

Adriano Correia: O Caso Eichmann: Hannah Arendt e as controvérsias jurídicas sobre o julgamento

Review: Adriano Correia, *O Caso Eichmann. Hannah Arendt e as controvérsias jurídicas sobre o julgamento*, Coimbra: Edições 70, 2023, 196 pp., R\$109,50 / £9,50 (ebook)

With the publication of *O caso Eichmann: Hannah Arendt e as controvérsias jurídicas sobre o julgamento* [The Eichmann Case: Hannah Arendt and the Legal Controversies about the Trial], Adriano Correia makes another relevant contribution to the Brazilian, and indeed South American, reading public. A leading expert on Hannah Arendt's thought, Correia has contributed with translations, books and articles on her thought, as well as with insightful philosophical commentaries on ethical issues, the problem of poverty, and authors such as Foucault and Agamben. Correia has also distinguished himself in institutional activities, having served two terms as president of ANPOF (National Association of Graduate Studies in Philosophy), director of the Inter-American Society of Philosophy and vice-president of the Ibero-American Philosophy Network. His activities show a strong and praiseworthy commitment to strengthening and spreading philosophical thought in our country and to bringing together the philosophical communities of different Latin American countries.

Correia brings here together and synthesizes the legal aspects of the Eichmann case, and Arendt could not fail to be at the heart of this account. Indeed, throughout these 200 pages, one can see a great dexterity in drawing on all her work, including letters and unpublished material, to examine her positions on the issues in the controversy. Mention is made of her most direct interlocutors, Jaspers, Buber, Jacob Robinson, Yosal Rogat, of participants in the process such as Hausner, and of later readers such as Schmitt, Judith Butler, Celso Lafer, Shoshana Felman, David Cesarani, Deborah Lipstadt, David Luban and others. Lafer, a leading figure in Brazilian legal thought, and especially among Arendtians, since he was Arendt's student and played a pioneering role in introducing her thought in Brazil, wrote the book's preface 'from the perspective of a law professor', which is complementary to Correia's political-philosophy perspective.

The book, however, is not really about Arendt, but about the Eichmann case and the problems it has left us with, and Correia's account is, as far as I know, the first book-length gathering and organisation of legal issues regarding the Eichmann case to be published in Brazil. The questions are summarised by the author as follows: "I will give priority to the following questions: the problems of jurisdiction; the typification of the criminal and the crime; the notion of humanity implied in the 'crime against humanity'; the con-

troversy over the appropriate punishment, and particularly over the death penalty; the impact and legacy of the trial; the challenge of personal responsibility in a criminal system.”

In the first chapter, Correia provides a detailed account of the facts of Eichmann's abduction in Argentina in order to address the question of the jurisdiction of the trial – and Correia does not miss the opportunity to denounce, once more, the ease with which Argentine society and the elite allowed the presence of Nazis among them. The discussion deals with the delicate problem of the specific relationship between the laws of Israel (who kidnapped), Argentina (where the kidnapping took place) and Germany (of which the kidnapped was a citizen), and the possibility of promoting justice, not revenge, when the Jewish state put its hands on its aggressor or, more precisely, when the victim took the place of the judge in a trial; legitimacy is seriously at stake here. The chapter goes beyond it as the argument focuses on understanding Eichmann as “enemy of mankind”, as someone “hostile to the human race” (*hostis humani generis*). Correia takes us back to Cicero and Schmitt through the theme of pirates who, having no territory, are not subject to any laws and thus challenge the legal legitimacy of those who capture them.

Drawing on a letter from Arendt to Jaspers, Correia shows that Arendt initially considered the comparison with the pirate theme to be “indispensable”, but later changed her mind, and this indicates Correia's own position in relation to Arendt. She remains, of course, a particularly important reference and authority for Correia's argument, both because she is a central figure in the the whole Eichmann controversy and because Correia has devoted years to Arendtian thought. However, Correia's position is not subservient to the Arendtian argument, since he, who states from the outset to be prepared to judge Arendt, does so throughout the book, not only by disagreeing with or showing the flaws in some of Arendt's positions, but also by showing the Arendtian argument to be much less assertive and affirmative than the one we find in her published work; under Correia's elaboration, Arendt's points appear much more ambiguous and oscillating than what we are used to see. The subject of pirates, initially 'indispensable', was partly abandoned when Arendt recognised, also in a letter to Jaspers, that “her theory of piracy doesn't work because it is essential [to the case] that the pirate acts from private motives, as Carl Schmitt, for example, insisted.” (p.118)

This is followed by a critical assessment of the way the trial was conducted. The trial was clearly, or even openly, subject to the geopolitical interests of the State of Israel, so that its legitimacy was questioned not only because it turned victims into judges, but also because of its spectacular and political nature, which, in the view of many, such as Arendt and Cesarani, undermined the proper juridical character of the trial, since it threatened the possibility of establishing an effectively complex narrative capable of adequately holding the accused individual accountable. The very long and tedious testimonies of the sur-

vivors may have contributed to the formation of a memory of the catastrophe, but very often they were useless in terms of attributing responsibility to the accused; they were, of course, useful for Ben-Gurion's political pretensions, and Correia makes a point of showing that Ben-Gurion didn't care much about the exact punishment that Eichmann would receive, because for him it was enough that the punishment was carried out in Israel. Moving in a slightly different direction, Correia draws on the distinction proposed by Hanna Yablonka and concludes that, thanks to the actions of the judges, the trial was not simply legal nor totally spectacular – it was a historical trial. In Correia's assessment, the judges' action, while not able to eliminate the political pressures that weighed on the spectacle, was considerably successful in maintaining the proper legal validity of the trial and, at the same time, the (always risky) extrapolation of the legal process was able to produce “a comprehensive historical description of the attempted extermination of the Jews by the Nazis” (p.112); since this description was ultimately “crucial in making the catastrophe of the extermination of the Jews a matter for everyone” (p.113), one can say that it was, if not a proper juridical trial, a truly historical one.

While it is true that this description is at the root of contemporary Israel's inhuman foreign policy, it is also true that this historical trial contributed to the understanding of the notion of “humanity”, which is the subject of the following chapter, dedicated to the very idea of “crimes against humanity”.

The ability to preserve a legal value to the judgment, thanks to the action of the judges, is all the more remarkable when we consider the difficulties linked to the novelty of the crimes in question. Again starting from the reactions to the trial, but now also looking at the philosophy of Nietzsche, Kant, the work of Jaeger and the differences in terminology between two German terms that can be translated as humanity – *Menschlichkeit* and *Menschheit* – Correia shows the difficulties of thinking about this unity that lies under the very idea of humanity, and he presents Arendt's position on the matter in a very nuanced way. While it is true that Arendt criticises the notion of human rights at the famous chapter 9 of *The Origins of Totalitarianism*; while it is true that in *The Human Condition* we have plurality as the core of political thought, thus weakening the universal unity between every single human being, it is also true that Arendt is a champion of *humanitas*, which she articulates, based on Cicero and Kant, as a form of love for the world (*amor mundi*), a love that leads to responsibility for it. “It is rather a question of maintaining that humanity, as an 'inescapable fact', should gradually be accompanied by the idea of a common humanity in a community of the peoples of humanity. Certainly not a 'world government', which 'would be the worst tyranny imaginable', but perhaps the progressive constitution of a community of peoples in which the notion of sovereignty would not be the articulating principle of the mutual promises of its foundation.” (p.141-2) Correia regrets that Arendt was not explicit about the nature of this community, and he suggests that an international criminal justice could be one good way of building it.

Correia then goes on to discuss Arendt's famous alternative death penalty, which is still controverted today. Buber opposed the death penalty and suggested that Eichmann should live in Israel (and perhaps do forced labour) so that he could see with his own eyes the flourishing of the Jewish people he tried to exterminate; instead, by being sentenced to death, Eichmann committed one last villainous act, as he led Israel to build a gallows and a crematorium on its own territory. Scholem, for his turn, criticised the verdict because, according to him, it presupposes the possibility of some proportionality between Eichmann's actions and the capital punishment, and because it creates the illusion that it was possible to conclude the case of a genocide by hanging an individual. The sentence drawn up by Arendt, which is the subject of a long discussion, is criticised by Correia, who agrees with Butler and considers it an "aporetic justification of the death penalty (...) in the name of the defence of plurality", a justification that is somehow still a part of the crime (p.174).

Finally, in his own epilogue, Correia addresses the legacy of the trial, critically highlighting the fact that it has contributed to Israel decisively assuming the position of exclusive "guardian of the enduring significance of Jewish history" (p.182), conceived in terms of a "historical essence" that grounds that sovereign nation-state. Correia is not afraid to affirm this:

The Eichmann case gave a moral seal of approval to Israel's national project, as a homogenous nation-state with poorly delimited relations with the Jewish religion, due to its linking of the 'Holocaust' as a founding event. Henceforth, the political spirit underlying the trial in Jerusalem, which gave a voice to the victims of Nazi domination, was paradoxically strengthened in the task of affirming Israel in the community of sovereign peoples, doomed to reproduce on non-Jewish Palestinians part of the oppression of which the survivors were victims. The 'we' that the public consciousness of extermination forged through the Eichmann trial necessarily engendered several 'theys', notably the Arabs, whom the prosecution tried to assimilate to Hitler already throughout the trial. (p.186).

The Eichmann trial is also responsible for a movement, particularly in Germany, to arrest and take to trial participants in the Nazi regime, but these efforts have always met with resistance from a society that is often (and frighteningly) comfortable with the idea of having murderers in its midst, often in prominent positions. Here we find criticisms similar to those made of Argentine society at the beginning of the book and, I believe, we find clues to the theme of individual responsibility that will perhaps be in Correia's announced next book.

In a final move, the discussion moves to the theme of forgiveness and the possibility

of moving on after the catastrophe, and ends by noting that Arendt's death sentence introduces a contradiction with her own account, an “unresolvable ambiguity” in her own words, by placing human plurality above the formal rules of law. At this point, says Correia, in agreement with Yosal Rogat and Butler, the interruption of the chain of revenge requires the establishment of a dispassionate tribunal, something that can be deduced from Arendtian thought, but was betrayed by the death sentence drawn up by Arendt: “...and perhaps the charge of lack of imagination could also fall on her on this point.” (p.206)

In any case, Correia praises Arendt's daring to judge, even though the conditions for doing so were particularly adverse. “By daring to judge,” and with this Correia ends this book and points to the theme of the next one, “she dared to give a name to what she thought was a factual phenomenon that we would have to deal with from then on, the ‘fearsome, word-and-thought-defying banality of evil’, and to which I will come to elsewhere, in a second movement of the reflection begun in this book.”

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