critics) as the field where this nego-

Indeed, once again, *The Reader* is a good example of a text that was subject to criticism and accused of revisionism or “bleaching” of German guilt. In this sense, Cynthia OZICK published an article (*The Rights of History and the Rights of Imagination*), addressing the fact that SCHLINK’s novel leads us to feel empathy for a Nazi murderer. This author draws a very clear boundary between history and fiction, and the latter does not have to move within the limits of reality. There is, however, in her opinion, an exception: the historical novel, in which the aim is to “embody” history. In this field, there would be an added duty to respect factuality and historical truth. Thus, the author calls into question SCHLINK’s true intentions in creating an atypical and inconsistent main character - the guard Hanna, who is an illiterate woman in a nation of educated people. Her conclusion points towards the manipulation of the reader, thus conditioned to feel empathy towards such a character<sup>13</sup>.

Not wanting to excuse myself from getting to the bottom of the issue, i.e., whether or not the novel appears to be absolving the action of the German population during the Second World War, what straight away seemed disturbing to me when reading this book was precisely the fact that she leads us (by denying the reader access to Hanna’s dark past) into a confrontation of mixed feelings of empathy and revulsion towards that woman. In fact, it seems to me that the work (most likely intentionally, given the author’s circumstances) evokes the philosophical debate and controversy surrounding Hannah ARENDT and her book *Eichmann in Jerusalem. A report on the banality of evil*. In it, ARENDT seeks to address the need to deal with the behaviours of ordinary people

---

tiation is further reflected upon, then the continued debate on guilt and shame in Der Vorleser points to the fact that the difficulties Germans have with their history, memory, and identity are both ongoing and in need of further exploration.”p. 511

<sup>13</sup> OZICK says: If virtually universal literacy was the German reality, how can a novel, under the rules of fiction, be faulted for choosing what is atypical? [...] Characters come as they will, in whatever form, one by one; and the rights of imagination are not the rights of history. A work of fiction, by definition, cannot betray history. Nor must a novel be expected to perform like a camera. [...] It would seem, though, that when a novel comes to us with the claim that it is directed consciously toward history, that the divide between history and the imagination is being purposefully bridged, that the bridging is the very point, and that the design of the novel is to put human flesh on historical notation, then the argument for fictional autonomy collapses, and the rights of history can begin to urge their own force. [...] and that the unlettered woman in Schlink’s novel is the product, conscious or not, of a desire to divert from the culpability of a normally educated population in a nation famed for Kultur.

(which Hanna is, undoubtedly), who, in different circumstances (other than in a totalitarian society that tolerated and endorsed the most abhorrent crimes) would not commit crimes.

It is generally accepted<sup>14</sup> that Hanna ARENDT failed to explain why some lose their ability to think and judge when in the context of a totalitarian society and others do not. SCHLINK's *The Reader* certainly does not offer any explanation. That could only come from Hanna, who explains nothing. But the work is effective in causing perplexity due to being confronted with "the banality of evil".

The reader's perception of his empathy towards a woman with a past such as Hannah's is disturbing, not because we are tempted to excuse her, but because we find that the face of someone who is capable of committing the most despicable crimes can be kind, or simply normal.

Personally, I do not think that such reasoning should be repressed or that it constitutes any kind of revisionism (but there is a danger that men without memory who enforce memory laws might think so), but is rather a way to remind us that no society, no civilization is exempt or safe from the possibility of embarking on the same monstrous adventure and, therefore, must be vigilant. In this sense, "The Reader" can be seen as a contribution to the contemporary movement of legal narratology, according to which, knowledge is so intensely personal, that it cannot be communicated through dispassionate reasoning, but only through the telling of stories that are themselves, inspirers of credibility.

Let us return to the philosophy in Hanna ARENDT. The author tells us: "The judges were obviously aware of how it would be comforting to believe that Eichmann was a monster, [...] The problem in Eichmann's case was that there were many like him, and these many were neither wicked nor sadistic, they were, and still are, terribly normal, frighteningly normal. From the point of view of our institutions and our moral values, this normality is much more terrifying than all the atrocities put together, as it implies (as was stated many times at the Nuremberg trials by the defendants and their lawyers) that this new type of criminal, being, in fact a *hostis humani generis*, commits crimes under circumstances that make it impossible for him/her to know or feel that he/she are acting wrongly."<sup>15</sup>

---

<sup>14</sup> Araújo, António e Nogueira de Brito, M., Arendt in Jerusalem, in Eichmann in Jerusalem. A report on the banality of evil, Portuguese edition, Lisbon: Tenacitas, 2003, pp.26 and 27.

<sup>15</sup> Arendt, H., op. Cit., p. 355 and 356.

## VI. Conclusions.

As the main character of Schlink's book struggles with the need to cope with his nation's past and his own feelings towards the former Nazi guard Hanna, he hesitates endlessly about his career. In doing so, the character seems to be particularly aware of the challenge that constitutes establishing truth in the legal world. The paper focus on the character's dilemma as it enlightens the debate on the connection between legal and historical truth.

Indeed, and returning once more to the text of *"The Reader"*, it becomes clear, in my view, that one admits that there is a difference between the positioning of the historian (even that of a historian of law), and that of the judge or lawyer, before the truth. The protagonist's choice of History of Law as a career path (in any case, an uncommon or unlikely choice, as other alternatives would be more attractive economically or even in terms of social prestige - as some exegetes of the book have pointed out<sup>16</sup>) appears to result from the choice of a less "simplistic" or "reductive" conclusion.

Assuming that no one possesses absolute truth, historical truth appears as a truth constructed from the parts of truth held by each individual, almost as if it were a puzzle.<sup>17</sup> That is, as a whole which is constructed by juxtaposing the pieces we can find.

In recent years, collective memory has become the subject of a vivid debate, as it has been used as the basis to establish group identity. Law is recognized as an important tool in this battle. It is certainly true that, due to its specific characteristics, resorting to the legal arena allows to generalize and universalize victimhood experiences. But not without a cost. As LOYTOMAKI says "The cost of playing identity politics through the law is precisely that historical complexity is lost."<sup>18</sup>

---

<sup>16</sup> Vd., ROTH, J Reading and misreading The Reader, "Law and Literature", 6: "Choosing his profession after graduation, Michael rejects lawyer, judge, and prosecutor and chooses to become a legal historian. He will delve into the past to uncover the truth." p.169.

<sup>17</sup> Cf. on this matter, Montoro Ballesteros, Verdad, método y conocimiento práctico, Murcia: DM editor, 2008, p. 18 and 19.

<sup>18</sup> LOYTOMAKI, op.cit., p.19.