Beyond Closure:
The Artistic Re-Opening of Holocaust Trials in Works by Hannah Arendt, Peter Weiss, Roland Suso Richter, and Uwe Timm

Kerstin Steitz
Berlin, Germany

M.A., University of Virginia, May 2008

A Dissertation presented to the Graduate Faculty
of the University of Virginia in Candidacy for the Degree of
Doctor of Philosophy

Department of Germanic Languages and Literatures

University of Virginia
May 2014

Abstract

This dissertation examines how the twentieth and twenty-first century German and German-Jewish authors and filmmakers Hannah Arendt, Peter Weiss, Roland Suso Richter, and Uwe Timm engage with historical Holocaust trials: the Eichmann trial in Jerusalem (1963), the Frankfurt Auschwitz trial (1963-1965), and the Hamburg trial (1967). The legal and literary trials have the same subject, the Jewish genocide committed by the National Socialists, but they treat the subject in different forms: the Eichmann and Auschwitz trials were legal criminal trials, Arendt's *Eichmann in Jerusalem* (1965) is a report, Weiss's *Die Ermittlung* (1965) is composed in the form of the oratorio, Suso Richter's film *Nichts als die Wahrheit* (1999) is a courtroom drama, and Timm's *Am Beispiel meines Bruders* (2003) is a memoir.

The analysis and juxtaposition of legal trials and literary engagements from both first- and second-generation writers and filmmakers seeks to answer the question of how literary, theatrical, and filmic trials can commemorate and convey dimensions of the Holocaust that do not fit easily into the judicial concepts, practices, and purposes of the legal trials. Drawing from Aristotelian definitions of judicial and epideictic rhetoric in his *Rhetoric*, this study argues that the legal and literary trials function in a structural relation to one another, thereby complementing each other. The artistic works criticize and correct what they consider the pitfalls of the legal proceedings.

Beyond Closure: The Artistic Re-Opening of Holocaust Trials argues that the Holocaust narratives created by the legal trials shape in significant ways the literary trials which adapt certain judicial concepts and practices, while simultaneously moving beyond the accusatory and punitive purpose of the legal trials to more fully understand, commemorate, and mourn the suffering of the victims and connect them to the present age.

Für Mama und Papa

Table of Contents

Acknowledgments

This dissertation would not have been possible without the intellectual and emotional support of various people and programs, and I want to express my gratitude to them.

I would like to thank my dissertation director, Jeffrey Grossman, for his careful reading, insightful feedback, and guidance on this project. I thank my dissertation committee, Lorna Martens, Gabriel Finder, and Alon Confino, whose knowledge and advice were invaluable for this project. I am deeply indebted to Renate Voris for her close reading of the dissertation and for patiently teaching me how to read and write.

A heartfelt thanks to Manuela Achilles, Benjamin Bennett, Chad Wellmon, Dana Elzey, Janette Hudson, William McDonald, and Sybil Scholz for teaching, challenging, mentoring, and supporting me. I am grateful for the support of the Department of Germanic Languages and Literatures at the University of Virginia for providing me with wonderful learning opportunities, especially the invaluable experience to teach the course "The Holocaust in Literature, Film, and Law" based on my dissertation topic in the fall semester of 2011. I thank my students for the insightful and inspiring discussions from which I learned so much.

I am especially grateful for the intellectual, emotional, and moral support in the early stages of the dissertation, which I received as a guest lecturer in the *Amerikanistik* at TU Dortmund, Germany, during the *Winter-* and *Sommersemester* 2010/2011. I am deeply grateful to Walter Grünzweig for his comments on early chapter drafts, his friendship, unconditional support, and encouragement. The discussions about writing with Sina Nitzsche and Katherine Thorpe in the dissertation-writing group were crucial for this dissertation, as was writing with Selma Erdogdu, and the feedback on my dissertation prospectus I received from everyone in the *Oberseminar*. I thank my students in the *Proseminar* "Af*fact*: Mourning and Memory in Literary and Filmic Treatments of Holocaust Trials" for their intellectual curiosity in the subject.

I am lucky to have had various opportunities to present my work and receive constructive criticism. Jennifer Geddes's comments on an early draft of my first chapter as part of the Jewish Studies Fellows Meeting were insightful and invaluable. James Loeffler, Asher Biemann, and the Jewish Studies Fellows provided extensive comments on the overall project. My teachers Kerstin von der Krone, Uffa Jensen, Hans-Joachim Hahn, and Toby Axelrod, and fellow students at the Leo Baeck Summer University 2012 generously shared their knowledge and advice and provided encouragement. The dissertation also greatly benefitted from the feedback I received on presentations on early chapter drafts at the German Studies Association and graduate student conferences at the University of Virginia and Rutgers University.

I want to thank the Jewish Studies Program at the University of Virginia for awarding me with a Rachel Winer Manin Interdisciplinary Graduate Fellowship of Jewish Studies during three years of my dissertation. I am honored to be part of this wonderful group and so grateful for the generous intellectual, emotional, and moral support everyone in the program has given me. Jewish Studies truly became my home at UVa. I am deeply grateful to everyone at the Teaching Resource Center for making my last year at UVa so enjoyable. I want to especially thank Dorothe Bach for being such a wonderful and understanding friend and mentor and for making me laugh.

For their friendship, listening, and caring, I would like to thank Anna Baker, Kathrin Große, Jennifer Hansen-Glucklich, Katja Hempel, Clare Johnson, Verena Kollig, Jessica Oelkrug, Stefanie Parker, Rebekah Slodounik, Adriana Streifer, Raphaela Tkotzyk, and Helena Wittkowski.

I am grateful for having such wonderful families in Germany and the US. I thank my parents, Gabriele und Gerhard Steitz, for their love and everything they have always done for me. Jonathan Stocking deserves the greatest thank you for making my life beautiful.

Introduction

What are literary, theatrical, and filmic trials able to articulate that legal trials cannot, and vice versa? How can these artistic trials commemorate and convey dimensions of the Holocaust and the National Socialist past that do not fit easily into the concepts, practices, and purposes of legal trials? The question of the capabilities and limitations of law and literature lies at the center of the judicial attempts to work through the National Socialists' crimes. In a letter to Karl Jaspers from August 17, 1946, published in *Hannah Arendt/Karl Jaspers: Briefwechsel 1926-1969,* Hannah Arendt addresses the dilemma of legal trials against Nazi perpetrators, beginning with the Nuremberg trials (1945-1946), but anticipating the later Eichmann trial in Jerusalem (1963) and the Frankfurt Auschwitz trial (1963-1965); she notes the necessity for legal prosecution and punishment of the Nazi perpetrators on the one hand, but underscores the inadequacy of legal concepts, such as "kriminelle Schuld," and legal practices to sentence mass murderers with regard to the Holocaust on the other:

> Mir ist Ihre Definition der Nazi-Politik als Verbrechen ("kriminelle Schuld") fraglich. Diese Verbrechen lassen sich, scheint mir, juristisch nicht mehr fassen, und das macht gerade ihre Ungeheuerlichkeit aus. Für diese Verbrechen gibt es keine angemessene Strafe mehr … Das heißt, diese Schuld, im Gegensatz zu aller krimineller Schuld, übersteigt und zerbricht alle Rechtsordnungen. … Mit einer Schuld, die jenseits des Verbrechens steht … kann man menschlich-politisch überhaupt nichts anfangen. … die Deutschen sind … mit Tausenden oder Zehntausenden oder Hunderttausenden belastet, die innerhalb eines Rechtssystems adäquat nicht mehr zu bestrafen sind … . (91)

According to Arendt, the Nazi atrocities exceeded the existing legal concepts and practices. She raises the question of what other terms and practices besides legal and political ones could adequately describe, judge, and pass sentence on the Nazi perpetrators, which ones may be able to represent the atrocities of the Holocaust more fully than the existing options.

Jaspers disagrees with Arendt's rejection of the legal concepts and practices as means of working through the Nazi atrocities. In his letter from October 19, 1946, he disagrees with Arendt's interpretation of the Nazi perpetrators' guilt as exploding the limits of law (91):

> Was die Nazis getan haben, lasse sich als "Verbrechen" nicht fassen, – Ihre Auffassung ist mir nicht ganz geheuer, weil die Schuld, die alle kriminelle Schuld übersteigt, unvermeidlich einen Zug von "Größe" – satanischer Größe – bekommt, die meinem Gefühl angesichts der Nazis so fern ist, wie das Reden vom "Dämonischen" in Hitler und dergleichen. Mir scheint, man muß, weil es wirklich so war, die Dinge in ihrer ganzen Banalität nehmen, ihrer ganz nüchternen Nichtigkeit … So wie sie es aussprechen ist fast schon der Weg der Dichtung beschritten. Und ein Shakespeare würde nie diesen Gegenstand angemessen gestalten können – ohne Unwahrhaftigkeit ästhetischer Herkunft – und er dürfte es darum nicht. Es ist keine Idee und kein Wesen in dieser Sache. Sie erschöpft sich als Gegenstand der Psychologie und Soziologie, der Psychopathologie und der Jurisprudenz. (*Briefwechsel* 99)

Jaspers argues that the Nazi atrocities have to be considered as crimes in the legal sense because the failure to do so would suggest the perpetrators' "Größe" – a depth and essence they did not possess in reality and that may only truly exist in "Dichtung" (99). Unlike Shakespeare's villains, Jaspers considers the Nazi perpetrators to be banal (99). Given the premise of the Nazi

perpetrators' banality and that poetry presents villains with demonic depth, whose guilt therefore can exceed the notion of criminal guilt, Jaspers disagrees with Arendt that poetry is an adequate form for dealing with the Holocaust. Strikingly, eighteen years later in the context of the Eichmann trial, Jaspers and Arendt change positions.[1]

Judicial and Epideictic Rhetoric

Arendt's and Jaspers's distinctions between the legal and the poetic realm, between law and literature, follow that of judicial and epideictic rhetoric, two of the three branches of speech – deliberative, political rhetoric being the third one – that Aristotle establishes in his *Rhetoric*. According to Aristotle, each kind of speech is characterized by the specific place in which it is delivered, its social purpose, and the audience it addresses (Aristotle 19). In *A Handlist of Rhetorical Terms*, Richard A. Lanham states, drawing from Aristotle, that judicial rhetoric takes place in court, that its purpose is forensic, and that it is employed to accuse or defend (Aristotle 19; Lanham 164).

Epideictic or panegyric rhetoric is ceremonial and serves to commemorate, praise or blame (Aristotle 19; Lanham 164). In *The New Rhetoric,* Chaim Perelman and Lucie Olbrechts-Tyteca argue that in Greek antiquity "epideictic oratory seemed to have more connection with literature than with argumentation" since epidictic speeches dealt with "topics which were apparently uncontroversial and without practical consequences," were often only circulated in writing as opposed to being delivered in speech, and took into consideration the "aesthetic value of the speech itself" (47-48). Epideictic and judicial rhetoric are not to be understood as binary oppositions but function in a structural relation to one another and thus are able to complement each other.[2] This structural, complementary relationship of law and literature is, for example,

further suggested by the invitation of writers to attend the trial proceedings in Nuremberg, Jerusalem, and Frankfurt.

A Brief History of Postwar Trials

The legal prosecution of Nazi perpetrators and the artistic engagements with the Nazi period in postwar Germany hold a crucial place in what Adorno famously termed "Aufarbeitung der Vergangenheit," or "working through the past." In his 1959 essay "Was bedeutet Aufarbeitung der Vergangenheit," he defines the concept as: "Aufgearbeitet wäre die Vergangenheit erst dann, wenn die Ursachen beseitigt wären. Nur weil die Ursachen bis heute fortbestehen ward sein Bann bis heute nicht gebrochen" (572).[3] As central ways of working through the past, investigating and reflecting on the origins of the Nazi ideology and atrocities, reaching out to the public in an attempt to confront it with and educate it about the Holocaust, legal trials and literary works, especially those that engage directly with the legal trial proceedings, call for a joint examination.

The legal trials of Nazi perpetrators represent an early attempt at working through the past, an attempt to establish and legitimize a new legal system, thereby decisively breaking with the Nazi system in which the crimes had been legalized. These legal trials laid a crucial foundation for the knowledge of the Holocaust, systematically collecting and generating documents and facts about the Nazi crimes (Wenzel 11). They significantly contributed to the confrontation of the public with the crimes, shaped the memory of the Holocaust, and created precedents on how other genocides are put on trial even today (Wenzel 12).[4]

The Nuremberg trial, the first legal proceedings against the major war criminals, such as Hermann Göring and Rudolf Heß, began November 20, 1945, and ended on October 1, 1946; its successor trials, which ended on April 14, 1949, were conducted by the Allies and were

International Military Tribunals.[5] Karl Jaspers's *Die Schuldfrage* (1946) and Stanley Kramer's famous courtroom drama, *Judgment at Nuremberg* (1961) are the most famous examples of philosophical and filmic engagements with the Nuremberg trials.

In the years following the Nuremberg trials, the number of legal proceedings against Nazi perpetrators decreased. Drawing on Adalbert Rückerl's *NS-Verbrechen vor Gericht: Versuch einer Vergangenheitsbewältigung* (1982), Claudia Fröhlich points out in "Der 'Ulmer Einsatzgruppen-Prozess' 1958: Warhnehmung und Wirkung des ersten großen Holocaust-Prozesses" (2011):

> Obwohl die der deutschen Justiz nach der Kapitulation seitens der Besatzungsmächte auferlegten Beschränkungen 1950 und 1951 weitgehend und 1955 endgültig aufgehoben wurden und damit NS-Verbrechen gemäß deutschem Recht hätten verfolgt werden können, sank die Zahl der Prozesse und der rechtskräftigen Verurteilungen wegen NS-Verbrechen stetig. (238)

According to Annette Weinke and other scholars, the legal prosecution of Nazi perpetrators entered a new phase in 1958 with the founding of the *Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung nationalsozialistischer Verbrechen in Ludwigsburg*. Often referred to simply as (*Ludwigsburger*) *Zentrale Stelle*, the organization was in charge of the preliminary investigation of Nazi crimes, which it then forwarded to the respective state courts that initiated and prepared the legal proceedings. With the establishment of the *Zentrale Stelle*, the prosecution of Nazi perpetrators became more systematic.[6] It was founded in response to the *Ulmer Einsatzgruppenprozess* (1957-1958), the first major trial against Nazi perpetrators in a German *Strafgericht* or criminal court – and because the statue of limitations for National Socialist-crimes was nearing expiration.[7] Despite the legal trials and their reporting, the German

public did not show great interest in them or in working through the Nazi past. Hessian Attorney General Fritz Bauer noted in his essay "Im Namen des Volkes: Die strafrechliche Bewältigung der Vergangenheit" that in the 1950s many judges and prosecutors in postwar Germany were under the impression that the parliament and the government considered the judicial working through the past to be over (85).

This public apathy changed with the major Holocaust trials in the 1960s: first and foremost the trial against Adolf Eichmann in Jerusalem in 1963 and the Frankfurt Auschwitz trial, from 1963-1965, which were major public media events and confronted the public with the Nazi crimes.[8] Peter Krause argues in "'Eichmann und wir'. Die bundesdeutsche Öffentlichkeit und der Jerusalemer Eichmann-Prozess 1961":

> Der Eichmann-Prozess trug nicht nur viel dazu bei, dass sich die deutsche Gesellschaft verstärkt mit der Erblast der nationalsozialistischen Vergangenheit auseinandersetze. Gleichzeitig sorgte er dafür, dass die Frage nach der Verantwortung jedes Einzelnen für sein Handeln auf der gesellschafts- und vergangenheitspolitischen Tagesordnung nach oben rückte. (306)

Although many West Germans did not know about the Frankfurt Auschwitz trial and did not follow the reporting, many authors accepted the invitation to attend the Frankfurt Auschwitz trial and wrote about it, such as, Arendt and Weiss, H.G. Adler, Heimrad Bäcker, Martin Walser, Günter Grass, and Marie-Luise Kaschnitz.[9]

Dissertation Chapters

Arendt's and Jaspers's definitions of the concepts and practices of legal trials and literature, together with Aristotle's, Lanham's, and Perelman and Olbrechts-Tyteca's definitions of judicial and epideictic rhetoric and the history of the prosecution of Nazi perpetrators in

postwar Germany, especially Adalbert Rückerl's *NS-Verbrechen vor Gericht: Versuch einer Vergangenheitsbewältigung*, provide the framework for my analysis of the two major Holocaust trials and their literary and filmic engagements: the Eichmann trial in Jerusalem and Arendt's *Eichmann in Jerusalem: A Report on the Banality of Evil* (1963); the "Strafsache gegen Mulka und andere vor dem Schwurgericht Frankfurt," commonly referred to as the Frankfurt Auschwitz trial (1963-1965), and Peter Weiss's *Die Ermittlung: Oratorium in 11 Gesängen* (1965); the artistic Holocaust trials, *Nichts als die Wahrheit* (1999) by second-generation film maker Roland Suso Richter and the memoir *Am Beispiel meines Bruders* (2003) by Uwe Timm, which I read as the author's fictional trial of his older brother, a member of the SS, as well as the author's self-trial.

I refer to the Eichmann and Frankfurt Auschwitz trials as Holocaust trials because they deal specifically with the genocide of the Jews.[10] Holocaust trials differ from ordinary criminal trials because they deal with genocide, a concept that was and is still not part of German criminal law. Further, because the mass murder was state-sponsored and bureaucratically organized under the National Socialist regime, the question of criminal guilt was difficult – if not often impossible – to determine, as Devin O. Pendas emphasizes in *The Frankfurt Auschwitz Trial, 1963 – 1965: Genocide, History, and the Limits of the Law* (2006). Due to the scope of the crimes – the murder of six million Jews – the legal trials were public spectacles of great interest, much more so than regular murder cases.

To explore how various judicial concepts and practices shape the Holocaust narratives of the legal proceedings; how the fictional trials engage with the legal proceedings and testimonies; and what these works of fictions criticize and identify as problems of the actual trials, I juxtapose and analyze two of the major legal Holocaust trials to four artistic trials. Moreover, I seek to

explore what the legal trials perform alternatively. While generally distinct in their purposes and practices, the legal and artistic trials share their creation for and appeal to a large public and didactic intentions, and their subject: the genocide of the Jews committed by the National Socialists. The legal and artistic trials treat the subject in different ways: the Eichmann and Auschwitz trials are legal criminal trials, Arendt's text is a report, Weiss's play is composed in the form of the oratorio drawing from Brecht's *Lehrstück* practice, Richter's film oscillates between the genre of the political thriller and the courtroom drama, and Timm's *Beispiel* is a memoir.

This dissertation argues that artistic trials are able to commemorate and convey dimensions of the past, such as the suffering of the victims and the ideology and values of the National Socialists, that do not fit into the concepts, practices, and purpose of actual legal trials, which attempt to establish objective facts and truth and seek to render justice through the use of (statutory) law. The artistic trials critically engage readers and spectators to contemplate their own connection to the past, to judge the perpetrators and crimes on their own, and to refuse to see any "Größe" in the Nazi perpetrators, as Jaspers suggested. In addition to Arendt and Jaspers, many others -- Hessian Attorney General Fritz Bauer, for example -- have argued that with regard to the Holocaust, the judicial approaches, concepts, and practices are not always adequate; often they misrepresent or omit aspects of the crimes of the Holocaust, obscuring, for instance, the underlying ideological and organizational structures of mass murder and the suffering of the victims they caused. Further, they do not adequately give the victims a voice, do not fully allow them to remember and share their stories and to bear witness, but instead reduce their stories and experiences to factual legal testimonies. Through the use of epideictic techniques, such as the recitation of poems and the inclusion of the dead as accusers of Eichmann, however, legal trials

may also have the potential to commemorate and mourn the dead, as the example of the Eichmann trial in Jerusalem shows.

The dissertation consists of four chapters, which are chronologically ordered. The first two chapters each compare a different Holocaust trial of the 1960s to a contemporary text that engages with them. Arendt's and Weiss's texts are direct responses to historical legal trials: Arendt was present in the courtroom in Jerusalem as a reporter for *The New Yorker*; Weiss attended the Auschwitz trial in Frankfurt on several occasions. The forty year gap between Arendt's and Weiss's literary trials and the works examined in chapters three and four – the film by Richter from 1999 and Timm's memoir, published in 2003 – is based on the interest to explore how the engagement with Holocaust changes in the works of second-generation filmmakers and authors, who have neither witnessed the Holocaust nor the legal trials.[11] Although in Timm's memoir the explicit references to the postwar Hamburg trial vanish in comparison to Arendt, Weiss, and Richter, the form of the legal trial, its practices and concepts, are still an integral element of Timm's attempt to work through his brother's past, which he realizes is part of his own present. Each chapter examines a different legal Holocaust trial and a different literary, theatrical, and filmic genre to show how the authors rework the legal trial form.

Chapter one, "Aristotelian Tragedy v. Brechtian Epic Theater: The Eichmann Trial in Jerusalem (1963-1965) and Hannah Arendt's *Eichmann in Jerusalem: A Report on the Banality of Evil* (1965)," analyzes prosecutor Gideon Hausner's opening speech to the Eichmann trial with regard to its use of judicial and epideictic rhetoric. The chapter argues that Hausner's rhetoric in his opening speech reflects his conceptualization of the legal trial as both prosecution of Eichmann and commemoration of the Jewish victims. Considering Hausner's claim in his memoir *Justice in Jerusalem* (1966) that he not only intended to convict Eichmann in the legal

trial but also to "touch the hearts of men" and his presentation of the Holocaust as tragedy, this chapter argues, that his conception of the Eichmann trial follows the Aristotelian notion of tragedy, which seeks to evoke emotions, such as *eleos* and *phobos*, fear and dread, in the spectators (291). This chapter follows Susan Sontag's observation in "Reflections on *The Deputy*" (1964), who argues that Hausner's conceptualization of the trial resembles tragedy in as much as it follows the Aristotelian characteristic of tragedy that it is teleological and aims for catharsis: "the function of the [Eichmann] trial was rather that of the tragic drama: above and beyond judgment and punishment, catharsis" (118).

Unlike Hausner's conceptualization of the Eichmann trial as tragedy, Arendt's report draws from Brechtian epic dramaturgy, as for example Elisabeth Young-Bruehl, Yasco Horsman, and Mirjam Wenzel have pointed out. Arendt opposes any emotional appeal, but instead intends to distance her readers to encourage them to judge both the legal proceedings and the defendant Eichmann. Arendt is not interested in the suffering of the victims but in Eichmann's obedient character, explaining why Eichmann decided to participate in the Nazi mass murder. Her report's tone, structure, and thesis of Eichmann's "banality of evil" – dating back to her correspondence with Jaspers in 1946 – implicitly references Brecht's play *Der aufhaltsame Aufstieg des Arturo Ui* (1941) and Brecht's refusal to consider Hitler a great political criminal, which Elisabeth Young-Bruehl mentions in her 1982 biography *Hannah Arendt: For Love of the World* (331).

Chapter two, "Juridical v. Epic Distancing: The Frankfurt Auschwitz Trial (1963-1965) and Peter Weiss's *Lehrstück*-Oratorio *Die Ermittlung: Oratorium in 11 Gesängen* (1965)," analyzes Hessian Attorney General Fritz Bauer's criticism of the Frankfurt Auschwitz trial for its "juristische Verfremdung von Auschwitz" ("Auschwitz auf dem Theater?" 74). Bauer's notion of

"juristische Verfremdung von Auschwitz," though evoking Brecht's theatrical practice of "Verfremdung," is significantly different from it, since the former refers to the misrepresentation of the atrocities committed in the Auschwitz concentration camp caused by the legal concepts and practices employed by the trial. For example, the absence of the legal concept of genocide in German criminal law, *Strafrecht*, shifts the focus onto individual guilt, thereby obfuscating the historical fact that the mass murder is one crime complex instead of consisting of hundreds of thousands of individual murder and manslaughter cases (Pendas 53).

The second part of the chapter examines Weiss's *Die Ermittlung* with regard to its re-organization and re-writing of the unofficial trial record by Bernd Naumann, *Auschwitz: Bericht über die Strafsache Mulka u. a. vor dem Schwurgericht Frankfurt* (1965), into a *Lehrstück*-oratorio. I argue that the non-scenic structure, verse form, and strict separation of epic and musical parts that *Lehrstück* and oratorio share, bring out the organizational structure of the Auschwitz concentration camp, which the legal trial's concepts and practices conceal. The drama seeks to appeal to the spectators' imagination and empathy, to allow for the commemoration of the suffering endured in Auschwitz, and the mourning of the dead. By means of these practices, *Die Ermittlung* thematizes and commemorates the Holocaust in a way that the legal trial was not able to.

The third chapter, "Confronting the Spectators with Their Own Corruptibility: Roland Suso Richter's Courtroom Drama *Nichts als die Wahrheit* (1999)," analyzes the fictional trial of Josef Mengele. The chapter argues that by means of the fictitious authenticity and claim to truth the film makes – for example the film places the fictional character Mengele, based on the historic character Josef Mengele, the so-called "Todesengel von Auschwitz," in a glass booth, thereby evoking the memory of the historical Eichmann trial in Jerusalem, and purports to

present the truth in its title and also by the courtroom setting – Richter seeks to show his viewers how manipulative the mass media can be with regard to the memory of the past: As a mass medium, film, *Nichts als die Wahrheit* suggests, always has the potential to misrepresent the past.

Following the non-scenic structure of epic theater, the film refrains from any visualization of the Nazi atrocities; instead, the atrocities are narrated and reported in the courtroom so as to appeal to the viewers' imagination as well as to their rational judgment. Contrasting Mengele's version of the truth with that of his victims, the courtroom drama asks the spectators to judge on their own whether they can believe Mengele's justification and white-washing of his crimes.

The final chapter, "Uwe Timm's Memoir *Am Beispiel meines Bruders* (2003): Reflecting on the 1967 Hamburg Trial and Christopher Browning's *Ordinary Men* (1993) as Ways to Investigate One's Connection to the Past," compares the concepts and practices of the 1967 Hamburg trial of fourteen former members of the *Reservepolizeibattaillon 101*, a special unit of the German Order Police during World War II, to the evaluation of its interrogation protocols by Browning in his historical study *Ordinary Men*: *Reserve Police Battalion 101 and the Final Solution in Poland* (1991), and to Timm's commentary on the legal trial as well as references to Browning. Timm employs the legal practices of interrogation and thorough search for truth to examine his brother's war journal and letters to the family written during his time as a member of the *SS-Totenkopfdivision,* an elite unit of the SS, in World War II. Timm seeks to understand who his brother was and what motivated him to join the *SS-Totenkopfdivision* in the first place.

Rejecting the legal practice of the Hamburg trial, which sought to determine objective facts about the crimes without being able to provoke any sense of the guilt in the convicts, and the trial's failure to render justice – the Nazi perpetrators only received minimal criminal charges –Timm applies Browning's questions and methodology to his brother's war journal and letters to the family, which lead him to wonder how he himself would have acted if he had been born earlier. Thus, Timm's thorough reading of his brother's war journal and letters shift from a family trial to a self-trial. The self-trial, Timm's contemplation of his intrinsic connection to the past, of how much of the past is still present in him today, seems to be triggered by the question Browning raises in *Ordinary Men*: "[i]f the men of Reserve Police Battalion 101 could become killers under such circumstances, what group of men cannot?" (189).

Scholarly Contribution

This project adds to current debates in the fields of law and literature, Holocaust and Jewish Studies, and postwar German literature and film. Various Holocaust trials have been thoroughly examined from historical and legal perspectives.[12] However, only a few scholars have approached the legal trials as texts in and of themselves. Susan Sontag, for example, referred to the Eichmann trial in Jerusalem as "the most interesting and moving work of art in the past ten years" (118). Works by Shoshana Felman (2002), Stephan Braese (2004), Lawrence Douglas (2005), Yasco Horsman (2010), and Mirjam Wenzel (2011) examine, among other aspects, legal and literary trials as ways of working through the Nazi atrocities.

In *The Juridical Unconscious: Trials and Trauma in the Twentieth Century,* Felman investigates the link between legal trials and trauma. In her analysis of the Eichmann trial, she examines the question: "How does literature do justice to the trauma in a way the law does not, or cannot" (8)? The contributions in Braese's anthology *Rechenschaften: Juristischer Diskurs*,

examine different artistic responses to the Nuremberg trials, the Frankfurt Auschwitz trial, and Bernhard Schlink's *Der Vorleser*, which also includes a fictional trial. Braese attributes a "seismographische[n] Charakter" to literature, because of which, he argues, it is able to respond more quickly and adequately to social changes than the rather conservative legal discourse (13). Douglas interprets the testimonies by the survivor witnesses in the Eichmann trial not as legal evidence, but as narratives allowing for bearing witness to the individual experience of the Holocaust.

Unlike the legal trials, the texts by Arendt and Weiss have been thoroughly examined from a literary perspective. The most recent works, Horsman's and Wenzel's, connect the literary trials to theatre. Horsman does not explicitly argue that, for example, Arendt's report about the Eichmann trial employs Brechtian epic dramaturgy. Wenzel, however, in *Gericht und Gedächtnis: Der deutschsprachige Holocaust-Diskurs der 60er Jahre*, examines Arendt's report in the context of Brecht and the genre of the documentary drama along with Weiss's *Die Ermittlung* (1965), and *Prozess in Nürnberg* by Rolf Schneider (1967).

However, while Horsman and Wenzel engage with the question of the interconnectedness of Holocaust trials and their corresponding texts, they do not analyze the inherent connection between the legal trial as source text for Arendt's report and Weiss's drama. Instead, as other scholars before them, they examine these different texts separately and in isolation from each other. Furthermore, it is striking that while the Eichmann trial has often been considered beyond its legal and historical significance in theatrical, literary, and cultural terms, for example by Felman, Douglas, and Horsman, the Frankfurt Auschwitz trial has not been sufficiently analyzed in this regard. This dissertation seeks to contribute to the closure of this research gap within the field.

Due to this lack of scholarly research and attention regarding the relationship between the trials and their literary treatments, this dissertation juxtaposes and directly compares the legal trials to their artistic engagements. This approach is vital and necessary given that the legal and artistic trials are inseparable. The legal trials use extralegal elements, for example, that often stem from the realm of theatre and literature. In turn, despite their criticism and awareness of the limitations of the law in working through, remembering, and representing the Holocaust, Arendt and Weiss also borrow from the law and incorporate legal elements and documents into their texts.

Consequently, this inherent reciprocity of trials and texts calls for a joint examination of them. Among all these journalistic and literary texts, Arendt's report and Weiss' play stand out due to their thorough interpretation of and critical engagement with the legal trials; in their works quotations from the legal trials are omnipresent, yet critically commented on and transformed. Their works not only shaped the understanding and memory of the legal Holocaust trials decisively, but also that of the Holocaust itself. Deborah E. Lipstadt points out in *The Eichmann Trial: Jewish Encounters* that Arendt's account of the Eichmann trial significantly shaped the memory and understanding of both the Eichmann trial and the Holocaust (149).

The juxtaposition of texts belonging to the legal and fictional realms contribute to Braese's and Wenzel's approach through reception history and discourse analysis, respectively. Braese and Wenzel approach the literary works as responses to the historical trials. In this regard my approach more closely resembles that of Horsman who argues in *Theaters of Justice* that "[y]et more than responses … [the texts] … , reopen[…] the cases that the historic trials sought to close, bringing to center stage aspects that had escaped the confines of the legal framework" (13). Further, the comparison of Arendt's and Weiss's historical engagements with the legal

trials to contemporary second-generation filmmakers and writers is new. The comparison allows for a better understanding of the long-term impact of the legal trials and their early engagements and of how they shaped the memory of the Holocaust today. It further shows that the process of working through the past is not yet completed. For example, the current NSU trial in Germany, which can be interpreted as a Holocaust trial, shows that some of the ideology and structures of the Nazi past are still prevalent in Germany today and that the judicial working through of the past continues almost seventy years after the end of the Nazi dictatorship.

Notes

1. In his letter to Arendt from December 16, 1960, Jaspers writes "Es wäre doch großartig, auf das Rechtsverfahren zu verzichten zugunsten eines Untersuchungs- und Feststellungsverfahrens. Das Ziel ist die bestmögliche Objektivierung der historischen Tatsächlichkeiten. Am Ende stände kein richterliches Urteil, sondern die Gewißheit der Tatbestände, soweit sie zu erreichen ist" (*Briefwechsel* 449). In her response to Jaspers, from December 23, 1960, Arendt argues that "wir nichts als Rechtliches in der Hand haben, um etwas zu beurteilen und abzuurteilen, was sich weder mit Rechtsbegriffen noch mit politischen Kategorien adäquat auch nur darstellen läßt. Das gerade macht den Vorgang selbst, nämlich den Prozeß, so aufregend" (*Briefwechsel* 455). Shoshana Felman mentions this exchange in her 2002 book, *The Juridical Unconscious: Trials and Trauma in the Twentieth Century* (140).

2. In *Grundkurs der Rhetorik,* Hermann Schlüter also points to the fact that the theoretical distinction of types of speeches defies a practical distinction and that in fact these different types of speeches merge:

> Der theoretischen Unterscheidung dreier Redegattungen steht in der Praxis eine Vielzahl von Redeformen gegenüber, welche zeigen, dass die drei Redegattungen in vielfältige Mischungsverhältnisse treten können und dass die Übergänge fliessend sind: Vorwiegend zur Gattung der Gerichtsrede gehört natürlich das Plädoyer; aber auch Bittschrift (Supplik) und Streitschrift haben einem dem Plädoyer ähnliche Funktion. Als Form der Anklage wird gern der Offene Brief gewählt ... (24)

3. In *Die Unfähigkeit zu trauern: Grundlagen kollektiven Verhaltens* (1967), Alexander and Margarete Mitscherlich argue that the legal trials do not comply with Adorno's definition of "Aufarbeitung der Vergangenheit":

> Es ist klar, daß man den millionenfachen Mord nicht "bewältigen" kann. Die Ohnmacht der Gerichtsverfahren gegen Täter beweist diesen Tatbestand in symbolischer Verdichtung. Aber eine so eng juristische Auslegung entspricht nicht dem ursprünglichen Sinn der Formulierung von der unbewältigten Vergangenheit. (24)

4. In *Gericht und Gedächtnis: Der deutschsprachige Holocaust-Diskurs der sechziger Jahre*, Mirjam Wenzel emphasizes the significance of the Holocaust trials with regard to the reception and memory of the Holocaust:

> …[d]en Nachkriegsprozessen [muss] … eine besondere Bedeutung innerhalb der Rezeptionsgeschichte des Holocaust eingeräumt werden. Diese Gerichtsprozesse garantieren, dass mündliche Aussagen protokolliert und schriftliche wie filmische

> Dokumente als Beweismaterial gesichtet und verstanden werden. Sie legten die Archive des Wissens an, die nach wie vor als Quellen historiografischer Forschung dienen. … Die Nachkriegsprozesse schrieben also fest, *was* und vor allem *wie* die Vergangenheit in Wort und Bild darzustellen, zu beurteilen und zu perspektivieren war. Sie organisierten die Parameter der mit ihnen entstandenen Texte und Filme und den Beginn der öffentlichkeitswirksamen Rezeption des Holocaust. (11-12)

5. For a history of the Nuremberg trial, see Michael Robert Marrus's 1997 *The Nuremberg War Crimes Trial, 1945-46: A Documentary History.*

6. For the public reactions to the founding of the Zentrale Stelle Ludwigsburg, see Annette Weinke's "'Bleiben die Mörder unter uns?' Öffentliche Reaktionen auf die Gründung und Tätigkeit der Zentralen Stelle Ludwigsburg" (2011).

7. For the reception of the Ulmer Einsatzgruppen-Prozess, see Claudia Fröhlich's "Der 'Ulmer Einsatzgruppen-Prozess' 1958: Warhnehmung und Wirkung des ersten großen Holocaust-Prozesses" (2011).

8. For the reporting on the Eichmann trial in Germany, see Peter Krause: *Der Eichmann-Prozess in der deutschen Presse* (2002) and "'Eichmann und wir'. Die bundesdeutsche Öffentlichkeit und der Jerusalemer Eichmann-Prozess 1961" (2011).

9. For a list of writers who attended the Frankfurt Auschwitz trial see Marcel Atze and Irmtrud Wojak (Ed.): *Auschwitz-Prozess 4 Ks 2/63 Frankfurt am Main: Buch erscheint anlässlich der gleichnamigen Ausstellung vom 27.03. bis 23.05.2004 im Gallushaus, Frankfurt am Main* and Stephan Braese article, "'In einer deutschen Angelegenheit' – Der Frankfurter Auschwitz-Prozess in der westdeutschen Nachkriegsliteratur," in Irmtrud Wojak (Ed.):

'Gerichtstag halten über uns selbst…': Geschichte und Wirkung des ersten Frankfurter Auschwitz Prozesses. Frankfurt/New York: Campus Verlag, 2001. 217-243.

10. Unlike the Nuremberg trial, which was a military tribunal conducted by the Allies, the Eichmann and Auschwitz trials represent attempts of the countries and jurisdictions of the victims and the perpetrators to deal with the National Socialist past. While the Nuremberg trial only mentions the systematic destruction of the Jewish people but uses instead the international law term "crimes against humanity," the Eichmann and Auschwitz trials focus on the genocide of the Jews. Further, for example according to Felman and others, the latter are witness trials, that is, they were based on witness testimonies. This evidentiary approach further allowed the witnesses to narrate their stories. The evidentiary approach of the Nuremberg trial was based on documents (Felman, *The Juridical Unconscious* 133).

11. For more about second-generation Holocaust authors see Marianne Hirsch, *Family Frames: Photography, Narrative, and Postmemory* (1997), and Erin McGlothlin, *Second-Generation Holocaust Literature: Legacies of Survival and Perpetration* (2006).

12. The most prominent works include Adalbert Rückerl's *NS-Verbrechen vor Gericht: Versuch einer Vergangenheitsbewältigung* (1982); Mark Osiel's *Mass Atrocity, Collective Memory, and the Law* (1997); Donald Bloxham's *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory* (2001); Hanna Yablonka's *The State of Israel vs. Adolf Eichmann* (2004), Rebecca Wittmann's *Beyond Justice: The Auschwitz Trial* (2005); Devin O. Pendas's *The Frankfurt Auschwitz Trial 1963–1965: Genocide, History, and the Limits of Law* (2006), and Deborah E. Lipstadt's most recent study *The Eichmann Trial: Jewish Encounters* (2011). The most influential anthologies are: Jörg Osterloh and Clemens Vollnhals's *NS-Prozesse und deutsche Öffentlichkeit: Besatzungszeit, frühe Bundesrepublik und DDR*

(2011); Jürgen Finger, Sven Keller, Andreas Wirsching's *Vom Recht zur Geschichte: Akten aus NS-Prozessen als Quellen der Zeitgeschichte* (2009); Georg Wamhof's *Das Gericht als Tribunal oder: Wie der NS-Vergangenheit der Prozess gemacht wurde* (2009); Peter Reichel's *Vergangenheitsbewältigung in Deutschland: Die Auseinandersetzung mit der NS-Diktatur von 1945 bis heute* (2001).

Chapter One

Aristotelian Tragedy v. Brechtian Epic Theater:

The Eichmann Trial in Jerusalem (1963-1965) and Hannah Arendt's

Eichmann in Jerusalem: A Report on the Banality of Evil (1965)

"The sum total of the suffering of the millions ... is certainly beyond human understanding, and who are we to try to give it adequate expression? This is the task for the great writers and poets."[1] In their concluding remarks on the Eichmann trial in Jerusalem in 1963, the judges address one difference between law and literature. They ascribe to the poet the task of expressing the suffering of the victims, since this goes beyond the scope of the trial – which is to judge and render justice. Can writers commemorate and convey dimensions of the Holocaust, such as suffering, that do not fit easily into the idiom, structure, or purpose of a judicial strategy? And if so, how?

The legal Eichmann trial and Hannah Arendt's response to it *Eichmann in Jerusalem: A Report on the Banality of Evil* (1965) have the same subject, the atrocities of Nazi Germany as represented by Adolf Eichmann, the former head of the Gestapo's section for Jewish affairs. Eichmann represents a new type of murderer: he is a bureaucratic perpetrator ("Schreibtischtäter"), who put into action the genocide of the Jewish people.[2] Israeli Attorney General Gideon Hausner, the prosecutor of the Eichmann trial, who was born in Lemberg in 1915 and immigrated with his family to Palestine in 1927, and political theorist Arendt, covering the court proceedings as a reporter for *The New Yorker* magazine, approach the subject of the legal trial in different rhetoric and terms, each of which develop from his and her specific position – in Hausner's case to prosecute Eichmann and to commemorate the Jewish victims of the Holocaust, in Arendt's case to reflect on the question of evil.[3]

In her article, "Between Justice and Politics: The Competition of Storytellers in the Eichmann trial" (2001), Leora Bilsky examines Hausner's and Arendt's competing narratives. She argues that "Hausner's story stretches to include the whole of Jewish history, while Arendt begins her story in the nineteenth century. … Hausner's story focuses on the Jewish people, while Arendt's concern is humanity" (233). Whereas Bilsky analyzes Hausner's and Arendt's competing narratives, that is, the content of their stories, this chapter analyzes and juxtaposes their rhetorical strategies, terms, and forms by which they approach the Nazi-perpetrator Eichmann. Arendt criticizes Hausner's rhetoric, his staging of the trial and his presentation of the Holocaust as "tragedy of Jewry as a whole" (63) as pathetic.[4] Walter Laqueur notes in his essay entitled "Hannah Arendt" that most critics found fault with how Arendt expressed her criticism of Hausner and the Eichmann trial: "Hannah Arendt was mainly attacked not for *what* she said, but for *how* she said it" (166; italics in original).

This chapter argues that while Hausner conceptualizes the legal trial and his presentation of the Holocaust as tragedy, Arendt compares Eichmann to a "clown" (*EJ* 54), highlighting his comical aspects and exposing him to laughter, which evokes the notion of Brecht's epic theater, especially his play *Der aufhaltsame Aufstieg des Arturo Ui* (1941).[5] Hausner's and Arendt's specific rhetoric and preference of a theatrical model for the legal trial is closely connected to the effects they attempt to have on their audience. While Hausner attempts to appeal to the emotions of his audience, Arendt seeks to distance and critically engage her readers in judging Eichmann and the legal trial.

Drawing on Aristotle's *Rhetoric* (19-20), Richard Lanham, defines judicial speech in his 1991 *A Handlist of Rhetorical Terms* as forensic and "purposive in motive" (164). Hausner's opening speech to the court in Jerusalem can be classified as "judicial speech" since it seeks to

accuse and prosecute Eichmann. Other elements of Hausner's judicial strategy in the courtroom belong to epideictic rhetoric. Hausner's epideictic rhetoric appeals to the emotions of the extralegal audience to commemorate and mourn the dead. It is ceremonial and serves to commemorate, praise or blame, according to Aristotle (19; Lanham 164). Lanham points out that epideictic rhetoric is "frequently found in the forum and the law court" (Lanham 164). This means, that judicial and epideictic rhetoric are not binary oppositions, but are intertwined. Hausner's use of epideictic rhetoric belongs and contributes to his accusation and prosecution of Eichmann.

Judicial and epideictic rhetoric each address a particular time (Aristotle 19). Aristotle states that the political orator usually directs his speech towards the future, while the judicial speech of parties in a legal trial is primarily concerned with the past, and epideictic speech generally addresses the present (19). Chaim Perelman and Lucie Olbrechts-Tyteca argue in *The New Rhetoric: A Treatise on Argumentation* (1969) that "epideictic oratory seemed to have more connection with literature than with argumentation" since epideictic speeches, such as those of antique Greek rhetors Gorgias and Isocrates, dealt with "topics which were apparently uncontroversial and without practical consequences" (47-48). Yet, Perelman and Olbrechts-Tyteca propose that epidictic speech can also be argumentative (50).[6]

Drawing on definitions by Aristotle, Lanham, Perelman and Olbrechts-Tyteca, and Sigrid Weigel about the function of judicial and epideictic rhetoric, I refer to those prosecutorial utterances by Hausner that neither directly accuse Eichmann nor address the immediate participants of the legal trial present in the courtroom as epideictic rhetoric. This rhetoric further includes utterances that go beyond the arena of the courtroom, and the legal trial in general, to bear witness to the victims' experience of suffering rather than serve the purpose of legal

prosecution. Hausner's epideictic utterances further commemorate and mourn the dead, seek to create a community by referencing certain shared values, and serve a didactic purpose. These epideictic utterances usually evoke the past, and focus on the victims and the absence of the dead in the courtroom. They are expressed in metaphors or metonymies and appeal to the listener's imagination and emotions.

Judicial and epideictic rhetoric are an effect of a structural relation between different elements and their function, e.g. the forensic and the commemorative, accusation and lamentation, the charging of the defendant and the six million, invoking the portrayal of Hausner himself as the prosecutor and as a "poet of lamentation," according to *The Trial of Adolf Eichmann: Record of Proceedings in the District Court of Jerusalem,* the official trial record (2043). Hausner's attempt to appeal to his audiences's emotions by means of epideictic speech corresponds to the Aristotelian notion of tragedy, which complies with his understanding of the Holocaust as the "tragedy of Jewry" in his opening speech according to the official trial record (62).

Whereas Hausner seeks to appeal to the emotions with his description of the Holocaust as tragedy, Arendt views such an approach as manipulative. In turn, she develops a rhetorical strategy in *Eichmann in Jerusalem* that is often ironic, attempting to ridicule Eichmann in order to expose him and to critically distance her audience so that they may come to judge Eichmann independently and in rational terms. In the journalistic report she wrote for *The New Yorker* and later published in book form, Arendt puts both the defendant Eichmann and the legal proceedings on trial. I borrow the metaphor of the legal trial being put on trial from Hausner's memoir *Justice in Jerusalem* (1968).[7] With the metaphor of the legal trial on trial, I refer to the antagonistic structure of Arendt's report, its montage of quotations from the trial transcripts and

descriptions of the court proceedings, on the one hand, and Arendt's response and evaluation, on the other hand, each of which fulfill several functions: the report allows her to present differing points of view, to weigh the pros and cons of the court proceedings, and to judge the trial's capability to work through the past, while seeking to prompt her readers to reflect critically upon the legal trial and the defendant Eichmann and formulate their own judgment about both. Arendt's attempt to encourage her readers to judge Eichmann and the trial proceedings rationally as well as the techniques she uses – montage, interruption, irony, etc. – evoke Brechtian epic dramaturgy, which developed in contrast to the Aristotelian notion of tragedy and empathy. Yet, while Brecht wrote his plays for the stage in order to be performed, Arendt writes a report, a narrative text to be read. In opposition to Hausner and in compliance with Brecht, Arendt does not present the Holocaust as a tragedy, an inevitable event in the long history of anti-Semitism and Jewish suffering, but emphasizes that the actual tragedy consisted in the fact that the Holocaust could have been prevented if more people had resisted the National Socialists. Anton Schmidt in her mind is an example of such a person (*EJ* 231).

The Eichmann Trial in Jerusalem

The Eichmann trial in Jerusalem was in session for 121 days, lasting from April 11, 1961, to December 15, 1961. It ended with the rendition of Eichmann's death sentence. Prosecuting Attorney Gideon Hausner indicted Eichmann on fifteen accounts, which included crimes against the Jewish people as well as crimes against humanity. Hausner's opening speech lasted over three court sessions from the morning of April 17,1961, to the morning of April 18, 1961.[8] Although Hausner according to *The Trial of Adolf Eichmann: Record of Proceedings in the District Court of Jerusalem* emphasized that the genocide of the Jewish people committed by the National Socialists was an "unprecedented crime," he contextualized and embedded the

accusations against Eichmann in the history of Jewish suffering and anti-Semitism (64).[9] Hausner further outlined the history of the Holocaust in his opening speech to show Eichmann's responsibilities and the extent of his plans as the head of the Gestapo's section of Jewish affairs. He called more than one hundred survivor witnesses on the stand to provide legal evidential testimony to the charges against Eichmann as well as to present their individual stories of suffering to the world audience.

In his memoir *Justice in Jerusalem* (1966), Hausner explains his conceptualization of the Eichmann trial as a witness trial in opposition to the Nuremberg trials:

> This was the course adopted at the Nuremberg Trials – a few witnesses and films of concentration camp horrors, interspersed with piles of documents. It was all efficient and simple. But it was also one of the reasons why the proceedings there failed to reach the hearts of men. In order to secure a conviction, it was obviously enough to let the archives speak; a fraction of them would have sufficed to get Eichmann sentenced ten times over. But I knew we needed more than a conviction; we needed a living record of gigantic human and national disaster, though it could never be more than a feeble echo of the real events. (291)

Unlike the Nuremberg trials, which mainly relied on written documents, Hausner conceptualized the Eichmann trial as a witness trial, that is, he used documents as well as witness testimonies as evidence to convict Eichmann. In addition to their judicial purpose, Hausner notes in *Justice in Jerusalem* that the witness testimonies served the extralegal intention of "touch[ing] the hearts of men" (291). The appeal to the emotions of the legal trial's extralegal audiences belongs to epideictic rhetoric, as derived by Aristotle and described by Lanham (164).

According to the trial record, Hausner distinguishes in the summations between himself as the lawyer, whose use of "the language of the law" seeks to render justice and punishment, and the "poet of lamentation," to whom he attributes the task of mourning for the dead by means of epideictic rhetoric (2043).[10] Given Hausner's attempt to strictly separate judicial from epideictic rhetoric in order to build the legal case against Eichmann, emphasizing that he as prosecutor speaks "the language of the law," his twofold conceptualization of the legal proceedings and his intertwined use of judicial and epideictic rhetoric may come across as striking (2043). However, Aristotle and Lanham (164) do not accept the strict distinction between judicial and epideictic rhetoric, that Hausner sees. Instead they argue that epideictic rhetoric frequently occurs in the law-court (Lanham 164). Hausner's inclusion of a literary quotation serves as an example of his oscillation between judicial and epideictic rhetoric. The prosecutor ends the sixth part of his opening speech about the "The Extermination in the Soviet Union and Annexed Countries" noted in the trial record (92-96) with a quotation from a lullaby written by "one of the partisan poets, Shmerke Kaczerginski" (95):

> Quiet, quiet my son, let us speak softly,
>
> Here grow the graves
>
> Which they that hate planted. (95-96)[11]

Hausner's explanation noted in the trial record for his digression into literature – "I have no words at my command to describe these terrible deeds in full" (95) – indicates that poetry, which can serve epideictic ends, is able to convey dimensions of the Holocaust that judicial rhetoric does not. Hence, Hausner needs to employ epideictic speech as part of his judicial strategy. While the lullaby is a fairly obvious digression, Hausner's double rhetoric in his opening speech, oscillating between legal and epideictic speech, is often more subtle.

Several scholars have pointed out that Hausner himself simultaneously employs judicial and epideictic strategies to different ends in the Eichmann trial. For example, Lawrence Douglas analyzes the witness testimonies in the Eichmann trial in his study *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (2005), showing how "the prosecution did not use the law simply to pursue legal ends. Instead, by interrogating the standard conception of law, the Eichmann prosecution pushed the trial and a reluctant court to become a powerful forum for understanding and commemorating traumatic history" (182). Further, Mirjam Wenzel in *Gericht und Gedächtnis: Der deutschsprachige Holocaust-Diskurs der sechziger Jahre* (2009) agrees with Douglas, especially with regard to the double function of the witness testimonies:

> Die Anklagestrategie des Generalstaatsanwalts zielte darauf ab, durch eine eindrucksvolle "Prozession von Augenzeugen" zu überzeugen. … [Hausner] verwandelte seine Anklage in eine Klage, indem er die Zeugenvernehmung weniger zur Beweisaufnahme durchführte, sondern den Opfern des nationalsozialistischen Terrors eine Plattform anbot, auf der sie ihre individuelle Leidensgeschichte erzählen und zugleich sicher sein konnten, dass diese weltweit gehört wurde. (57)

In addition to Douglas's and Wenzel's observation of Hausner's dual conceptualization of the legal trial, the following analysis shows that already the first few sentences of Hausner's opening speech, as recorded in *The Trial of Adolf Eichmann: Record of Proceedings in the District Court of Jerusalem,* reflect his intertwined use of both judicial and epideictic rhetoric, relying on rhetorical devices with a double function:

> As I stand before you, Judges of Israel, to lead the Prosecution of Adolf Eichmann, I am not standing alone. With me are six million accusers. But they

> cannot rise to their feet and point an accusing finger towards him who sits in the dock and cry: "I accuse." For their ashes are piled up on the hills of Auschwitz and in the fields of Treblinka, and are strewn in the forests of Poland. Their graves are scattered throughout the length and breadth of Europe. Their blood cries out, but their voice is not heard. Therefore I will be their spokesman and in their name I will unfold the awesome indictment. (62)

Hausner immediately designates his opening speech addressed to the "Judges of Israel" as legal rhetoric (62). With the deictic statement "As I stand here before you," he situates himself in the courtroom in Jerusalem as the prosecutor of the defendant Eichmann, whom he accuses of having murdered six million Jews (62). Further, according to Yasco Horsman in *Theaters of Justice: Judging, Staging, and Working Through in Arendt, Brecht, and Delbo* (2011), the deictic statements also "indicate that a special event is going to happen," thereby stressing the historical significance of the Eichmann trial (64).

Hausner continues with deictic expressions, pointing to other personal entities of the legal trial, such as the "Judges of Israel," to which he refers with an apostrophe (62). Since the judges decide about the outcome of the case, they are Hausner's most important audience. Given that he does not mention the names of the judges, the generality of the phrase transforms the legal term "Judges" into a metaphor for other audiences of the trial who are not judges by profession, but who still perform the act of judging, in the sense of forming an opinion and making a decision about Eichmann and the legal trial. In this metaphorical sense, a "Judge of Israel" could, for example, be a critic of the legal proceedings as Hausner's metaphor of the "Eichmann trial on trial" in *Justice in Jerusalem* suggests (288). The metaphorical address of an extralegal audience belongs to epideictic rhetoric.

Hausner's addressing of the trial's audience as "Judges" amounts to a complex rhetorical strategy. By this he might not only refer to the actual judges, but also the world audience, which is following the trial. The address of an unseen audience might be a form of flattery and appeasement. The elevation of the audience to the status of "Judges" endows its members with the power of articulating a decision. Arendt, one of Hausner's most fervent critics, seems to take Hausner's metaphorical address literally: she re-writes the judgment in the epilogue of her report. With the metaphor "Judges of Israel," Hausner might also be referring to the various implied audiences of the trial, of which he distinguishes three in his memoir: the world at large, Israel, and the youth of Israel (292).

In *Justice in Jerusalem,* Hausner attributes a didactic purpose to the witnesses' testimonies for extralegal spectators, who become witnesses of an act of testifying:

> In any criminal proceedings the proof of guilt and the imposition of a penalty, though all-important, are not the exclusive objects. Every trial also has a correctional and educational aspect. It attracts people's attention, tells a story and conveys a moral. Much the more so in this particular case. It was mainly through the testimony of witnesses that the events could be reproduced in court, and thus conveyed to the people of Israel and to the world at large, in such a way that men would not recoil from the narrative as from scalding steam, and so that it would not remain the fantastic, unbelievable apparition that emerges from the Nazi documents. (292)

This quotation from Hausner's memoir indicates the twofold purpose of the witnesses' testimonies, which is to blur the boundaries between judicial and epideictic rhetoric, and which is also inherent in both Hausner's double rhetoric and the phrase "Judges of Israel" (62). The legal

witnesses' and expert testimonies of the prosecution serve as incriminating evidence to prove Eichmann's guilt.[12] Simultaneously, the witnesses' testimonies also bear witness to the individual experience of suffering. In her essay "Zeugnis und Zeugenschaft, Klage und Anklage: Zur Differenz verschiedener Gedächtnisorte und –diskurse," Sigrid Weigel distinguishes "legal testimony" ("Zeugenschaft"), that is, the legal act of testifying to facts and providing evidence, from "bearing witness" ("Zeugnis ablegen"), which conveys an individual experience, in this case, suffering, to someone who did not witness the event and thus learns about it through the testimony of the survivor.[13] Weigel's clear distinction of "legal testimony" and the act of "bearing witness" does not hold in the Eichmann trial but rather helps to clarify the interconnectedness of judicial and epideictic rhetoric there. In the Eichmann trial, the legal testimonies of the survivor witnesses fulfilled the judicial purpose of providing incriminating facts against Eichmann and simultaneously had the epideictic function of commemorating and praising the dead, as well as sharing their own individual experience of suffering. By conveying an experience to someone else, the act of bearing witness is didactic. It is didactic, that is, if one accepts Perelman and Olbrechts-Tyteca's claim that epideictic speech is didactic and the speaker becomes an educator (51).[14]

Testifying in court for judicial ends and bearing witness require different audiences: the former addresses the judges in their function to decide the verdict, the latter calls for a mere listener, someone to whom to address one's story. According to Dori Laub, a Clinical Professor of Psychiatry at the Yale School of Medicine and co-author with Shoshana Felman of the influential study of survivor testimony, titled *Testimony: Crises of Witnessing in Literature, Psychoanalysis, and History* (1992), bearing witness requires in equal measure a narrator and an auditor. While the judges listen to the witnesses' testimonies with the sole purpose to judge the

defendant, it is the presence of an addressee that turns testimony into an act of bearing witness according to Laub:

> The emergence of the narrative which is being listened to – and heard – is, therefore, the process and the place wherein the cognizance, the "knowing" of the event is given birth to. The listener, therefore, is part of the creation of knowledge *de novo*. The testimony to the trauma thus includes its hearer, who is, so to speak, the blank screen on which the event comes to be inscribed for the first time. (57)

The listening audience partakes in bringing out this new cognition and also learns from it equally as the narrator himself is instructed. Although Laub and Felman do not talk about witnesses' giving legal testimony as Weigel does, their findings can be applied to such testimonies in the Eichmann trial, since those testimonies have a double function. The didactic function of the legal witnesses' testimonies was crucial for Hausner with regard to this second most important audience, the people of Israel, especially the Israeli youth, according to *Justice in Jerusalem* (291). As Douglas and already before him Shoshana Felman, in her 2002 study, *The Juridical Unconscious: Trials and Traumas in the Twentieth Century,* have pointed out, the Eichmann trial allowed the survivor witnesses to share their stories and to commemorate and record traumatic history.

Hausner's intention to educate the Israeli audience corresponds to his aim to create a community through the witnesses' stories. The creation of a "communion of the audience" by means of listening to the same stories, generating and referencing shared experience, knowledge and values, that Hausner evokes in the trial is according to Perelman and Olbrechts-Tyteca a strategy of epideictic rhetoric (51). To achieve this "communion of the audience" based on shared values Perelman and Olbrechts-Tyteca argue that "every device of literary art is

appropriate" (51). In *Testimony,* Felman emphasizes the difference between Holocaust testimonies and literature, but concedes that they share resemblances:

> The Holocaust testimonies in themselves are definitely, at least on their manifest level, as foreign to "poetry" as anything can be, both in their substance and in their intent. Yet many of them attain, surprisingly, in the very structure of their occurrence, the dimension of discovery and of advent and the power of significance and impact of a true event of language – an event which can unwittingly resemble a poetic, or a literary, act. (41)

The phrase "Judges of Israel" is further a reference to the *Book of Judges* of the Hebrew Bible. Thus, although the majority of Israelis were at the time strongly opposed to religion, its evocation references the values of the Jewish audience to whom the Bible was nonetheless a culturally foundational text.

Hausner concludes the first sentence of the trial with the paradox "I am not standing alone" (62). Given the reality of the courtroom, in which he as the prosecutor of Eichmann stands by himself in front of the judges delivering his opening speech, this statement is contrary to fact. However, in the preceding sentence he reveals the paradox to be a metaphor. Hausner unveils the information concealed by the litotes suggesting that present with him in the courtroom are the ghosts of the six million Jewish victims murdered by the National Socialists in their function as "six million accusers" (62).

Hausner's mentioning of the dead makes them part of the legal trial and is forensic as well as commemorative. In his essay "Victims and Voyeurs: Two Narrative Problems at the Criminal Trial," Paul Gewirtz explains that it is a common argumentative strategy of the prosecution to stress the absence of the victims to highlight the loss: "[P]articularly in murder

cases, where the victim is absent and silent, there is an understandable effort to make more present the life that was taken and to vocalize the suffering the murder caused" (138). Gewirtz argues that the prosecution seeks "to insist on the vivid human particularity of the people whose lives had been extinguished" and that prosecutors also try to "fill the gap created by the victim's silence and absence" (139).

Hausner points to the absence of the six million Jews murdered by the National Socialists by implying the exact opposite: their, albeit invisible, presence with him in the courtroom as accusers. He omits explicit terms such as "dead," "victims," and even the metaphor of the "ghost." In lieu of explicitly stating that the dead are with him in the courtroom or that they are present as ghosts, Hausner only alludes to the metaphor of the ghost with the litotes "I am not standing alone" (62). He skips the more obvious religious metaphor of the ghost and uses instead one from the semantic field of law: "accusers" (62). This metaphor from the semantic field of law for the six million Jewish Holocaust victims is part of Hausner's rhetoric of oscillation. As a figure it is part of Hausner's judicial strategy of Eichmann's accusation while simultaneously having an epideictic function, praising the dead one last time, elevating and endowing them with authority and agency. Drawing on Lyotard's *The Differend: Phrases in Dispute*, published in 1991, Weigel points to the incommensurability of the position of victim and accuser: "Opfer sein bedeutet, nicht nachweisen zu können, dass man ein Unrecht erlitten hat. Ein Kläger ist jemand, der geschädigt wurde und über Mittel verfügt es zu beweisen" (47). Hausner reconciles these two in his speech and overall conceptualization of the trial.

The metaphorical reference to the dead as "accusers" endows them posthumously with authority and agency. It is a symbolic gesture of praising and commemorating them and an attempt to endow them with the epideictic ability to prosecute their murderer. The shift from the

passive and powerless victim to the status of an accuser is analogous to Hausner's twofold conceptualization of the legal trial as accusation ("Anklage") and lamentation ("Klage"). In the sense of Lanham, who defines "metaphor" as "a fable in brief," an "allegory-in-miniature" (Lanham 101), Hausner's metaphor of the "six million accusers" contains a condensed version of his idea of a witness trial seeking to empower the victims and reclaiming their agency to which he refers in his *Justice in Jerusalem* as: "now … the roles were reversed and the persecuted had become the prosecutors" (322). In *The Juridical Unconscious*, Felman emphasizes that the Eichmann trial gives the victims a voice and records their history, which she considers to be unique and the strength of this particular Holocaust trial:

> Because history by definition silences the victim, the reality of degradation and of suffering – the very facts of victimhood and abuse – are intrinsically inaccessible to history. But the legally creative vision of the Eichmann trial consists in the undoing of this inaccessibility. The Eichmann trial is a victims' trial insofar as it is now the victims who, against all odds, are precisely *writing their own history*. (126; italics in original)

After the enumeration of gestures of accusation, such as "point an accusing finger," Hausner utters the short phrase "'I accuse'" (62). This sentence again belongs to both judicial and epideictic rhetoric. It is part of Hausner's legal accusation of Eichmann, foreshadowing and alluding to his narrative of the Holocaust and Eichmann's guilt. Simultaneously, it is elliptical since it does not provide any specific information about the crimes Eichmann committed and the laws he violated, which a legal indictment requires. Due to its imprecision and generality caused by the ellipsis, it functions as a mere gesture, similar to the "point[ing of] an accusing finger" (62).

In addition, the phrase is a quotation from the title of Emile Zola's famous open letter to French President Felix Faure, "J'Accuse…! Lettre Au Président de la Republique," published on the front page of the newspaper *L'Aurora* on January 13, 1898, in defense of Captain Alfred Dreyfus, a Jewish officer in the French army sentenced to live imprisonment for treason.[15] The invocation of an incident of the past in the long history of European anti-Semitism is commemorative and goes beyond the Eichmann trial and its subject. With the reference to Zola, Hausner places himself and the ghosts of Auschwitz within the history of anti-Semitism and leaves the courtroom in Jerusalem.

The short phrase "'I accuse'" marks a rupture in Hausner's opening speech, as has been pointed out for example by Horsman. In *Theaters of Justice,* Horsman notes a shift of rhetoric "into a mode that is no longer entirely legalistic" but "belong[s] to a poetic or religious rhetoric" (65).[16] As Horsman rightly observes, the sentences that follow the "'I accuse'" do not seem to have a twofold purpose any more but rather belong to epideictic rhetoric:

> The pathos of phrases such as "their blood cries to Heaven" and "alas, they cannot rise" signals a switch in genre. They stand out as locutions alien to the legal sphere; they more properly belong to poetic or religious discourse. Another idiom seems to be at work in his speech, one that empties out his legal discourse because, as Hausner states, when he slips into this mode, his words no longer seem to be his own. He merely lends his voice to a demand for justice coming from beyond the community of the living… (Horsman 65)

Already before "their blood cries out" (62; "'their blood cries to Heaven'", Horsman 65) and "their voice is not heard" (62; "'alas, they cannot rise'", Horsman 65), the change of Hausner's tone becomes noticeable. Although Hausner still omits explicit terms, such as "the dead," and

continues using paraphrases and allusions to describe what happened to the six million Jewish Holocaust victims, he does not draw from metaphors from the semantic field of law any more, such as "accusers" (62), but from that of death, using such terms as "ashes," "graves," and "blood" so as to appeal to the spectators' emotions and imagination, and to indicate that he is speaking in the voice of the dead (62). The words from the semantic field of death certainly also belong to judicial rhetoric, since the Eichmann trial was a murder trial concerned with the genocide of the Jewish people. Yet, in combination with the pathos of other phrases by Hausner, such as "their blood cries out" (62), the terms from the semantic field of death are part of his epideictic speech, attempting to commemorate and mourn the dead and to provide them with the justice to have their stories told as opposed to the mere conviction of Eichmann by means of legal rhetoric. Hausner's metaphors of death contrast with the previous indirect evocation of the metaphor of the "ghost" and indicate a shift in rhetoric and tone (62). He is not accusing Eichmann any more, but becomes more solemn and commemorates the victims and the suffering they had to endure.

In addition to the shift in word choice, Hausner changes the diathesis, the voice. Employing in the first part of his opening speech deictic expressions that situate his speech in the present of the courtroom in the active voice ("stand," "lead," "cannot rise," "sits," "cry," "accuse"), simultaneously belonging to both judicial and epideictic rhetoric, Hausner switches in this second part to the passive voice, e.g., "are piled up … are strewn," "are scattered," "… is not heard" (62). The passive voice emphasizes the suffering the victims had to endure, their helplessness and innocence, and their condition of being unable to testify to the atrocities. Therefore, this part of the opening speech is primarily commemorative of the victims. Hausner's epideictic description of the suffering of the six million Jews contrasts with the accusation in the

present tense and active voice, "'I accuse,'" as well as with the symbolic claim and accusation of the dead, "[t]heir blood cries out" – a somewhat dramatic phrase that also makes up part of his strategy of commemoration (62).

Further, Hausner evokes in this same passage different locations. While his deictic statements in the first part of the opening address emphasize his presence in the courtroom in Jerusalem, he metaphorically leaves the courtroom in the second part, evoking the places where the six million were murdered: "Auschwitz" and "Treblinka" in particular and "Europe" in general (62). The names of the Polish towns Auschwitz and Treblinka, where the death camps were located in which a vast number of Nazi victims were murdered, have now become synecdoches for the Holocaust. Similarly as Hausner omits the term "death," he also refrains from explicitly mentioning the death camps in the second part of his address. Instead, he adds a geographical characteristic to each place, such as "the hills of Auschwitz," "the fields of Treblinka," or "the forests of Poland," which emphasizes each place's nature and implies a certain innocence (62). The nature images appeal to the audiences' imagination. This notion of the seemingly peaceful landscape, however, is simultaneously undermined by the trope of the "ashes" of the six million, a commonly used metaphor for "death." The anaphora of the personal pronoun "[t]heir," for example, in "their ashes," "[t]heir graves," "[t]heir blood," "their voice," makes his speech commemorative and contemplative since the repetition creates monotony and does not introduce new information, but shifts the focus onto the dead (62).

His speech focuses on the fact that they were murdered and also emphasizes that they were not buried. The metonymy "graves" in fact means its exact opposite: the absence of any official burial site (62). Connected to that, the absence of their graves means further that they never received a eulogy. With its praise of the dead as "accusers" and commemoration of the

dead and their stories, Hausner's speech functions as a eulogy honoring the dead and the survivors one last time. This praise and honoring go beyond the sole purpose of prosecution and hopes to restore some of the dignity of the victims. As such it is another attempt of extralegal justice for the dead in addition to the judicial justice of sentencing Eichmann. Perelman and Olbrechts-Tyteca mention among other genres eulogy as an example for epideictic speech (47). Hausner's emphasis on the "length and breadth of Europe" implies that all Europe is an unofficial graveyard of its murdered Jews (62). The evocation of Europe as a graveyard also includes its status as a site of mass murder. Thus, the evocation of the graveyard and mass murder site Europe functions here as a symbolic accusation of Europe.

Hausner concludes from the antithesis "[t]heir blood cries out, but their voice cannot be heard" that it is his duty to speak on behalf of the dead, who speak with one voice due to their shared experience of suffering (62). Therefore, he returns in his last sentence to the beginning of the speech. Yet, he does not refer to himself as the prosecutor any more but as "spokesman" of the six million, representing them with one voice (62). The term "spokesman," which is used in the official trial record and Hausner's memoir, has also often been translated as "mouthpiece." As Horsman argues, both terms are metaphors and transcend the legal meaning and function of the prosecutor (65-66). In Arendt's opinion this metaphor of the "mouthpiece" is "the chief argument against the trial," since "criminal proceedings are initiated by the government in the name of the victims, who are assumed to have a right to revenge" (*EJ* 260). Therefore, Arendt emphasizes, criminal proceedings are not between the victim and the accused, but between the state and the defendant to guarantee justice and to prevent vengeance (*EJ* 261). Since Hausner accuses Eichmann directly in the name of the victims, instead of on behalf of the state of Israel,

Arendt argues that the trial could easily be interpreted as a show trial, seeking vengeance instead of justice (*EJ* 261).

While Arendt's criticism is justified, it misses the symbolic function of this metaphor, as Horsman has pointed out (65-66). According to Horsman, the metaphor of the mouthpiece suggests that the dead are speaking directly through Hausner, transforming him into a medium (65-66). Horsman notes that this raises the question of whether what he calls "legal rhetoric" is able to articulate the need for justice for the dead (66).[17] Hausner's answer to this question seems to be that only epideictic rhetoric can adequately give voice to the dead and render an alternative kind of justice that commemorates, honors, and praises the victims, which is distinct from the punitive legal justice. Hausner's memoir indicates that he contemplated the question of what the dead would have liked him to say in preparation of the legal proceedings: "I kept asking myself what the victims themselves would have wished me to say on their behalf, had they had the power to brief me as their spokesman" (322). Since he cannot ask the dead anymore, his work as a prosecutor resembles that of a poet, who has to imagine what happened and to assume what they would have wanted him to say. This task, though, is not purely imaginative and fictional since he conducted interviews with survivors, read memoirs and testimonies by survivors, and collected evidence. His thorough research indicates that he combines judicial and epideictic rhetoric that, traditionally, he as a lawyer prefers to keep separate.

Arendt's Report *Eichmann in Jerusalem*

Arendt rejects Hausner's content, rhetoric, and staging of the trial in *Eichmann in Jerusalem*. In her report, Arendt states that the spectators in the courtroom

> were to watch a spectacle as sensational as the Nuremberg Trials, only this time "the tragedy of Jewry as a whole was to be the central concern." For "if we shall

> charge [Eichmann] also with crimes against non-Jews, … this is" not because he committed them, but, surprisingly, "*because we make no ethnic distinctions*." Certainly a remarkable sentence for a prosecutor to utter in his opening speech; it proved to be the key sentence in the case of the prosecution. For this case was built on what the Jews had suffered, not on what Eichmann had done. (6; italics in original)

She disagrees with Hausner's indictment of Eichmann's crimes as crimes against the Jewish people but proposes to consider Eichmann's crimes as "crimes against humanity executed on the body of the Jewish people" (*EJ* 261). Therefore, Arendt thinks that an international court of justice in The Hague should try Eichmann as she explains, for example, in her letter to Jaspers from December 23, 1960 (*Briefwechsel* 452-453). She further disagrees with the trial's focus on the suffering of the Jewish people instead of on Eichmann's guilt. This is closely connected to her rejection of Hausner's staging of the trial as tragedy and his legal presentation of the Holocaust as inevitable tragedy. Arendt draws a connection between the legal trial and theater, comparing the defendant of a legal trial to the hero of a theatrical play:

> A trial resembles a play in that both begin and end with the doer, not with the victim. A show trial needs even more urgently than an ordinary trial a limited and well-defined outline of what was done and how it was done. In the center of a trial can only be the one who did – in this respect, he is like the hero in the play – and if he suffers, he must suffer for what he has done, not for what he has caused others to suffer. (*EJ* 9)

Unlike Hausner, Arendt does not approach the Holocaust in terms of tragedy. She seeks to create a critical distance in her readers to encourage them to judge the legal trial and the

defendant Eichmann on their own. Her criticism of Hausner's conceptualization of the trial and rhetoric as well as her own rhetoric suggest that she would prefer the presentation of the Eichmann trial in a form that resembles Brecht's epic theater, which is directed against the Aristotelian notion of evoking emotions and calls for a critical spectator. Already Arendt's epitaph to *Eichmann in Jerusalem* – a quotation from Brecht's poem "Deutschland" – suggests his significance for her report.[18] Benjamin summarizes Brecht's epic dramaturgy in his essay, "Was ist das epische Theater. *Erste Fassung*," as follows:

> Was in der Brechtschen Dramatik wegfiel, das war die aristotelische Katharsis, die Abfuhr der Affekte durch Einfühlung in das bewegende Geschick des Helden. Das entspannte Interesse des Publikums, welchem die Aufführungen des epischen Theaters zugedacht sind, hat seine Besonderheit eben darin, daß an das Einfühlungsvermögen der Zuschauer kaum appelliert wird. Die Kunst des epischen Theaters ist vielmehr, an der Stelle der Einfühlung das Staunen hervorzurufen. (25)[19]

Arendt's biographer Elisabeth Young-Bruehl as well as Arendt scholars Yasco Horsman and Mirjam Wenzel have pointed out the report's implicit references to Brecht's epic theater and its theatricality.

In her biography, *Hannah Arendt: For Love of the World*, Young-Bruehl points out that the following passage of Brecht's notes to his play *Der Aufhaltsame Aufstieg des Arturo Ui*, which Arendt's husband Heinrich Blücher discovered seven years after the Eichmann trial and after the publication of Arendt's report, resonated with Arendt's understanding of Eichmann's "banality of evil" (331). In his essay, "Zu 'Der Aufhaltsame Aufstieg des Arturo Ui'," Brecht emphasizes the necessity of laughter and comedy for the exposure of political perpetrators:

> Die großen politischen Verbrecher müssen durchaus preisgegeben werden, und vorzüglich der Lächerlichkeit. Denn sie sind vor allem keine großen politischen Verbrecher, sondern die Verüber großer politischer Verbrechen, was etwas ganz anders ist.
>
> Keine Angst vor der platten Wahrheit, wenn sie nur wahr ist! So wenig das Mißlingen seiner Unternehmungen Hitler zu einem Dummkopf stempelt, so wenig stempelt ihn der Umfang dieser Unternehmungen zu einem großen Mann. Die herrschenden Klassen im modernen Staat bedienen sich bei ihren Unternehmungen meistens recht durchschnittlicher Leute. Nicht einmal auf dem höchst wichtigen Gebiet der ökonomischen Ausbeutung ist besondere Begabung vonnöten. … Und im allgemeinen gilt wohl der Satz, daß die Komödie die Leiden der Menschen häufiger auf die leichte Achsel nimmt als die Tragödie. (163-164)[20]

Brecht reverses the common understanding of laughter and comedy, arguing that comedy is often more serious than tragedy since it brings to light the guilt without allowing for the glorification of evil. This provides a possible explanation as to why Arendt focuses on Eichmann and his guilt, rather than on the survivor witnesses and their testimonies of suffering, and why she uses laughter, irony, and other distancing techniques even though at first glance this seems highly inappropriate considering the pain and suffering Eichmann caused. In her essay "Der Dichter Bertolt Brecht," Arendt mentions Brecht's comment on his play:

> Dabei hat er oft im Nachhinein eine erstaunliche politische Kraft bewiesen, wie etwa in den Bemerkungen über Hitler in den Aufzeichnungen "Zu 'Der aufhaltsame Aufstieg des Arturo Ui.'" Das Stück selbst wiederholt das Thema aus der Dreigroschenoper – Geschäftsleute und Gangster werden gleichgesetzt; aber

> in diesem Nachwort wendet sich Brecht gegen alle diejenigen, die Hitler entweder für einen großen Mann, eben einen "großen politischen Verbrecher", oder für einen Dummkopf halten. "So wenig das Mißlingen seiner Unternehmungen ihn zu einem Dummkopf stempelt, so wenig stempelt ihn der Umfang dieser Unternehmungen zu einem großen Mann." (104)[21]

According to Young-Bruehl, Arendt cited Brecht in an interview with Roger Ererra and added that she regards Hitler as a clown: regardless "what he does and if he killed ten million people, he is still a clown" (331). Arendt's ironic and comical presentation of Eichmann in her report – foreshadowed by the quotation from Brecht's "Deutschland," "O Germany–/Hearing the speeches that ring from your house/one laughs./ But whoever sees you reaches for his knife," shows her refusal to see anything great in evil. Yet, she wants to avoid by all means the impression that Eichmann could be considered innocent or even harmless.

Horsman argues that Arendt's report "can be understood as a polemic against such a 'tragic' understanding of the trial" (24). He further observes that Arendt's report calls for a detached and rational spectator:

> *Eichmann in Jerusalem* can be understood as a polemic against such a "tragic" understanding of the trial. Throughout her book Arendt insists that the political and the cultural role of a trial is to provide a different moment of closure than that which occurs in tragedy; it ends in a verdict, a scene of justice, rather than a moment of catharsis or redemption. Furthermore, as she implicitly states, such a scene requires a specific type of spectator. … *Eichmann in Jerusalem*'s epitaph from Brecht – an author who in Arendt's eyes always fought the temptation of compassion – as well as its judgmental, ironic, and somewhat impatient tone

> testify to the author's resisting of the appeal to compassion and sympathy that the trials' 'spectacle of suffering' made on its spectators. (24)

In addition, Wenzel argues with regard to the opening phrase of Arendt's report "'Beth Hamishpath'" – a quotation from the very first words of the trial – that Arendt not only reports about the legal trial, but also stages it in her report at times (90). She further approaches Arendt's report as documentary theater in the tradition of Brecht's epic theater:

> Arendts Prozessbericht rezipiert das Geschehen auf der Bühne des Gerichtssaals als episches Theater im Sinne Brechts und greift mit der Darstellungsform des Berichts Grundsätze der zeitgenössischen dokumentarischen Dramatik auf. Der Gestus des Texts schreibt somit den Gedanken der "Demonstration" vor, den Brechts "Strassenszene" formulierte, und modifiziert diesen zur "Stellung des Beobachtenden und Analysierenden", von der aus der Text operiert. (Wenzel 105)

In addition to Arendt's references to Brecht pointed out by Young-Bruehl, Horsman, and Wenzel, this section examines Arendt's rhetoric, as well as practices and techniques of epic theater Arendt draws from in her report to distance her readers in order to encourage them to judge Eichmann. This section focuses on Arendt's use of the form of the report, its montage technique with its principle of interruption and other distancing practices, such as narrator comments and irony.

As a political philosopher, Arendt's project does not concentrate so much on reporting the details of the legal trial, but focuses rather on analyzing the mechanisms of subjugation she considers to be characteristic for the value system of National Socialist Germany.[22] The subtitle of her report indicates that her text is *A Report on the Banality of Evil*, which she deduces from her observations of Eichmann during the legal trial. The legal trial serves her only as a vehicle,

which allows her to observe and study Eichmann's mind. It is Eichmann's refusal and inability to judge that constitute his evil as Arendt later explains in four lectures entitled "Some Questions of Moral Philosophy," which she gave at the New School for Social Research in 1965 and which are published under the title *Responsibility and Judgment*:

> Morally and even politically speaking, this indifference, though common enough, is the greatest danger. And connected to this, only a bit less dangerous, is another very common modern phenomenon, the widespread tendency to refuse to judge at all. Out of the unwillingness or inability to choose one's examples and one's company, and out of the unwillingness or inability to relate to others through judgment, arise the real *skandala*, the real stumbling blocks which human powers can't remove because they were not caused by human and humanly understandable motives. Therein lies the horror and, at the same time, the banality of evil. (146)

By means of the report form, Arendt herself performs the act of judging that she seeks to engage her readers in. Prior to the trial she explains her decision to attend the trial not as a political philosopher but as a reporter for *The New Yorker* in a letter to Karl Jaspers on December, 23, 1960, according to *Hannah Arendt, Karl Jaspers: Briefwechsel 1926-1969*, as follows:

> Ich selbst aber gehe dahin als ein bescheidener Berichterstatter, nicht einmal für die Presse, sondern für eine Zeitschrift. Damit habe ich für das, was da vorgeht, gar keine Verantwortung. … Qua Berichterstatter habe ich das Recht, ihre Begründungen zu kritisieren, aber nicht ihnen Vorschläge zu machen. Wenn ich das wollte, dürfte ich vor allem nicht Berichterstatter sein. Wie weit ich mich

> selbst aber gerade aus diesen Dingen heraushalten will, können Sie daran sehen, daß ich für ein nicht-jüdisches Blatt berichte. (454)

Arendt's explanation that she will attend the trial in the role of a reporter since it allows her to observe and criticize the legal trial foreshadows the form that her report will assume. It mainly consists of the account of the events in the courtroom through descriptions and quotations or paraphrases from the trial transcript by Hausner, Eichmann, and the witnesses; Arendt's own response to and analysis of this material, including her analysis of the mechanisms of subjugation; and finally moves beyond the trial material in its account of the Holocaust itself. Arendt keeps the different perspectives apart by means of quotation marks or indirect speech so that the reader is able to distinguish them. In the epilogue, she emphasizes that her text belongs to the genre of the report and identifies the legal trial as its main source: "This book contains a trial report, and its main source is the transcript of the trial proceedings which was distributed to the press in Jerusalem" (*EJ* 280). The *Fischer Lexikon Publizistik Massenkommunikation* (2009) defines the report as a form of reportage as follows:

> Die *Reportage* (lateinisch reportare = überbringen) ist ein tatsachenbetonter, aber persönlich gefärbter Erlebnisbericht. ... [Sie] soll … so konkret und anschaulich wie möglich sein [La Roche 2008, 155]. Es gibt zwei Grundformen: den authentischen Bericht (Report) über ein handlungsreiches Ereignis und die durch die Beschreibung von Handlungen spannend aufgelockerte *Milieustudie*. … Allerdings kann sie Themen aus allen Bereichen "behandeln", wobei der Reporter aus eigener Augenzeugenschaft berichtet … . (150)

Wenzel is one of the few scholars to examine Arendt's text with regard to its genre of the journalistic report that she then connects to the genre of documentary theater. In her book

Gericht und Gedächtnis: Der deutschsprachige Holocaust-Diskurs der sechziger Jahre, Wenzel contrasts Arendt's report with the Dutch author Harry Mulisch's reportage *Criminal Case 40/61, The Trial of Adolf Eichmann: An Eyewitness Account* (1961), which originally appeared in Dutch in the Dutch weekly, *Elseviers Weekblad* (Mulisch 1; Wenzel 86). While Mulisch's reportage is an eyewitness report, combining facts of the legal trial with the impressions of the reporter and even includes a journal, Arendt's report provides a record of the legal trial, and a critical analysis of the events (Wenzel 86).[23] Due to the differences between the journalistic genres of report and reportage, Wenzel draws the connection between Arendt's report ("Bericht") and the court of law ("Gericht"):

> Im Sinne des Homoioteleutons Bericht/Gericht unterstrich Arendt mit der Wahl des Untertitels und ihren nachträglichen Bemerkungen also nicht nur die Ähnlichkeiten zwischen den Vorzeichen, unter denen ein Bericht verfasst und eine Gerichtsverhandlung geführt wurde, sie legte auch nahe, dass sie sich selbst als richtende Berichterstatterin, oder besser: berichtende Richterin, verstand. (87)

Arendt's self-understanding as reporting judge is, for example, suggested in her letter to Jaspers cited above and in her re-writing of the judgment in the epilogue of her report (*EJ* 277-279). Further, another significant difference between Mulisch's and Arendt's text is that the former writes for a daily newspaper, while Arendt reports for a magazine. Arendt writes for *The New Yorker* magazine, which appears biweekly, is more open, flexible in tone, subjective, and less constrained by the posture of providing mere facts than a daily newspaper. In his essay, "Der verdrehte Eichmann," Golo Mann criticizes Arendt's cynicism, connecting it to *The New Yorker*, whose editors he calls "Witzbolde" (190).

The following quotation from chapter seven of Arendt's report entitled "The Wannsee Conference, or Pontius Pilate" (*EJ* 112-134) shows how she draws upon and employs practices and techniques derived from Brechtian epic dramaturgy, practices, and techniques that seek to distance the reader and to expose Eichmann to laughter. Her repertoire consists, for example, of the montage of dramatic and epic parts, ironic commentary and rhetorical questions, and the principle of interruption. Arendt quotes a statement by Eichmann made in court about the moment in January 1942 during the Wannsee Conference when he lost his conscience and advocated the so-called Final Solution (*EJ* 113). This episode is crucial for Arendt since it is one of the few significant historical events Eichmann remembers, signifies his loss of conscience and refusal to judge on his own, and reveals his obedient character. Eichmann, who at this conference "was by far the lowest in rank and social position," according to Arendt (*EJ* 113), used to have doubts concerning the extermination of the Jews. The unanimous decision at the conference about the Final Solution reached by the Nazi elite, first and foremost Heydrich and Müller, changed his mind, however. Arendt reports this moment of Eichmann's loss of conscience as follows:

> "At that moment, I sensed a kind of Pontius Pilate feeling, for I felt free of all guilt." *Who was he to judge?* Who was he "to have [his] own thoughts in this matter"? Well, he was neither the first nor the last to be ruined by modesty. (*EJ* 114; italics in original)

As indicated by the quotation marks, Arendt's report alternates between a quotation by Eichmann from the trial transcript, and her response to it. The report's combination of quotations and paraphrases from the trial, and Arendt's comments constitute a montage by which she presents Eichmann's obedient personality and refusal to judge on his own, while simultaneously

performing the act of judging rationally herself.[24] Montage is a technique that epic theater employs and that by the twentieth century other art forms, like painting, also make use of. In his essay "Das epische Theater," Brecht describes the montage technique as the juxtaposition of different tableaus: "Der Epiker Döblin gab ein vorzügliches Kennzeichen, als er sagte, Epik könne man im Gegensatz zur Dramatik sozusagen mit der Schere in einzelne Stücke schneiden, welche durchaus lebensfähig bleiben" (53).[25] The montage structure of Arendt's report resembles the antagonistic structure of a legal trial between prosecution and defense. To evoke Hausner's metaphor mentioned above, the form of the report with its montage technique allows Arendt to put the Eichmann trial itself on trial, or as Wenzel puts it: "das [Gerichts]verfahren zu verdoppeln und zu verhandeln" (88). The quotations from Eichmann and Hausner allow Arendt to double the trial and to put the trial itself on trial, while questioning both Hausner's prosecutorial strategy as well as Eichmann's defense.

As direct speech, the quotation from Eichmann helps to reveal him to her readers. The quotation creates a more defined image of who Eichmann was and what he was like to her readers, most of whom will not have attended the trial, while providing them with the chance to read Eichmann's own words. In this sense, the direct speech functions like a dramatic element in Arendt's report. In this way, Arendt's report comes to share certain characteristics with epic theater, combining as it does both dramatization and narration. Arendt's reporting is comparable to narrated epic elements, which often function as commentary. In his essay "Das epische Theater," Brecht explains the difference between dramatic and epic theater as follows:

> [D]er Unterschied zwischen der dramatischen und der epischen Form wurde schon nach Aristoteles in der verschiedenen Bauart erblickt, deren Gesetze in zwei verschiedenen Zweigen der Ästhetik behandelt wurden. Diese Bauart hing

> von der verschiedenen Art ab, in der die Werke dem Publikum geboten wurden, einmal durch die Bühne, einmal durch das Buch, aber es gab dann doch unabhängig davon "das Dramatische" auch in epischen Werken und "das Epische" in dramatischen. (53)

The inclusion of direct speech makes Arendt's report lively and immediate, seeking to give her reader the impression that she is attending the legal trial as an observer herself. The quotations interrupt Arendt's retrospective epic narration of the trial events, making the *trial itself* appear more immediate and present. For example, Arendt imitates the general structure of the Eichmann trial by framing her report with the beginning and end of the legal trial: she opens her report with a quotation of the first words of the legal trial, "'Beth Hamishpath'" (*EJ* 3), and concludes with her version of the verdict (Horsman 24). Arendt's citing of Eichmann in the passage quoted above further complies with the antagonistic structure of the report, which it shares with the legal trial. One sees this antagonism when she embeds Eichmann's or Hausner's words within her own commentary of the trial. At the same time, since Arendt wants to expose Eichmann's submissive personality, choosing specific passages from the trial transcript that support her claim means that her voice ultimately dominates her report.[26]

While the quotation from Eichmann initially moves him as a defendant closer to Arendt's readership, this rather dramatic element also allows her to emphatically distance herself from him when she asks: "*Who was he to judge?*" – a rhetorical and ironic question that decisively counters Eichmann's point of view (*EJ* 114; italics in original). The italics further emphasize her disagreement with Eichmann. Similar to epic theater, in which a narrator often reports and comments on the events, Arendt as a reporter responds to statements by Eichmann and Hausner. Arendt's use of italics, rhetorical questions, and ironic commentary noted above all seek to

achieve what Brecht called a distanciation effect ("Verfremdungseffekt"). The "Verfremdungseffekt" is a technique deployed in Brecht's epic theater by which he seeks to distance the audience, as he explains, for example, in "Kurze Beschreibung einer neuen Technik der Schauspielkunst, die einen Verfremdungseffekt hervorruft":

> Der Zweck dieser Technik des *Verfremdungseffekts* war es, dem Zuschauer eine untersuchende, kritische Haltung gegenüber dem darzustellenden Vorgang zu verleihen. ... Der Kontakt zwischen Publikum und Bühne kommt für gewöhnlich bekanntlich auf der Basis der *Einfühlung* zustande ... [D]ie Technik, die den V-Effekt hervorbringt, [ist] der Technik, die die Einfühlung bezweckt, diametral entgegengesetzt ... . (155; italics in original)[27]

While Eichmann appears to be serious in his claim that once he realized that high-ranking Nazi officials advocated the genocide of the Jews, he did not feel guilty participating in the killings since he was of much lower rank than they and therefore followed them unconditionally, Arendt's italicized rhetorical question stages mock agreement with Eichmann's serious claim. This mocking is immediately conveyed by the italics, which visually indicate Arendt's distance and dismissal. Arendt's ironic treatment of Eichmann asks: How could Eichmann – or for that matter anyone – refuse to judge? In her judgment in the epilogue of her report, she articulates this more explicitly: "politics is not like the nursery; in politics obedience and support are the same" (*EJ* 279). Arendt's ironic treatment of Eichmann's testimony expresses her incomprehension and anger at Eichmann's submissive personality, even while functioning as an accusation. Arendt finds precisely in this aspect of Eichmann's self-description the quintessence of the Nazi system. The failure to judge is what she ultimately terms Eichmann's "*banality of evil*" (*EJ* 252) and what she calls "die gedankenlose Minderwertigkeit [seiner] Ideale" in an

interview with Thilo Koch (38). Therefore, she condemns Eichmann for claiming that refusing to judge is his only option. She does so by means of several techniques, which likewise encourage her readers to critically judge Eichmann's conduct, including the already mentioned italics, irony, and rhetorical questioning.

Another technique by which Arendt attempts to distance her readers from Eichmann is her use of interruption – a common technique in Brechtian epic theater. In *Versuche über Brecht,* Benjamin notes:

> … Unterbrechen [ist] eines der fundamentalen Verfahren aller Formgebung … . Es reicht über den Bezirk der Kunst weit hinaus. Es liegt, um nur eines herauszugreifen, dem Zitat zugrunde. Einen Text zitieren schließt ein: seinen Zusammenhang unterbrechen. Es ist daher wohl verständlich, daß das epische Theater, das auf die Unterbrechung gestellt ist, ein in spezifischem Sinne zitierbares ist. (26)

In the short "Who was he to judge"-passage from *Eichmann in Jerusalem* quoted above, Arendt employs two different kinds of interruption. First, she interrupts the quotation by Eichmann, interjecting her own comments in between two of his sentences: "'At that moment, I sensed a kind of Pontius Pilate feeling, for I felt free of all guilt.' *Who was he to judge?* Who was he 'to have [his] own thoughts in this matter'?" (*EJ* 114). Then she interrupts a single sentence by Eichmann that she quotes by inserting the possessive pronoun "[his]." Arendt's first interruption of Eichmann's utterance – "*Who was he to judge*?" – introduces an alternative and thus performs exactly the opposite of that which Eichmann does: she judges. Like Brechtian practices of interruption, this kind of interruption seeks to show alternative possibilities, where others, like Eichmann, will find none.[28]

The third sentence noted above is a montage and an interrupted sentence, consisting partly of a quotation by Eichmann, which Arendt has to alter, and partly of Arendt's response. It is a variation of the previous sentences, continuing and paraphrasing Eichmann's opinion on judging: "Who was he 'to have [his] own thoughts in this matter'?" (*EJ* 114). While in the first two sentences the speaker, the position, and tone are distinct, Arendt combines here her own ironic voice with that of Eichmann's, while still holding them distinct by means of quotation marks. The first three words – "who was he" – are from Arendt. In the second half of the sentence, she quotes Eichmann using direct speech. To be grammatically consistent with the beginning of her sentence, in which she uses the third person singular while discussing Eichmann, Arendt now has to analogously use the possessive pronoun "his" in the Eichmann quotation so that both parts of the sentence conform to each other. This requires her to slightly change Eichmann's words, which presumably were: "Who was I to have my own thoughts in that matter?" She indicates this variation of the original quotation with square brackets "[his]," which function in a way similar to the previous italicized rhetorical question, that is, as a visual interruption of the quotation, disturbing the cohesion, thereby distancing Eichmann's statement.

Also, the interrupted and modified Eichmann quotation "Who was he 'to have [his] own thoughts in this matter'?" reveals Arendt's previous rhetorical question "Who was he to judge" to be a paraphrase of the original statement by Eichmann (*EJ* 114). Arendt's comment and Eichmann's statement are almost identical except for the paraphrase of the verb "to judge" she uses and its variation in Eichmann's part "Who was he 'to have [his] own thoughts in this matter'" (*EJ* 114). The anaphora "Who was he" and the variation enhances the ironic distancing effect of the passage. This means further that Arendt reverses the repetition, that is, she paraphrases a quotation by Eichmann and postpones the original Eichmann quotation, which she

then slightly changes. By placing her ironic rhetorical question before Eichmann's serious question, Arendt rhetorically preempts Eichmann and thereby undermines him. The paraphrase is a specific kind of irony, which Hermann Schlüter defines as follows: "Eine Sonderform der Ironie ist die Bumerang-Technik (reflexio): man greift Formulierungen des Gegners auf und wendet sie gegen ihn" (Schlüter 37). Arendt poses the rhetorical question herself before quoting Eichmann so as to turn it against him before he even gets to aks it. Schlüter adds that the *reflexio* is often emphasized with italics to indicate the irony: "Ein ironischer Effekt ist es auch, wenn man Formulierungen des Gegners aufgreift und durch besondere Betonung oder durch Anführungszeichen zu erkennen gibt, daß man sich von ihnen distanziert" (Schlüter 37).

Arendt enhances her use of irony in the last sentence with the euphemism "modesty" for Eichmann's refusal to judge. Characterizing Eichmann, in general, and his refusal to judge, in particular, as "modesty" contrasts with Arendt's evaluation of Eichmann as a showoff: "Bragging was the vice that was Eichmann's undoing" (*EJ* 46). Arendt compares Eichmann to classical villains from Shakespearean tragedies, such as Iago, Macbeth, and Richard III (*EJ* 287-288). She characterizes them as individuals who make conscious decisions to do evil, walk over dead bodies to reach their goals, and thus possess what she refers to as "demonic depth" (*EJ* 287-288). Arendt proposes that in contrast to them Eichmann had no criminal or evil motives and was rather oblivious of the crimes he committed due to his fundamental lack of imagination and his inability to see things from a different perspective, which she deduces from Eichmann's statements early on in her report, especially his rhetoric: "a more specific, and also more decisive, flaw in Eichmann's character was his almost total inability ever to look at anything from the other fellow's point of view" (*EJ* 48). Therefore, Arendt refuses to designate

Eichmann's character profoundly as monstrous, demonic, or evil but instead calls him "banal" and even comical:

> Despite all the efforts of the prosecution, everybody could see that this man was not a "monster," but it was difficult indeed not to suspect that he was a clown. And since this suspicion would have been fatal to the whole enterprise, and was also rather hard to sustain in view of the sufferings he and his like had caused to millions of people, his worst clowneries were hardly noticed and almost never reported. (*EJ* 54)

Yet, despite her interpretation of Eichmann as comical and banal, she emphasizes the inherent danger – and indeed ultimately evil effect – of the ignorant, unimaginative, and indifferent attitude he employs: "That such remoteness from reality and such thoughtlessness can wreak more havoc than all the evil instincts taken together which, perhaps, are inherent in man – that was, in fact, the lesson one could learn in Jerusalem. But it was a lesson, neither an explanation of the phenomenon nor a theory about it" (*EJ* 288).

Conclusion

The analysis of Hausner's opening legal speech to the Eichmann trial in the first part of this chapter examined Hausner's oscillation between judicial and epideictic rhetoric. Hausner's oscillating rhetoric corresponds to his twofold conceptualization of the legal trial as judicial process, intended to convict Eichmann and to render justice for the six million Holocaust victims, on the one hand, and lamentation and commemoration of the dead, on the other. The epideictic rhetoric Hausner employs is part of the judicial strategy, one that allows him to go beyond the function of the judicial procedure in order to render a different kind of justice for the victims. It allows him to commemorate and mourn the victims, to give them their own authority,

and to speak in their voice. The use of epideictic rhetoric further corresponds to Hausner's attempt "touch the hearts of men" by means of the legal trial and his legal rhetoric, as he explains in his memoir *Justice in Jerusalem*. His attempt to appeal to the emotions of his extralegal spectators by means of the Eichmann trial is consistent with Hausner's understanding of the Holocaust as "tragedy of Jewry as a whole" and his conception of the Eichmann trial based on Aristotle's notion of tragedy.

Arendt disagrees with Hausner's understanding of the Holocaust as tragedy and his conception of the legal trial as such. She criticizes Hausner's rhetoric and the Eichmann trial by means of the genre of the journalistic report for *The New Yorker* magazine, which gives her the freedom to report in a more subjective tone, as opposed to only providing factual information about the trial itself. Arendt alludes to and draws from techniques and practices of Brechtian epic dramaturgy, such as the montage technique with its principle of interruption, the oscillation between epic and dramatic elements, and ironic narrator comments. By means of these practices, which attempt to expose Eichmann to laughter, Arendt seeks to motivate her readers to judge both Eichmann – especially his refusal to judge – and the legal proceedings. The ability to judge rationally and independently is crucial to Arendt since she considers Eichmann's refusal to judge as the essence of his evil and the actual tragedy of the Holocaust. She concludes from the story of Anton Schmidt that the Holocaust could have been prevented if more people had relied on their own judgment and thereby resisted the National Socialists. Schmidt, who supported the Jewish partisans by providing them with access to papers and military trucks (*EJ* 230), serves Arendt as an example that counters Eichmann's refusal to judge and Hausner's narrative of the Holocaust as a tragedy. The narrative of Schmidt's resistance makes Arendt reflect upon "how utterly different everything would be today in this courtroom, in Israel, in Germany, in all of

Europe, and perhaps in all countries of the worlds, if only more such stories could have been told" (*EJ* 231). This is an expression of Arendt's mourning and consternation that the actual tragedy of the Holocaust lies in the fact that it could have been prevented.

Notes

1. This quotation is from "The Judgment of the District Court" as recorded in *The Trial of Adolf Eichmann: Record of Proceedings in the District Court of Jerusalem* on page 2082. The reading of the judgment lasted for five court sessions from December 11, 1961 (session No. 115), to December 12, 1961 (Session No. 119); also quoted in Lawrence Douglas's 2005 study *The Memory of Judgment*: *Making Law and History in the Trials of the Holocaust* (148).

2. According to the official trial record published by the State of Israel Ministry of Justice in 1992, *The Trial of Adolf Eichmann: Record of Proceedings in the District Court of Jerusalem*, Hausner said that "In this trial, we shall also encounter a new kind of killer, the kind that exercises his bloody craft behind a desk, and only occasionally does the deed with his own hands" (62).

3. For more biographical information on Gideon Hausner, see his 1966 memoir *Justice in Jerusalem*.

4. According to *The Trial of Adolf Eichmann: Record of Proceedings in the District Court of Jerusalem*, Hausner emphasized that the trial focuses on "the tragedy of Jewry as a whole":

> The calamity of the Jewish people in this generation was the subject of consideration at a number of the trials conducted in the wake of Germany's defeat in World War II, when mankind resolved to set up instruments of defence,

> through the establishment of courts and execution of judgments, to ensure that the horrors of war which our generation has witnessed shall not recur. But in none of those trials was the tragedy of Jewry as a whole the central concern. (63)

5. In "Was bleibt? Es bleibt die Muttersprache: Ein Gespräch mit Günter Gaus," published in Adelbert Reif's *Gespräche mit Hannah Arendt*, Gaus addressed the fact that Arendt's ironic and cynical tone in *Eichmann in Jerusalem* generated a lot of criticism. Arendt responded resignedly:

> Dagegen kann ich nichts sagen. Und darüber will ich nichts sagen. Wenn man der Meinung ist, dass man über diese Dinge nur pathetisch schreiben kann ... Sehen Sie, es gibt Leute, die nehmen mir eine Sache übel, und das kann ich gewissermaßen verstehen: Nämlich, das ich da noch lachen kann. Aber ich war wirklich der Meinung, dass der Eichmann ein Hanswurst ist, und ich sage Ihnen: Ich habe sein Polizeiverhör, 3600 Seiten, gelesen und sehr genau gelesen, und ich weiß nicht, wie oft ich gelacht habe; aber laut! Diese Reaktion nehmen mir die Leute übel. Dagegen kann ich nichts machen. (26)

6. According to Perelman and Olbrechts-Tyteca

> [E]pidictic oratory forms a central part of the art of persuasion, and the lack of understanding shown toward it results from a false conception of the effects of argumentation. … [E]pidictic oratory has significance and importance for argumentation, because it strengthens the disposition toward action by increasing adherence to the values it lauds. (50)

7. In chapter 15, "Some Prosecution Problems," of his memoir *Justice in Jerusalem* (1968), Gideon Hausner remembers the international outcry caused by the announcement of Eichmann's capture and uses the metaphor of the trial to describe it:

> From the moment Prime Minister David Ben-Gurion announced Eichmann's capture, Israel itself was on trial. The whole world seemed to be watching to see how we acquitted ourselves of the task we had undertaken. … This 'trial' of the trial continued everywhere, throughout the proceedings in Jerusalem … . (288)

8. His speech consists of different parts, which cover the following topics, according to the official trial record *The Trial of Adolf Eichmann: Record of Proceedings in the District Court of Jerusalem*: "Introduction" (62-67), "II – The SS, the SD and the Gestapo" (67-71), "III – The Accused" (71-74), "IV – The Final Solution of the Jewish Problem" (74-85), "V – The Extermination in Poland" (85-92), "VI – The Extermination in the Soviet Union and Annexed Countries" (92-96) "VII – The Extermination in Northern, Western, and Southern Europe" (96-105), "VIII The Extermination of Hungarian Jewry" (105-109), "IX The Camps" (109-114), and " X – A World That Has Vanished" (115-116).

9. Hausner connects the genocide of the Jewish people to anti-Semitism in his opening speech, according to *The Trial of Adolf Eichmann: Record of Proceedings in the District Court of Jerusalem*:

> Hatred of the Jews, now called "anti-Semitism," was not invented by Hitler. It had existed for many generations. Its roots are in the disastrous dispersion of the Jews, in ignorance and prejudice, superstition and envy. Stupid people have always hated those who differ from them, those who are exceptional. But the Nazis converted anti-Semitism into a doctrine of hatred, which started with hostility and culminated in murder. It was a spontaneous and irresistible development. He that gave free reign to hatred for the Jews had taken the steep path that plunged down to the "Day of Boycott" against the Jews on 1 April 1933; to the "*Kristallnacht*"

> of 9-10 November 1938; to the "physical extermination" decision of 31 July 1941. This was the logic of events, each of which evolved from the one before, and led inevitably to its successors. The way of anti-Semitism led to Auschwitz. (64)

10. According to *The Trial of Adolf Eichmann: Record of Proceedings in the District Court of Jerusalem,* Hausner said:

> They are gone, and no human being can bring them back to life. In order to weep over their suffering and death, a latter-day poet of Lamentations would have to come forward and cry out over the destruction of the daughter of my people.
>
> But what happened to them demands justice and punishment. And I am proud that days have come when a man of Israel may speak in the language of the law to the captured oppressor. (2043)

11. This is the lullaby in its entirety that Hausner quotes in his opening speech to the trial, according to the trial transcript:

> "Quiet, quiet my son, let us speak softly,
> Here grow the graves
> Which they that hate planted.
> Here are the paths.
> The roads lead to Ponar,
> There is no way back.
> Father has gone, never to return,
> And with him the light.
> Quiet my son, my treasure.

Let us not cry in pain.

In any case, we have wept;

The enemy does not understand.

The sea has limits and a shore -

This, our suffering

Is limitless,

Is endless." (95)

Hausner also quotes it in his memoir (324). The English translations from the trial record and the memoir differ slightly.

12. In *Testimony: Crises of Witnessing in Literature, Psychoanalysis, and History* (1992), Shoshana Felman notes that

> … in the legal context … testimony is provided, and is called for, when the facts upon which justice must pronounce its verdict are not clear, when historical accuracy is in doubt and when both the truth and its supporting elements of evidence are called into question. The legal model of the trial dramatizes, in this way, a contained, and culturally channeled, institutionalized, *crisis of truth*. The trial both derives from and proceeds by, a crisis of evidence, which the verdict must resolve. (6; italics in original)

13. According to Sigrid Weigel

> Das Zeugnis nämlich liegt immer jenseits der Form der Aussagen oder der Mitteilung eines Inhaltes, weil es um das Bezeugen einer dem Anderen … gerade unzulänglichen Erfahrung geht. … Es liegt aber auch jenseits der Historisierung und einer Logik der Evidenz, weil der Gestus des Bezeugens sich fundamental

> vom Beweis unterscheidet. Werden Tatsachen ohnehin erst dort zu Beweisen, wo sie zum Indiz innerhalb eines argumentativen Verfahrens oder "in den Dienst einer Behauptung oder Mutmassung gestellt werden", so geht es in den Zeugnissen nicht einmal in erster Linie darum, Tatsachen zu belegen oder das, "was der Fall ist" bzw. war, sondern darum, die Erfahrung des Geschehenen zu bezeugen. (42)

14. Perelman and Olbrechts-Tyteca address the didactic purpose of epideictic oratory. According to them, epideictic speech is usually practiced by traditionalists, people who intend to maintain traditional values: "Epidictic speeches are most prone to appeal to a universal order, to a nature, or a god that would vouch for the unquestioned, and supposedly unquestionable, values. The epidictic oratory, the speaker turns educator" (51).

15. In *The Juridical Unconscious: Trials and Traumas in the Twentieth Centry (2002),* Shoshana Felman examines this reference to Zola in detail (115-120). Dreyfus was accused of espionage for the German army since he was Jewish. Aware of the prevalent anti-Semitism in the French army, Zola wrote an open letter in Dreyfus's defense to re-open his case. After recapitulating the entire case and all the circumstances, which led to Dreyfus's illegal sentence, Zola accused all parties involved, addressing each person individually in chronological order of their occurrence in the several stages of the Dreyfus affair. Every allegation in the letter begins with the anaphora "J'accuse" followed by the name and the reason for the accusation.

16. Horsman uses a different translation of Hausner's opening speech than the one from the official trial record. It is identical with that of Arendt's report (*EJ* 260).

17. Horsman asks:

> Can a demand for justice for the dead be articulated in a juridical vocabulary? What sort of language do we need to give voice to the dead so that they may address us with their demand for justice? (66)

18. Arendt quotes the following lines from Brecht's poem "Deutschland":

> O Germany–
> Hearing the speeches that ring from your house,
> one laughs,
> But whoever sees you, reaches for his knife.
> –Bertolt Brecht

19. In his essay "Das epische Theater," Brecht distinguishes the epic from the dramatic form as follows:

> Das Wort "episches Theater" schien vielen als in sich widerspruchsvoll, da man nach dem Beispiel des Aristoteles die epische und die dramatische Form des Vortrages einer Fabel für grundverschieden voneinander hielt. Der Unterschied zwischen den beiden Formen wurde keinesfalls nur darin erblickt, daß die eine von lebenden Menschen vorgeführt wurde und die anderen sich des Buches bediente. (53)

20. Young-Bruehl references this passage in translation (331).

21. Marie Luise Knott outlines Arendt's reception of Brecht's poetry in her 2007 essay "Die verlorene Generation und der Totalitarismus: Hannah Arendt liest Bertolt Brecht."

22. Amos Elon notes in his introduction to the English edition of Arendt's report that "[Arendt] felt she simply had to attend the trial, she owed it to herself as a social critic, displaced person, witness, and survivor" (xi). The famous letter she sent to the Rockefeller Foundation

supports Elon's claim and also indicates the focus of her interest: "You will understand, I think, why I should cover this trial: I missed the Nuremberg Trials, I never saw these people in the flesh, and this is probably my only chance" (Young-Bruehl 329). Already here, Arendt makes her motivation and interest in the trial transparent. She does not articulate any interest in the survivor witnesses' accounts, but is only interested in the perpetrator Eichmann. Arendt considered the Eichmann trial as a unique opportunity to encounter a high-ranking National Socialist. It seems to be crucial for her to see Eichmann in person to comprehend how the National Socialists could commit these atrocities. According to Elon "[s]he was interested, as she put it, in understanding Eichmann's mind (if he had one) and, through the testimonies at the trial, to explore 'the totality of the moral collapse the Nazis caused in respectable European society'" (xii).

23. In his *Rhetorik des Schreibens: Eine Einführung*, Gert Ueding traces the history of the reportage back to the ancient eyewitness reports by Thukydides and Plinius (125). According to Ueding, their eyewitness accounts served as crucial sources of information and additionally encompassed literary qualities (125).

In his "Introduction" Mulisch explains that his reportage is:

> the account of an experience. An experience is different from a train of thought: it is subject to change. At the end one finds a different person, partly with different thoughts, from at the beginning. Since the account of this changing experience is announced in the first entry, I have not made any corrections anywhere: this was not supposed to be a book about Eichmann, but to remain the double report as it was intended from the start. (1)

While Mulisch emphasizes that it is personal "account of an experience" which includes his experience as a reporter during the trial, his experience as a reporter in Israel, and his research in Berlin after the legal trial, that he records in his "Jerusalem Diary I," Arendt's report focuses on Eichmann and the value system of the Nazi perpetrators (Mulisch 27-72). Further, Wenzel states that Mulisch's reportage differs from Arendt's report with regard to its organization; Mulisch follows in his reportage the chronology of the trial, whereas Arendt organizes her report thematically (Wenzel 87). For example, despite the fact that the Eichmann trial was a witness trial in which more than two hundred survivor witnesses testified, Arendt's chapter entitled "Evidence and Witnesses" is the second to last of fifteen chapters since her focus is on Eichmann.

24. Ueding identifies the montage technique as the most important literary means of the reportage (131). Peter Hutchinson defines in his book *Games Authors Play*, montage as follows: "Its most common form is the successive juxtaposition of brief moments (sometimes only a sentence, but often extending to a short sentence) of a contrasting nature, or, if not contrasting, at least from different sources" (69).

25. Peter Szondi defines the montage technique in *Theorie des modernen Dramas 1880 – 1950* as follows: "Zwischen zwei aufeinanderfolgenden Szenen besteht kein organisches Band, sondern die Kontinuität wird vorgetäuscht durch die Zusammenfügung der Szenen im Hinblick auf ein Drittes, an dem sie beide teilhaben: auf den Begriff des Gerichts. Das aber ist die Montage. … Und Montage ist jede epische Kunstform, die den Epiker verleugnet. Während die Erzählung den Akt des Erzählens perpetuiert, die Bindung an ihren subjektiven Ursprung, den Epiker, nicht abreißt, erstarrt die Montage im Augenblick ihrer Entstehung und erweckt nur den

Anschein, als bilde sie wie das Drama aus sich heraus ein Ganzes. Auf den Epiker verweist sie nur wie auf ihre Marke – Montage ist die Fabrikware der Epik" (Szondi 127).

26. Arendt states in her interview with Thilo Koch entitled "Der 'Fall Eichmann' und die Deutschen: Ein Gespräch mit Thilo Koch" that she cannot grasp the lack of judgment and imagination of the bureaucratic perpetrators: "Was wir alle an der Vergangenheit nicht bewältigen können, ist doch nicht etwa die Zahl der Opfer, sondern gerade auch die Schäbigkeit dieser Massenmörder ohne Schuldbewusstsein und die gedankenlose Minderwertigkeit ihrer Ideale" (Arendt/Koch 38).

27. In *Rhetorik des Schreibens: Eine Einführung*, Gerd Ueding identifies "Verfremdung" as a means of presentation in the journalistic reportage intended to distance the reader (132).

28. In "Der V-Effekt als eine Prozedur des täglichen Lebens," Brecht gives an example of what kind of sentences employ the distanciation effect:

> Allereinfachste Sätze, die den V-Effekt anwenden, sind Sätze mit 'nicht-sondern' (er sagte nicht "kommt herein", sondern "geht weiter".) Da bestand eine Erwartung, gerechtfertigt durch Erfahrung, aber sie wurde enttäuscht. … Es gab nicht nur eine Möglichkeit, sondern deren zweie, beiden werden angeführt, zunächst wird die eine, die zweite, dann auch die erste verfremdet. (175)

Chapter Two

Juridical v. Epic Distancing:

The Frankfurt Auschwitz Trial (1963-1965) and Peter Weiss's *Lehrstück*-Oratorio *Die Ermittlung: Oratorium in 11 Gesängen* (1965)

The first chapter examined the different approaches to the Eichmann trial by Attorney General Gideon Hausner and political theorist Hannah Arendt. While Hausner attempted to convict Eichmann, on the one hand, and to appeal "to the hearts of men," according to his 1968 memoir *Justice in Jerusalem* (291), on the other, so as to confront a world audience with the atrocities of the Holocaust, Arendt's response form to the trial, the report, intends to distance her readers so as to encourage them to judge on their own. Moving beyond the Eichmann trial and Arendt's report form, this second chapter examines Hessian Attorney General Fritz Bauer's criticism of the judicial concepts and practices of the Frankfurt Auschwitz trial (1963-1965) and Peter Weiss's dramatic response, *Die Ermittlung: Oratorium in 11 Gesängen* (1965). What aspects of the Holocaust and the German past was the Frankfurt Auschwitz trial able to convey and to commemorate? What aspects did it omit and misrepresent, which Weiss's oratorio in turn is able to address?

In a panel discussion entitled "Auschwitz auf dem Theater?" on the occasion of the premiere of Weiss's play *Die Ermittlung* on October 24, 1965, while the legal trial was still in process, the German-Jewish Attorney General and Social Democrat Bauer called for the poet to express what the judge of the trial is unable to:

> Es müsste eine Arbeitsteilung geben, lieber Peter Weiss, zwischen dem Auschwitz-Richter und dem Auschwitz-Dichter. Der Auschwitz-Richter züchtigt, der Auschwitz-Dichter sollte erziehen. Diese Arbeitsteilung ist notwendig, und

> ich als Jurist sage Ihnen, wir Juristen in Frankfurt haben erschreckt gerufen, mit ganzer Seele gerufen nach dem Dichter, der das ausspricht, was der Prozess nicht im Stande ist. (74)

Bauer's use of the homoioteleuton "Richter" and "Dichter," evokes Arendt's differentiation between "Gericht" and "Bericht" (Wenzel 87), both of which suggest the similarities and differences between legal trials and poetic works. Bauer distinguishes the role of the judge from that of the poet. He argues that the judge punishes, while the poet should educate. Bauer's use of the subjunctive "sollte" implies that the role of the poet to educate is an ideal that is not always achieved. Since the judge of the Frankfurt Auschwitz trial and the dramatist Weiss in his play *Die Ermittlung* deal with the same subject, the genocide of the Jews in the Auschwitz concentration camp, which they approach from different perspectives with distinct practices and concepts, and to different ends, Bauer proposes that their roles are complementary and that they therefore should collaborate. This also explains why Bauer, who was well read, supported Weiss's project from the very beginning and why Weiss and other writers were invited to attend the trial to write about it.[1] This chapter argues that Weiss's *Die Ermittlung* is able to convey and commemorate dimensions of the past that the legal concepts and practices employed by the criminal court in Frankfurt either omit or misrepresent. In so doing, *Die Ermittlung* contributes to the construction of a memory culture in Germany that stimulates discussion beyond the courtroom and to German society's working through the past.

The first part of this chapter analyzes what Holocaust narrative the Frankfurt Auschwitz trial generated, what aspects of the Holocaust it was unable to convey, and the reasons for these limitations. Drawing from Devin O. Pendas's study *The Frankfurt Auschwitz Trial 1963-1965: Genocide, History, and the Limits of the Law* (2010), the first part of this chapter examines

certain legal concepts and practices of West German criminal law, such as the concepts of criminal guilt, "Mord" and "Totschlag" as well as the differentiation between "Täter" and "Beihilfe zum Mord." It does so in order to show how these legal concepts and practices generate certain narratives and presentations of the Holocaust, which differ from the actual historical events and conditions. These discrepancies between the judicial presentation of the Holocaust and the actual historical events and conditions are especially significant for Bauer, since he had hoped that the legal trial would give German audiences a more profound sense of the history of Nazism and the impacts on its victims, and would thereby force them to reflect on the past.

In his essay "Im Namen des Volkes: Die strafrechtliche Bewältigung der Vergangenheit" (1965), Bauer explained his intention of educating West Germans about their past by means of the legal trial, which he envisioned to be rather representational of the historical conditions of Auschwitz.[2] However, Bauer believed that the trial failed to present the Auschwitz concentration camp as a site of "bureaucratically organized, state-sponsored mass murder" because of the judicial concepts and practices employed by the criminal court (Pendas 53). The judicial concepts and practices of German criminal law present a "juristische Verfremdung von Auschwitz," *a juridical distanciation of Auschwitz,* according to Bauer, which means that the trial failed to present Auschwitz in a historically profound manner ("Auschwitz auf dem Theater?" 74). Therefore, the Frankfurt Auschwitz trial was not suitable to educate West Germans about the Holocaust.

While Bauer criticized the trial proceedings for failing to foster the historical understanding of the Holocaust for West Germans, Weiss reworks the trial transcript produced by Bernd Naumann, *Auschwitz: Bericht über die Strafsache gegen Mulka u.a. vor dem*

Schwurgericht Frankfurt (1965), into the form of the oratorio. Weiss combines this oratorio with practices drawn from Brecht's epic theater, especially his specific use of the "Lehrstück"-genre, to commemorate and convey dimensions of the past that do not fit easily into the concepts and practices of the legal trial.[3] Weiss seeks thereby to reveal the structure and organization of the Auschwitz concentration camp, its origins, underlying ideology, and language.[4] His aim is to commemorate the dead and bear witness to the experience of suffering. Weiss's *Die Ermittlung* shares significant practices with Brecht's "Lehrstück" *Die Maßnahme* (1930), which is also at the same time an oratorio. As "Lehrstücke," *Die Maßnahme* and *Die Ermittlung* both serve didactic ends; they are non-scenic musical pieces, written in verse that lends itself to setting to music and singing; and they do not present specific characters, but types.

The Frankfurt Auschwitz Trial

The Auschwitz trial took place from December 20, 1963 to August 20, 1965 in Frankfurt am Main, West Germany. Since it dealt with the Nazi genocide of the Jews, it was viewed as the first Holocaust trial after 1945 in West Germany. Officially designated "Strafprozess gegen Mulka und andere vor dem Schwurgericht Frankfurt," the trial was conducted under ordinary West German statutory criminal law against twenty-two defendants. The defendants ranged in rank from major to private and represented every major sub-unit of the Auschwitz concentration camp. In her introduction to *Die Humanität der Rechtsordnung* (1998), Irmtrud Wojak points out that since, according to Bauer, these defendants carried out the "Final Solution," they were charged with murder and accessory to murder (16).

Pendas points to Fritz Bauer's significance for the Frankfurt Auschwitz trial, empasizing that without the effort and persistence of Bauer the Frankfurt Auschwitz trial probably would not have taken place (Pendas 52).[5] Bauer was not the State's Prosecuting Attorney in the trial but

was instrumental in its preparations. According to Wojak's *Fritz Bauer 1903-1968: Eine Biographie* (2009), the Social Democrat and victim of National Socialism himself – the Gestapo detained him in the Heuberg concentration camp in March 1933 for eight months – Bauer had begun the preparations for the Auschwitz trial as early as 1958 (317-318). Similar to Adorno, who argued for the need to work through the past as a didactic and therapeutic process in his 1959 essay, "Was bedeutet Aufarbeitung der Vergangenheit?," Bauer believed it necessary to learn from the past and to draw connections between the past, present, and the future if post-war Germany was going to overcome the remnants of Fascism in the present and the possibility of another Holocaust or resurgence of virulent anti-Semitism or fascist domination in the future.

Fritz Bauer's Conceptualization of the Auschwitz Trial

In his "Im Namen des Volkes: Die strafrechtliche Bewältigung der Vergangenheit," which reads like a response to Adorno, Bauer describes the process of coming to terms with the past as a learning process: "Mit dem Wort von der 'Bewältigung unserer Vergangenheit', das Bundespräsident Heuss seinerzeit geprägt hat, ist gemeint, daß wir aus dem Vergangen lernen und die Konsequenz für Gegenwart und Zukunft ziehen" (77). Already in 1945, Bauer explained in his book, *Die Kriegsverbrecher vor Gericht,* in the context of the Nuremberg trials his understanding of the legal trial as a didactic event, which has an effect beyond the actual proceedings:

> [D]ie Prozesse gegen die Kriegsverbrecher könnten Wegweiser sein und Brücken schlagen über die vom Nationalsozialismus unerhört verbreiterte Kluft. Sie können und müssen dem deutschen Volk die Augen öffnen für das, was geschehen ist und ihm einprägen, wie man sich zu benehmen hat. Noch besser wäre es, wenn das deutsche Volk den Ausgleich selbst vollziehen würde, wenn es

> nicht bloß ein mehr oder minder aufmerksamer Zuhörer, ein mehr oder minder gelehriger Schüler wäre, sondern selbst das Schwert des Krieges mit dem Schwert der Gerechtigkeit vertauschte. Ein ehrliches deutsches "J'accuse" würde das "eigene Nest nicht beschmutzen" (es ist schon beschmutzt und die Solidarität mit den Verbrechern würde es nur noch mehr beschmutzen). Es wäre ganz im Gegenteil das Bekenntnis zu einer neuen deutschen Welt. (211)[6]

Beyond convicting Nazi perpetrators and rendering justice, Bauer viewed the legal Holocaust trials as a means to confront West Germans with the National Socialist crimes. In this sense, the trials were fundamental for a new beginning in Germany. In the context of the Nuremberg trials Bauer expressed his hope that Germany would have its own trial against Nazi perpetrators. Strikingly, though, in the opening quotation, Bauer attributes didacticism to the poet arguing that neither the judge nor the Frankfurt Auschwitz trial itself was able to instruct its West German audience in the meaning of the Holocaust.

Juridical Distancing of Auschwitz

On the occasion of the premiere of *Die Ermittlung*, the Württembergische Staatstheater Stuttgart hosted a panel discussion. Together with Siegfried Unseld and Peter Weiss, Bauer discussed the question "Auschwitz auf dem Theater?" The only jurist on the panel, Bauer was also the only one to directly address the Frankfurt Auschwitz trial and its relation to Weiss's *Die Ermittlung*. He explained his comment that the legal trial was unable to express certain aspects about the Auschwitz concentration camp, by referring to the legal proceedings as a "juristische Verfremdung von Auschwitz" ("juridical distanciation of Auschwitz"; "Auschwitz auf dem Theater?" 74).

Bauer's notion of "juristische Verfremdung" evokes Brecht's "Verfremdungseffekt," variously translated as "alienation" or "distanciation effect." Brecht developed this dramaturgical practice for his epic theater and defines it, for example, in his 1939 essay "Über experimentelles Theater":

> Einen Vorgang verfremden heißt zunächst einfach, dem Vorgang oder dem Charakter das Selbstverständliche, Bekannte, Einleuchtende zu nehmen und über ihn Staunen und Neugierde zu erzeugen. ... Die Haltung ... wird verfremdet, das heißt sie wird als eigentümlich, auffallend, bemerkenswert dargestellt, als gesellschaftliches Phänomen, das nicht selbstverständlich ist. (101)

However, Bauer's notion of juridical distanciation of Auschwitz differs significantly from Brecht's epic distanciation. Bauer elaborated in "Auschwitz auf dem Theater?" what he meant by the term and what judicial concepts and practices generated this distanciation:

> [D]er Auschwitz-Prozess ist weniger als Auschwitz ... Der Richter in unserem Strafrecht schaut rückwärts und er sieht in Wirklichkeit nur die Taten; er sieht leider nicht die Quellen der deutschen Not, man sieht nicht die Quellen des deutschen Übels ... . Und ohne Kenntnis dieser Quellen des deutschen Übels, das unser aller Übel ist ... gibt es auch kein Heil und auch keine Heilung. Der Jurist tut das nicht und Peter Weiss tut es zu wenig. (75)

By juridical distancing of Auschwitz Bauer means that "[d]er Auschwitz-Prozeß … weniger als Auschwitz [ist]," that the specific functions, practices, and concepts of West German criminal law are only able to convey a few aspects of the Auschwitz crime complex. Bauer argues that the presentation of the crimes committed in Auschwitz during the trial proceedings differs significantly from the actual crimes committed in the Auschwitz concentration camp, suggesting

that the trial does not capture the atrocities in their entirety. Rather the narrative the trial creates is incomplete. Bauer's observation that "der Auschwitz-Prozeß … weniger als Auschwitz [ist]" points to the gap between both the crimes and their judicial examination. As an example of the juridical distanciation of Auschwitz, Bauer mentions that West German criminal law focuses on the crimes and criminal guilt instead of reaching farther back to examine the origins of the Nazi atrocities. He argues that it is impossible for postwar West Germany to recover, to heal from its past, unless its origins are investigated, understood, and worked through.

Bauer's criticism of the legal trial as juridical distanciation of Auschwitz and his intention to confront and educate West Germany about its past by means of the trial further suggest that Bauer approaches the trial not entirely from the judicial perspective. Rather, he also considers the *representational* aspects of the trial, that is, the kind of narrative the trial generates by means of its concepts and practices. In *The Frankfurt Auschwitz Trial,* historian Devin O. Pendas distinguishes between the representational and the juridical domain of the Auschwitz trial and examines its achievements in each of these areas (291). In this context, he draws on James Boyd White who elaborates on the notion of the representational function of trials in *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law* (1985). In this seminal work of the law and literature movement, White examines the intersections between law and literature and explains that legal trials create narratives:

> One way in which the law is poetic is that it works by narrative. … [T]he law always begins in story … . It ends in story too, with a decision by a court or jury, or an agreement between the parties, about what happened and what it means. This final legal version of the story almost always includes a decision or an

> agreement about what is to remain unsaid. Beyond the story is a silence it acknowledges. (168)

White further emphasizes that legal trials consist of and generate conflicting narratives, and also omissions, narratives that remain untold (168).

Bauer's evaluation of the trial as a juridical distanciation of the Nazi crimes means that the legal trial fails to present a profound history of Auschwitz as a state-sponsored crime complex of mass murder. In "Im Namen des Volkes," Bauer explains that this failure is problematic in light of his hope that the legal trial would educate West Germans about the Holocaust:

> Die Prozesse, die Bewältigung unserer Vergangenheit sind eine bittere Arznei. Niemand weiß dies besser als der Jurist, der Psychologe, der Soziologe, der Pädagoge; sie stehen auch allem Menschlichen nicht zu fern, um nicht die Scheu des deutschen Bürgers zu ahnen, mit den gebieterisch fördernden Lehren der Prozesse, die zugleich die Lehre der Vergangenheit sind, nachdrücklichst konfrontiert zu werden. (85)

To confront Germans with the lessons of Auschwitz, with the "bitter pill" of the National Socialist past, Bauer even went so far as to organize an exhibition about the Auschwitz concentration camp as Wojak notes in *Fritz Bauer* (350-351). Yet, since the Auschwitz trial was ultimately unable to convey crucial aspects of Auschwitz and National Socialism, Bauer called for the poet to tell the narrative the trial could not.

Presiding Judge Hofmeyer's Judicial Approach to the Trial

In opposition to Bauer, Presiding Judge Hofmeyer approached the Auschwitz trial from the judicial domain as, for example, his concluding remarks, quoted in Naumann's trial report

Auschwitz, show. Hofmeyer explained on what legal concepts and practices the trial was based, and what it was and was not able to convey. First and foremost, Hofmeyer expresses seemingly in response to Bauer his understanding of the expectation of the legal trial to bring to light the underlying historical conditions of Auschwitz, as noted in Naumann's trial record:

> Es ist verständlich, dass in diesen Prozess der Wunsch hineingetragen worden ist, die Grundlagen zu einer umfassenden geschichtlichen Darstellung des Zeitgeschehens zu schaffen, die Hintergründe, die zu dieser Katastrophe führten, zu erkennen, die politische Entwicklung seit dem ersten Weltkrieg aufzuzeigen und zu ergründen, die zu diesem furchtbaren Geschehen in Auschwitz führte. (521)

Despite his understanding, Hofmeyer emphasizes, according to Naumann, that it is not the task of the legal trial to overcome the past: "Das Schwurgericht war nicht dazu berufen, die Vergangenheit zu bewältigen" (521). Consequently, Hofmeyer rejects the colloquial and metaphorical designation of the trial as "Auschwitz Prozess" (Naumann 521). In lieu of this designation he emphasizes the official judicial title, which points to the trial's function and procedure: "Wenn auch der Prozess … den Namen 'Auschwitz-Prozess' erhalten hat, so blieb er für das Schwurgericht ein 'Strafprozess gegen Mulka und andere'" (Naumann 521). This means that the trial examines the individual criminal guilt of the defendants, punishes them, and renders justice. Therefore, Hofmeyer rejected Bauer's representational approach of investigating and conveying the historical conditions underlying the crimes.

The Legal Form of the Auschwitz Trial: "Strafprozess"

Bauer and Hofmeyer both point out that the Frankfurt Auschwitz trial is a criminal trial. Pendas emphasizes that "[t]he single most important thing to remember about German Nazi trials

is that they took place under existing statutory law (*Strafgesetzbuch*, or StGB)" (Pendas 53). This means that unlike the Nuremberg trial, which was conducted under international law, or the Klaus Barbie trial in France, which used the Nuremberg trial's charge of "crimes against humanity," the Frankfurt Auschwitz trial used neither new legal categories, such as mass murder or genocide, nor new legal procedures that specifically corresponded to the genocide of the Jews committed by the National Socialists. Instead, the trial relied on already existing criminal procedures and legal categories (Pendas 53).

Like Bauer, Pendas sees a conflict between the juridical and the representational domain of the trial, arguing that the trial employed juridical concepts and practices that misrepresented and omitted certain aspects of Auschwitz. According to Pendas, the criminal trial's investigation of individual criminal guilt and the assumption of the defendants' subjective motivations were not adequate to approach the crimes of Auschwitz (Pendas 292). Therefore, Pendas proposes that the Auschwitz trial "was unable to articulate adequately a historical account of the Holocaust that fully incorporated or even sufficiently acknowledged the extent to which it was a 'total social event,' one in which every dimension of German society was implicated to one degree or another" (Pendas 293). The following analysis of the legal concepts and practices employed by the trial will shed light on the weaknesses Pendas identifies.

The Judicial Breaking up of the Auschwitz Crime Complex Into Ordinary "Murder" and "Manslaughter" Cases

The West German *Strafgesetzbuch* distinguishes thirty different categories of crimes, ranging from "Friedensverrat, Hochverrat und Gefährdung des demokratischen Rechtsstaates" to "Straftaten gegen den Personenstand, die Ehe, die Familie" to "Straftaten im Amt," all of which are tried in criminal trials (StGB §80, §80a; §169-§173; §331-§358). The defendants in the

Auschwitz trial were indicted with murder and manslaughter (StGB §211, §212). These crimes belong to category sixteen, designating "Straftaten gegen das Leben." In the concluding remarks quoted in Naumann's trial record, Judge Hofmeyer explains the juridical practice of the criminal trial to determine individual guilt: "[E]s war für die Entscheidung des Schwurgerichts nur die Schuld der Angeklagten maßgebend" (Naumann 521). He further explains that the court only investigated the criminal guilt, as opposed to moral guilt, of the defendants: "Bei der Frage der Schuld konnte das Gericht nur die kriminelle Schuld, das heißt die Schuld im Sinne des Strafgesetzbuches untersuchen. Nicht stand für das Gericht die politische Schuld, die moralische und die ethische Schuld im Mittelpunkt seiner Prüfung" (Naumann 522). The prosecution indicted the defendants on mass murder. However, the criminal court could only investigate the individual criminal guilt of each defendant regarding murder or manslaughter since West German criminal law does not include the legal concept on mass murder or genocide.

As a result of the absence of the category of mass murder in West German criminal law, Pendas argues that "German criminal law was … not well equipped – conceptually or procedurally – to deal with genocide, … it fundamentally lacked the theoretical apparatus to grasp and render judgment on systematic, bureaucratically organized, state-sponsored mass murder" (53). To determine the defendants' individual criminal guilt the trial was required to divide the mass murder into individual murder and manslaughter cases, which suggested that the crimes at Auschwitz were ordinary (Pendas 53). Hofmeyer emphasizes the ordinariness of the Frankfurt Auschwitz trial when he defines it in his concluding remarks, as recorded in Naumann, as a "normale[r] Strafprozeß, mag er auch einen Hintergrund haben, wie er wolle" (524). However, since the Nazi atrocities were bureaucratically organized and state-sponsored genocide they significantly differed from ordinary murder and manslaughter cases.

In his essay "Im Namen des Volkes," Bauer criticizes the legal practice of determining individual criminal guilt and breaking up the crime complex Auschwitz into single individual crimes:

> Die Gerichte machten den Versuch, das totale Geschehen, z.B. den Massenmord an Millionen in den Vernichtungslagern, in Episoden aufzulösen, etwa in die Ermordung von A durch X, von B durch Y oder von C durch Z. Dem einzelnen Angeklagten wünschte man sein individuelles Tun im Detail nachzuweisen. Dergleichen vergewaltigt aber das Geschehen, das nicht eine Summe von Einzelereignissen war. (83)

Bauer regards the criminal procedure to determine individual guilt and to divide the mass murder into individual crimes as something that does violence to the understanding and memory of the Holocaust. The Auschwitz mass murder is not a series of individual crimes according to Bauer, but should be considered as one large crime complex since all the murders there belong to the overall mass murder. By implication, the investigation of individual criminal guilt conceals that mass murder cannot be exactly attributed to any individual involvement.

Hofmeyer concedes in the closing remarks that the absence of the concept of mass murder in West German criminal law represented one of the greatest challenges for the court since it was difficult to present sufficient evidence for "murder" and "manslaughter" in accord with German legal code:

> Infolge der Beweisschwierigkeiten, in denen sich das Gericht befand, konnten nicht alle strafbaren Handlungen nachgewiesen werden. Das Gericht mußte vielmehr ausgehen nur von den Taten, für die ein konkreter Beweis erbracht war,

> da das Strafgesetzbuch Massenverbrechen nicht kennt. Das bedeutet, daß das Gericht sich auch insoweit bescheiden mußte. (Naumann 526)

Hofmeyer's concession that it was impossible to provide sufficient evidence for every crime makes clear that the criminal court was unable to verify the entire criminal guilt of every defendant, and that the legal trial consequently was not able to render justice regarding every crime.

The Limitations of the "Murder" and "Manslaughter" Charges

Pendas points out that West German criminal law defines "murder" ("Mord") and "manslaughter" ("Totschlag") in terms of specific motives (Pendas 57). According to § 211 *Strafgesetzbuch*, "Mord" is defined as follows: "Mörder ist, wer aus Mordlust, zur Befriedigung des Geschlechtstriebes, aus Habgier oder sonst aus niedrigen Beweggründen, heimtückisch oder grausam oder mit gemeingefährlichen Mitteln oder um eine andere Straftat zu ermöglichen oder zu verdecken, einen Menschen tötet." § 212 StGB defines "Totschlag" as: "(1) Wer einen Menschen tötet, ohne Mörder zu sein, wird als Totschläger mit Freiheitsstrafe nicht unter fünf Jahren bestraft. (2) In besonders schweren Fällen ist auf lebenslange Freiheitsstrafe zu erkennen." The use of the legal concepts "murder" and "manslaughter" legally misrepresent Auschwitz since the *Strafgesetzbuch* defines these concepts according to specific criminal motives, such as "blood lust, sexual desire, or other "base motives"" (Pendas 57). The criminal motives of "murder" and "manslaughter" are not always adequate regarding the ideological motives of the Nazi perpetrators, but obscure their actual motives and the intention to murder.

In addition, Pendas mentions that the motives of each crime are defined in subjective terms, that is, they are defined by internal conditions (Pendas 57). For example, guilt is defined by the "defendants' internal disposition toward their actions" (Pendas 291). This is not only

inaccurate with regard to the actual ideological motives, but also a problem procedurally since the motives "can be demonstrated only on the basis of indirect evidence ... except in those rare cases where direct statements made by the perpetrators at the time of the crime are available" (Pendas 58). Pendas explains that "it has mainly been possible to demonstrate blood lust for perpetrators from the lower ranks ..., while base motives have tended to be easier to demonstrate across the board" (58).

According to Pendas, the investigation of inner motives is rather "vague" and "subjective" in West German criminal law and has consequences for the distinction between "Täter" and "Beihilfe" (Pendas 61-61). § 25 StGB defines "Täterschaft" as follows: "(1) Als Täter wird bestraft, wer die Straftat selbst oder durch einen anderen begeht. (2) Begehen mehrere die Straftat gemeinschaftlich, so wird jeder als Täter bestraft (Mittäter)." In contrast, "Beihilfe" is defined by § 27 StGB as: "(1) Als Gehilfe wird bestraft, wer vorsätzlich einem anderen zu dessen vorsätzlich begangener rechtswidriger Tat Hilfe geleistet hat. (2) Die Strafe für den Gehilfen richtet sich nach der Strafdrohung für den Täter. Sie ist nach § 49 Abs. 1 zu mildern." Besides Pendas, legal scholars, like Claus Roxin, have stressed that, like the distinction between the motives of murder and manslaughter, the differentiation between perpetrator and accomplice depends on internal criteria, such as "the will, intention, motives and attitudes" of the perpetrator, which are difficult to determine due to their subjectivity (Pendas 63). According to a ruling by the *Bundesgerichtshof*, Germany's highest court, to convict a defendant as perpetrator it had to be proved that the defendant internalized the criminal motives and not only followed orders, which was difficult to prove (Pendas 70). With regard to Nazi perpetrator trials this means that prosecutors had to prove that the particular defendant was a National Socialist, that he had internalized the Nazi ideology and murderous motives of the main perpetrators Hitler, Himmler,

and Heydrich (Pendas 70). It was difficult to prove a defendant's internal disposition during the time of the crime, because the crimes happened more than twenty years before the trial and because during the trial the defendants remained silent, lied, or stated that they were not National Socialists, but only followed orders (Pendas 70).

In "Im Namen des Volkes," Bauer criticizes the imprecise distinction between perpetrator and accomplice, which often resulted in the defendants' conviction as accomplice instead of as perpetrator:

> Hinter der bei den Gerichten bis hinauf zum Bundesgerichtshof beliebten Annahme bloßer Beihilfe steht die nachträgliche Wunschvorstellung, im totalitären Staat der Nazizeit habe es nur wenige Verantwortliche gegeben, es seien nur Hitler und ein paar seiner Allernächsten gewesen, während alle übrigen lediglich vergewaltigte, terrorisierte Mitläufer oder depersonalisierte und dehumanisierte Existenzen waren, die veranlaßt wurden, Dinge zu tun, die ihnen völlig wesensfremd gewesen sind. Deutschland war sozusagen nicht ein weitgehend besessenes, auf den Nazismus versessenes, sondern ein von einem Feind besetztes Land. (83)

Bauer argues that the legal concepts of individual criminal guilt, and the differentiation between perpetrator and accomplice led to a deeply flawed presentation of the Holocaust. The conviction of a small minority of National Socialists as perpetrators and the majority of other perpetrators as accomplices suggests that only a few people were National Socialists and as such guilty of the crimes of the Holocaust, and everyone else was forced to participate. The legal narrative thus suggests that the National Socialists and their accomplices were a minority in Germany. This might be true regarding the actual membership in the National Socialist party, which was less

than 4% of the population in 1935, as pointed out by historian Ian Kershaw (28) but in 1945 had risen to up to 8.5 Million. However, regardless whether they were members of the NSDAP, the majority of Germans were generally supportive of NSDAP policy. Therefore, Bauer calls the juridical concepts and practices a "Wunschvorstellung," a fantasy, presenting Germany as a victim of National Socialism.

Like Bauer, Pendas criticizes the concepts and practices of West German criminal law that require the dissolving of the Holocaust as a crime complex, as contiguous crimes, into individual crimes such as murder and manslaughter cases. This procedure both disregards and conceals the fact that the crimes belong to the realm of bureaucratically administered, state-sponsored genocide (Pendas 53). Fundamentally different in motives, structure, and execution from regular murder or manslaughter cases, state-sponsored genocide can, in general, not be exactly ascribed to one individual perpetrator. Since mass murder involves many perpetrators who contribute in various ways to the death machinery as a whole, the legal differentiation between perpetrator and accomplice is not helpful in the context of the Holocaust. Therefore, the breaking up of the Holocaust as a crime complex is, according to Pendas:

> misleading, if not perverse, when applied to the Holocaust, since it is a crime that makes sense only in its totality… [D]ifferentiating the perpetrators of the Holocaust on the basis of presumed motivation means necessarily to fragment the Holocaust into a series of distinct, often unconnected crimes or half-crimes, none of which begins to add up to the whole crime of genocide. This belies the true character of the Holocaust as a total social act, like war, one that can only be fetishized or ideologized when not identified as such. This is why the Auschwitz Trial could sincerely strive for justice on one level – the level of criminal

> punishment – while simultaneously generating a kind of injustice on another level – the level of historical consciousness. (298)

Judicial Truth Versus Representational and Experiential Truth

In the above passage, Pendas distinguishes different levels of justice that the Auschwitz trial engages in, justice with regard to criminal punishment on the one hand, and justice regarding the trial's historical accuracy, on the other. Like the Eichmann trial in Jerusalem the Frankfurt Auschwitz trial was a witness trial in which two hundred eleven survivor witnesses testified to the crimes committed at Auschwitz. As mentioned in the first chapter, the survivor witnesses' testimonies in the Eichmann trial not only served as legal testimonies to prove Eichmann's guilt, but additionally allowed the survivors to bear witness to their individual experience of suffering and to commemorate and mourn the dead. The Eichmann trial further gave them the opportunity to record their stories, and by doing so to reclaim their agency and write their own history, as has been pointed out, for example, by Shoshana Felman. In this sense, the Eichmann trial achieved representational justice with regard to the historical Holocaust narrative it created as well as experiential justice, because it gave the survivor witnesses a voice with which to share their stories and have them heard.

In contrast, in the Auschwitz trial the survivor witness testimonies only served as legal testimonies to reconstruct the crimes, because the majority of the existing documents did not provide sufficient evidence. Since the aim of the Frankfurt legal proceedings was to establish factual truth, that is, juridical truth, regarding the crimes in order to render justice, the criminal court in Frankfurt reduced the over two hundred survivor witness testimonies to factual and objective information. Although the Auschwitz trial was a witness trial and granted the witnesses the right to be heard, their testimonies had to comply strictly with the legal standards of a

criminal trial. Providing detailed and objective juridical truth regarding the crimes was often in conflict with the survivor witnesses' need to bear witness to their individual experience of suffering and consequently offended many survivors (Pendas 102). Further, Pendas argues that "the trial devalued the experiential truth of Auschwitz recounted by the survivor witnesses. The only truth that counted, that *could* count, was the juridical truth of individual agency, not the representational truth of the victim's suffering" (291; italics in original).

According to Naumann's trial transcript, Hofmeyer conceded in the concluding remarks the difficulty for the witnesses to recall meticulous and seemingly superfluous details about the crimes after more than twenty years and took into account that the survivor witnesses had no access to calendars and clocks in Auschwitz. He insisted on the significance of accuracy regarding "the juridical truth of individual agency," as Pendas calls it (291), to exclude false convictions as they had occurred in the past (Naumann 524-525). Naumann quotes Hofmeyer as follows: "Diese Fälle von Justiztirrtum dienen nicht dazu, die Rechtssicherheit zu stärken und den Glauben an das Recht zu schützen. Aus diesem Grunde hat auch das Gericht alles vermieden, was irgendwie auch nur im entferntesten auf eine summarische Entscheidung hindeuten könnte" (525). The court had to ensure that the defendants were only sentenced for crimes they committed, that is, for criminal guilt, and not for their mere presence in the Auschwitz concentration camp, which would constitute moral guilt (Naumann 525).

Beyond the Frankfurt Auschwitz trial's failure to provide the victims with the representational and experiential justice of bearing witness to their individual experience of suffering, in "Im Namen des Volkes," Bauer considered the low sentences to be an injustice and consequently an insult to the victims: "Die Strafen, die ausgesprochen wurden, lagen häufig an der Mindestgrenze des gesetzlich Zulässigen, was mitunter einer Verhöhnung der Opfer recht

kam" (84). Hofmeyer agreed that the punishments were low, but emphasizes that human life is not long enough to provide justice.[7] In addition to the low sentences, Bauer is further disappointed that the defendants did not take the trial as an opportunity to apologize to the victims, a display of remorse, which he had hoped the defendants would come to recognize as necessary and proper.[8] Bauer's hope that the defendants might apologize to their victims was closely connected to the representational truth of the trial he had sought. He wished that the trial would be able to confront the perpetrators with their crimes, make them realize their responsibility, evoke feelings of guilt and empathy and the need to ask for repentance. Showing no sign of remorse or desire for forgiveness from the survivor witnesses, the perpetrators remained predominantly silent, lied, or even accused the witnesses of lying. According to Naumann's trial report, Hofmeyer also emphasized the defendants' silence and denials in his concluding remarks: "Auch die Angeklagten haben keinen Anhaltspunkt für die Erforschung der Wahrheit gegeben und im wesentlichen geschwiegen und zum großen Teil die Unwahrheit gesagt" (Naumann 525). In addition to claiming that they did not remember and were oblivious to what was going on in Auschwitz, they often accused the survivor witnesses of lying, something that additionally contrasted with Bauer's hopes for the trial.

The Auschwitz trial both facilitated and limited the understanding of Auschwitz as a crime complex and the experience of suffering of the victims. The legal trial facilitated the understanding of Auschwitz through the detailed witness testimonies and the investigation prior to the trial. The focus on criminal guilt limited the understanding of Auschwitz as a crime complex, that is, as a site of state-sponsored mass murder; the reduction of the witness testimonies to factual and objective evidence often disregarded the individual experience of suffering. In contrast, Peter Weiss's play *Die Ermittlung* is able to express what is testified to in

the Frankfurt Auschwitz trial and recorded by Naumann differently and with different effects. Weiss shifts the focus from the investigation of the individual criminal guilt of the defendants, to the architecture and organizational structure of the Auschwitz concentration camp, as well as to the experience of suffering so as to confront his audience with a Holocaust representation that is historically more accurate than that of the legal trial. Weiss seeks in that way to educate his spectators about the Holocaust.

Peter Weiss's *Die Ermittlung: Oratorium in 11 Gesängen*

While Bauer criticizes the judicial practices and concepts as juridical distanciation of Auschwitz, Weiss's *Die Ermittlung* responds to this problem, attempting to mediate it by means of epic distanciation. In an interview entitled "Kann sich die Bühne eine Auschwitz-Dokumentation leisten? Peter Weiss im Gespräch mit Hans Mayer," Weiss questions the adequacy of the legal concepts and practices employed by the criminal court in Frankfurt to approach Auschwitz:

> Bei dem aktuellen Prozess in Frankfurt kommt man deshalb auch zu der Frage, ob solche Verbrechen überhaupt mit unseren Rechtsmaßstäben bestraft oder bewertet werden können. Kann man einen Mord an Hunderttausenden mit den gleichen Rechtsbegriffen bewerten wie einen Raubmord an ein oder zwei Personen? Es gibt da gar keine Proportion. (17)

Since Weiss does not consider the mass murder committed in the Auschwitz concentration camp an ordinary crime, he suggests that the Nazi crimes have to be approached with new concepts and practices distinct from those of West German criminal law. In "Notizen zum Dokumentartheater" (1968), Weiss claims that documentary theater could take on the form of the tribunal (100). Although Weiss quotes directly from Naumann's unofficial records of the

Auschwitz trial, includes the personae of the trial, and employs speech acts typically found in trials, such as question and answer, speech and counter-speech, and testimonies, *Die Ermittlung* as documentary theater reworks the legal trial documents into a new meaning, according to Weiss's "Notizen zum Dokumentartheater": "[Das Dokumentartheater] kann … die im wesentlichen Verhandlungsraum zur Sprache gekommenen Fragen und Angriffspunkte zu einer neuartigen Aussage bringen" (100).

Weiss's play *Die Ermittlung: Oratorium in 11 Gesängen* has been sufficiently analyzed with regard to the genre of documentary theater, for example, by Weiss scholar Erika Salloch in *Peter Weiss'* Die Ermittlung*: Zur Struktur des Dokumentartheaters* (1972) and by Mirjam Wenzel in *Gericht und Gedächtnis: Der deutschsprachige Holocaust-Diskurs der sechziger Jahre* (2009). Only a few scholars approach the drama with regard to its form as oratorio. Salloch's study includes a brief discussion of the genre in chapter two, entitled "Die Spannung zwischen Titel und Untertitel der *Ermittlung: Oratorium in 11 Gesängen*" (42-46). As the title of his essay "Protokoll, Memoria, Schattensprache: *Die Ermittlung* ist kein Dokumentartheater" (2004) suggests, Burkhardt Lindner argues that the play does not belong to the genre of documentary theater at all (132). Alternatively, Lindner examines it with regard to its oratorio form (142). Lindner proposes that "[a]ls Weiss *Die Ermittlung* schrieb, geschah dies sozusagen in direkter Konfrontation, ja Konkurrenz zum Prozess" (144). Following Lindner's lead, this section begins by analyzing the oratorio form of *Die Ermittlung* and proceeds to explore this oratorio's connection to Brecht's epic theater and "Lehrstück" practice, showing how a Brechtian "Verfremdungseffekt" is also at work in *Die Ermittlung*.

While Weiss himself designates *Die Ermittlung* in the subtitle as an oratorio, he nowhere explicitly calls it a "Lehrstück," unlike Weiss scholars Salloch and Gerhard Schoenberner, who

indeed do call it that. For example, Salloch compares *Die Ermittlung* to one of its most important source texts, Dante's *Divina Commedia*: "Als reiner Gegenentwurf ist die Lehre – und Lehrliteratur sind beide Werke – der *Ermittlung* zur *Divina Commedia* anzusehen. Während Dantes Lehre Heilslehre ist, ausschließlich auf das Leben nach dem Tode gerichtet, verneint das Lehrstück *Die Ermittlung* die Möglichkeit der Metaphysik" (72). Schönberner's essay title "*Die Ermittlung* von Peter Weiss: Requiem oder Lehrstück?" similarly claims it as "Lehrstück" without further analyzing it in this regard. Fritz Bauer scholar Wojak seems to use the term "Lehrstück" in the context of *Die Ermittlung* more loosely. In *Fritz Bauer*, she argues that Weiss's "Stück konfrontierte die Zeugenaussagen der Überlebenden mit der hämischen Ablehnung durch die Angeklagten und wurde so zum Lehrstück der 'westdeutschen Vergangenheitsbewältigung'" (355).

Die Ermittlung: Oratorio, Epic Theater, and "Lehrstück"

The subtitle *Oratorium in 11 Gesängen* places *Die Ermittlung* in the tradition of a musical genre suggesting that the text can be sung and set to music. In her dissertation, "Das deutschsprachige Oratorienlibretto 1945-2000: Literaturwissenschaftliche Annäherung an eine vernachlässigte Gattung" (2007), Cäcilie Kowald mentions Weiss's oratorio briefly among a list of four oratorios that have never been set to music, but are nevertheless labeled as such in their respective titles.[9] Kowald suggests that the term "oratorio" in the title or subtitle of a work "die Erwartung [weckt], einem Werk mit moralisch-weltanschaulichem Anspruch zu begegnen" (48) and that the audience expects that "es mit einem christlich-religiös geprägten Werk zu tun [hat]" (99).

The term "oratorio" derives from the Latin *oratorium*. According to the entry on "Oratorium" in Otto F. Best's *Handbuch literarischer Fachbegriffe* (1972), the term originally

designated a place, "the oratory," or *house of prayer*, that is, the places where in late sixteenth-century Italy, oratories were first performed (353). Oratorios are musical pieces for solo and choir, accompanying the prayers and recitals of biblical stories (Best 353). The musical compositions consist of epic lyrical and dramatic elements (Best 353). Kowald refers to the oratorio as a compound genre owing to its combination of epic parts, which are biblical or secular reports in the form of recitatives, lyrical parts, and dialogical parts (20-21).

According to Best, the form of the oratorio was adopted for epic theater because of the reported storyline and the commentary in lieu of the acted out plot (353). Oratorio and epic theater, particularly Brecht's "Lehrstück" practice, from which Weiss also draws in *Die Ermittlung*, are not identical, but they share many characteristics despite their crucial differences, such as that oratorios originally narrate biblical stories.[10] The distinction between a work of epic theater, like *Leben des Galilei* (1939), and a "Lehrstück," like *Die Maßnahme*, has generated a scholarly debate between Brecht scholars Reiner Steinweg and Klaus-Dieter Krabiel. In *Brechts Lehrstücke: Entstehung und Entwicklung eines Spieltyps* (1993), Krabiel points out that the major differences between epic theater and "Lehrstück" are the didactic emphasis of the latter (289), that the "Lehrstück" does not feature specific characters, but types (289), and that "Lehrstücke" are musical pieces (295). Krabiel explains that the first "Lehrstücke" were commissioned works by composers and that "Musik … von Anfang an integraler Bestandteil des Konzepts [war]" (4). He argues that "[d]as Lehrstück … seinen Ursprung nicht in Theatergeschichte und Theatertheorie [hat], sondern in musikgeschichtlichen Entwicklungen und in musiktheoretischen Überlegungen. Es kann sich zwar theatralischer Mittel bedienen, ist auf solche aber durchaus nicht angewiesen" (295).

Despite their crucial differences, epic theater and the "Lehrstück" share in addition to their non-scenic structure, the use of the "Verfremdungseffekt," as Brecht points out in his essay "Zu den Lehrstücken": "Für die Spielweise gelten Anweisungen des epischen Theaters. Ein Studium des V-Effekts ist unerläßlich" (79). In his essay "Über experimentelles Theater," Brecht further describes "Verfremdung" as a historicizing theatrical practice: "Verfremden heißt also historisieren, heißt Vorgänge und Personen als historisch, also als vergänglich darstellen" (101-102). By means of this distanciation effect Brecht aims to show that conditions and events are always contingent so as to evoke an interrogative and critical attitude in the spectator, as he explains in "Kurze Beschreibung einer neuen Technik der Schauspielkunst, die einen Verfremdungseffekt hervorbringt": "Der Zweck dieser Technik des Verfremdungseffekts war es, dem Zuschauer eine untersuchende, kritische Haltung gegenüber dem darzustellenden Vorgang zu verleihen" (55).

The "Verfremdungseffekt" in epic theater can be evoked by several practices that may also be found in the oratorio. However, traditional oratorios do not employ the "Verfremdungseffekt" so as to distance their spectators. Weiss employs practices in his oratorio, which the oratorio shares with the "Lehrstück," such as the non-scenic narration, the setting to music, with verses for both solo and choir, the strict separation between epic and musical elements, and the use and adaptation of well-known subjects and source texts. He uses these practices to achieve a "Verfremdungseffekt" and to distance his audience from the known content of the Auschwitz trial. All of this suggests why *Die Ermittlung* can be described as a "Lehrstück-oratorio." While Bauer argues that the trial juridically distances Auschwitz, the distanciating practices Weiss employs in his oratorio mentioned above are intended to mediate the juridical distanciation of Auschwitz that the legal concepts and practices had caused. Weiss

seeks in that way to convey and commemorate dimensions of Auschwitz that the trial omits and misrepresents.

Non-Scenic Narration and Exchanges in *Die Ermittlung*

As noted above, both, oratorio and "Lehrstück" are non-scenic, that is, nothing is acted out but the text is narrated or sung by different actors in different roles (Best 353). For Weiss's *Die Ermittlung* this means that the play neither stages the legal Auschwitz trial on which his oratorio is based, nor any other trial. Weiss merely alludes to the Frankfurt Auschwitz trial by means of quotations from Naumann's legal trial transcript, the question and answer structure, speech and counter-speech, and the personae of the judge, prosecution, defense, defendants, and witnesses. Despite these allusions, his play differs significantly from the legal trial proceedings. For example, Weiss omits a jury and reorganizes the legal trial record thematically and topographically so as to encourage his spectators to judge and to show the organizational structure of the Auschwitz concentration camp. Epic narration by actors in the dramatic roles of witnesses and defendants and exchanges between them allow Weiss to bypass the major problem of the representability of the legal trial and the Auschwitz concentration camp, which defy representation, according to Weiss (*DE* 259).[11]

The non-scenic structure allows for the reflection on the legal trial, its practices and concepts, as well as on the organization of and conditions in the Auschwitz concentration camp concealed or misrepresented by the legal trial that Salloch points out as a characteristic of the oratorio: "nicht Ereignisse an sich, sondern Ereignisse im Spiegel menschlicher Reflektionen … sind Gegenstand des Oratoriums" (44). In the interview with Hans Mayer, Weiss explains his thematic arrangement of the source materials in such ways that they reveal the organization, procedure, conditions, and killing methods of the concentration camp (9).[12] He states that he

wanted to show how the different parts of the death machinery contributed in various ways to the institution of mass murder as a whole to allow his spectators to imagine Auschwitz (9). To show how each part of the concentration camp individually contributed to the entire crime complex of mass murder, thereby also pointing out how each individual working in the Auschwitz concentration camp actively participated in the Holocaust, and to make it imaginable how the National Socialists were able to murder six million people, Weiss does not follow the chronology of the legal trial, but organizes the trial record according to the topography of the Auschwitz concentration camp and specific themes. This means that Weiss breaks down the Auschwitz concentration camp into its various places, methods of killing, victims, and perpetrators (9).

For example, the cantos in Weiss's oratorio follow the topographic organization of the Auschwitz concentration camp. The first canto of *Die Ermittlung,* entitled "1 Gesang von der Rampe," tells about the platform, which is the entrance to the concentration camp. The second canto, "2 Gesang vom Lager," then moves to the actual camp. From there, the next section of the concentration camp is the "Politische Abteilung" in the third canto, "3 Gesang von der Schaukel." The following three cantos, "4 Gesang von der Möglichkeit des Überlebens," "5 Gesang vom Ende der Lili Tofler," and "6 Gesang vom Unterscharführer Stark," thematize the freedom of each guard in the camp to torture and kill, the specific story about the victim Lili Tofler, and the perpetrator Starck, who explains his reasons to participate in mass murder. Unlike the legal trial, Weiss does not distinguish between perpetrator and accomplice, but considers everyone who participated in the Auschwitz crime complex guilty. These three cantos as well as cantos "7 Gesang von der Schwarzen Wand," "8 Gesang vom Phenol," and "10 Gesang vom Zyklon B," all focusing on methods of killing and torture, interrupt the way from the platform of

the first canto, to canto "9 Gesang vom Bunkerblock," and the very last canto, "11 Gesang von den Feueröfen."

These interruptions suggest that the way through the concentration camp was not linear, that there was room to maneuver not to torture and murder, which means that those who suffered and perished could still be alive. Weiss's *Die Ermittlung* repeatedly emphasizes that everyone who worked in the Auschwitz concentration camp could decide whether to participate in the mass murder without having to fear repercussions:

> ZEUGE 3. Es stand jedem frei zu töten
>
> oder zu begnadigen
>
> …
>
> Der Lagerarzt Flage zeigte mir
>
> …
>
> daß es möglich gewesen wäre
>
> auf die Maschinerie einzuwirken
>
> wenn es mehr gegeben hätte
>
> von seiner Art (*DE* 331-332)

These lines imply that those who did not resist were guilty of contributing to mass murder.

Further, the topographic organization of the legal trial material in the oratorio turns the Auschwitz concentration camp from a crime scene into a site of memory, an "imaginäre[r] Gedächtnisraum," according to Lindner (140): "*Die Ermittlung* knüpft … an die Tradition der Memoria-Bildung an, in der das Geschehen als Geschehenes erinnert wird. Und diese Memoriabildung bezieht sich nicht auf den Prozess, jedenfalls nicht primär, sondern auf Auschwitz selbst" (140). Lindner suggests that since *Die Ermittlung* locates each canto in a

specific place of the Auschwitz concentration camp, each place functions as a memory place in the *memoria* tradition of Simonides of Ceos as told by Cicero in *De Oratore*. The Greek poet Simonides identified the victims of a collapsed banquet hall by recalling the places where they had been sitting, so their relatives could bury them. *Die Ermittlung* takes the audience through the different places of the Auschwitz concentration camp so as to commemorate and mourn the dead and the suffering endured in each place of the concentration camp – acts the legal trial is unable to perform.

In addition, the trial materials are also arranged in such a way that the killing methods become more industrial and anonymous, and the number of victims increases. In his interview with Mayer, Weiss describes the second part of his oratorio as a climax: "wie diese verschiedenen Teile … sich mehr und mehr vergrößern, bis sie in den Maßstab des sogennanten Unvorstellbaren gelangen" (9). For example, in the cantos of the first half, the number of victims is significantly lower than in the second part. In canto two, "2 Gesang vom Lager," witnesses four, five, and seven narrate individual stories of death that they witnessed (*DE* 290-291). Witness five in canto three, "3 Gesang von der Schaukel," recalls that she noted "300 Tote pro Tag" (*DE* 309) and remembers at least twenty cases in which people died due to torture (*DE* 311). The turning point is after Lili Tofler's canto, which solely focuses on the circumstances of her death. The first time mass murder is mentioned is in canto six, "6 Gesang vom Obersturmführer Starck" (*DE* 363, 367):

> ANKLÄGER. Im Herbst und Winter 1941
> begannen die Massenvernichtungen
> von sowjetischen Kriegsgefangen
> Diesen Vernichtungen fielen 25000 Menschen

zum Opfer (*DE* 367)

With the mentioning of gas as a new killing method (*DE* 363) and the term "Massenvernichtung" (*DE* 367), the number of victims increases. For example, the first canto of "7 Gesang von der Schwarzen Wand" ends with the total of "20 000 Menschen," who were shot (*DE* 378). "8 Gesang vom Phenol" concludes with a listing of "30 000 Menschen," killed through Phenol-injections in their heart (*DE* 410).

Also, with the increasing number of victims, their individual stories get lost as Weiss explains in the panel discussion: "[v]on der Mitte des Dramas an geht es in die großen Vernichtungsaktionen über, da verlieren wir den Einzelmenschen aus dem Gesicht" ("Auschwitz auf dem Theater?" 86). While each canto contains at least one eyewitness account of an individual incident of murder or torture, such as "Ich sah einmal eine Frau" (*DE* 264), serving as specific example to make the factual descriptions more relatable, and the perpetrators can be identified until the very last canto – for example, Boger's name is constantly mentioned (*DE* 317, 354, 379, 443) – the last canto, "11 Gesang von den Feueröfen," does not narrate the story of a specific individual victim. Instead, witness seven replies to the judge's question of how he explains that no one resisted the gas chambers:

ZEUGE 7. Es kam kein einziger heraus

um darüber zu berichten (*DE* 435)

The fact that no one survived the gas chambers, verifies their existence.

Another function of the non-scenic structure of the oratorio is that it enables Weiss to engage his audience in active participation to listen to and imagine what it hears instead of providing it with visual images as he explains in his interview with Meyer (Weiss 9). To appeal to his audience's imagination, *Die Ermittlung* includes many detailed questions about every

aspect in the Auschwitz concentration camp, such as "Wie wurde die Tätowierung ausgeführt" (284), "Wie waren die Karteikarten angeordnet" (308), and "Wie lange stand der Raum unter Gas" (436). These questions are not intended to determine the guilt or innocence of any given defendant or to test the accuracy of a witness' testimony, as it is the case in the legal trial, but to allow the spectators to imagine Auschwitz so as to connect with it more easily.

Many cantos begin with specific questions about the space, such as "Wie sah der Block aus" (*DE* 285), "Wie sah die Baracke der Politischen Abteilung aus" (*DE* 307), "Wie sah das alte Krematorium aus" (*DE* 363), followed by a meticulous response describing it. A comparison between the witness testimony by Dr. Klodzinki recorded Naumann's trial report (185-189) and *Die Ermittlung* shows that Weiss provides the description about "Zimmer 1" of the *Krankenlager* in form of questions. For example, Naumann records a witness saying "ein grau-grüner Vorhang verbarg die Behandlung" (186), which Weiss first introduces as a question "Was war das für ein Vorhang" and then lets witness six provide a meticulous and descriptive answer (*DE* 402):

> ZEUGE 6. Er war etwa 2 Meter hoch
> und reichte nicht ganz bis zur Decke
> Der Stoff war von grüngrauer Farbe (*DE* 402)

These meticulous, descriptive, and visual questions and answers are part of the didactic aims of the non-scenic structure of Weiss's "Lehrstück" oratorio. They appeal to the imagination and seek to rid the audience of the "erhabene Haltung" (*DE* 335), as Zeuge 3 calls it, that might prevent it from relating to the crimes of Auschwitz:

> ZEUGE 3. Wir müssen die erhabene Haltung fallen lassen
> daß uns diese Lagerwelt unverständlich ist (*DE* 335)

The "erhabene Haltung" of those who did not experience the concentration camp, which creates a disconnect between them and those who experienced Auschwitz, is further bridged by the practice of the oratorio to neither designate specific roles, nor to distinguish between actor and spectator. Lindner mentions that, "das Oratorium keine prinzipielle Unterscheidung zwischen Zuschauer und Schauspieler [kennt]. Spieler wie Teilnehmer befinden sich in einem gemeinschaftlichen Vollzug" (143).

While the legal trial encloses the crimes of Auschwitz in the past with the judgment, another function of the non-scenic structure of *Die Ermittlung* is that it opens up the past, that is, seeks to analyze and understand past events, their origins, and their connections to the present.[13] The oratorio's reflection on the past seeks to engage its spectators to contemplate their own connection to the past, as indicated, for example, by Lili Tofler's letter in the center of the play:

> ZEUGIN 5. Lili Tofler fragte in dem Brief
>
> Ob es ihnen möglich sein könnte
>
> Jemals weiterzuleben
>
> nach den Dingen die sie hier gesehen hatten
>
> Und von denen sie wüßten (*DE* 344)

Weiss combines different testimonies from different legal Holocaust trials in this passage.[14] The question Lili poses to her friend Gabis about the possibility to continue to live after Auschwitz addresses spectators and readers. The temporal adverb "nach" pertains to all life after Auschwitz.

Die Ermittlung further draws connections between the past and the present by mentioning what positions the defendants and companies involved in the genocide, such as IG Farben, hold nowadays (*DE* 445), that is, during the time Weiss wrote the play in 1965. In addition, the absence of a judgment at the end of *Die Ermittlung* also shows that the oratorio refuses to

enclose Auschwitz in the past. In lieu of a judgment in *Die Ermittlung*, the main defendant Mulka proclaims the forgetting of the past and presents himself as a victim, mentioning that he spent time in prison and that his son died during the war (*DE* 448). Weiss emphasizes the focus on the present by means of designating one line to the word "Heute" (*DE* 448). The audience of *Die Ermittlung* is not asked to come up with a juridical judgment with sentences for the defendants, but to critically judge everything they have been confronted with, including Mulka's self-victimization and their own involvement.

Further, while the legal trial fails to render justice since the prison sentences are short compared to the atrocities, *Die Ermittlung* attempts to provide representational and experiential justice for the victims by means of commemorating, for example, the individual story of Lili Tofler. The young woman from Slovakia was presumably murdered by Boger in the Auschwitz concentration camp. The story of her death is told from the perspective of three eyewitnesses, including her friend Gabis. Each witness provides another fragment to Lili's story as a whole. The testimonies intersect and complement each other so as to strengthen the position of the witnesses and to present them as a unanimous choir, commemorating and mourning Lili. Unlike the legal testimony in a trial, which needs to provide factual information pertaining to the crime and thus is required to be truthful, the eyewitness testimonies in *Die Ermittlung* bear witness to the individual experience of suffering in the concentration camp and commemorate and mourn the dead. This connects to Salloch, who points out that the storyteller of the oratorio is also called "Testo" and testifies to the experience of suffering (45).

Within the oratorio the canto about the individual fate of Lili Tofler functions in a similar way as the specific examples about individuals in the testimonies. The testimonies usually begin rather generally and then suddenly provide a specific example. This sudden breaking in of an

individual case makes the statistical descriptions of the conditions in the camp more comprehensible. For example, the detailed technical description about trains arriving at the ramp is interrupted by the individual memory of witness two, who intended to give water to a woman holding a child out of the train, and was threatened with death if he would do so (*DE* 264).

Verse Structure of the *Lehrstück*-Oratorio

Weiss further defamiliarizes the known trial documents not only by rearranging them, but also by rewriting the prose text of Naumann's trial report and other source texts into verse, that is, he breaks each sentence into smaller units of meaning, creating pauses at the end of each it. In an interview with *Der Spiegel* from March 18, 1968*,* Weiss comments on the function and intended effect of these caesuras and interruption: "Werden Sätze durch bestimmte Zäsuren zerteilt, so wird die verhüllte Absicht offensichtlich" (146). The interruptions and caesuras create verses, thereby slowing down the speech. The smaller units of meaning and pauses at the end of each verse allow the spectator to listen to the spoken text more easily. Therefore, the verse structure in *Die Ermittlung* is closely connected to the non-scenic practice of the oratorio, which appeals to the imagination, as the following example illustrates:

ZEUGIN 5. Da war draußen ein Lastwagen vorgefahren
mit einer Fracht von Kindern
Ich sah es durch das Fenster der Schreibstube
Ein kleiner Junge sprang herunter
er hielt einen Apfel in der Hand
Da kam Boger aus der Tür
Das Kind stand da mit dem Apfel
Boger ist zu dem Kind gegangen

und hat es bei den Füßen gepackt

und mit dem Kopf an die Baracke geschmettert

Dann hat er den Apfel aufgehoben

und mich geholt und gesagt

Wischen Sie das da ab an der Wand

Und als ich später bei einem Verhör dabei war

sah ich

wie er den Apfel aß (*DE* 312-313)

Each line consists of one verb, either in the past tense or the present perfect, such as "war vorgefahren," "sah," "sprang herunter," "hielt." Each line is limited to the description of one specific activity performed by the little boy, Boger, or the eyewitness. Since each line introduces a new piece of information regarding a specific action of one individual and mainly alternates between Boger and the boy, the verses are visual and resemble a filmic shot-reverse-shot technique. In this way the verse form allows the spectator to imagine the scene, which makes any representation obsolete, hence supporting the non-scenic structure of the "Lehrstück" oratorio as well as its didactic and commemorative function.

In addition to the many questions posed in the play, the verse form also engages the audience in a critical attitude of asking questions themselves.[15] The different units of meaning the interruptions create often appear fragmentary, lacking coherence and logic, which is disconcerting and alienating, as the following example about the "Latrinenkommando" shows. The "Latrinenkommando" is a special unit in the Auschwitz concentration camp designated to ensure that people would not spend too much time on the toilet:

ZEUGE 3. Das Latrinenkommando passte auf

Daß niemand zu lange saß

Die Leute des Kommandos schlugen

Mit Stöcken zwischen die Häftlinge

Um sie wegzujagen (*DE* 286)

The verse structure brings the activities of the "Latrinenkommando" out of context, which raises several questions, such as, what the exact function of the "Latrinenkommando" was, why people were not allowed to sit for a long time, why people were beaten. Thereby, the verse structure presents and questions the conditions of Auschwitz. This further indicates that things could have been different, that is, that the genocide could have been prevented.

Second, the verse form mirrors on a smaller scale the oratorio's division into cantos. The verses break down each individual crime into its various actions, which is analogous to the organization of the trial materials according to different places and methods of killing in the concentration camp. In the above quotation from the oratorio, Weiss divides the killing of the boy by Boger into the individual actions leading to, involved in, and following it. The interruptions created by the verses are intended to reveal the conditions between the people, "Zustände zwischen Menschen" (Benjamin 26). According to Benjamin, "... [ist] das Unterbrechen … eines der fundamentalen Verfahren aller Formgebung" (Benjamin 26). By means of the interrupted narrative this eyewitness testimony testifies to Boger's criminal guilt of having killed an innocent boy and illustrates the conditions in the Auschwitz concentration camp that enable him to commit such a crime in the first place and to eat an apple afterwards as if nothing happened – aspects the investigative practice of the criminal court disregards.

Die Ermittlung as a Musical Piece

The function of the verse form is twofold, supporting the non-scenic and the musical structure of Weiss's "Lehrstück" oratorio. In addition to the classification of *Die Ermittlung* as "Oratorium" and its division into "Gesänge," an allusion to Dante's *Inferno,* it is predominantly the verse form that makes the play a musical piece since it allows for the singing of the text and its setting to music.[16] The point of Weiss's drama is that genocidal acts of murder are sung. And it is precisely in the singing that intense suffering is conveyed, commemorated, and mourned in *Die Ermittlung* – not in its representation. By bringing the legal trial documents into new forms, the practice of the oratorio and the "Lehrstück" to combine epic narration and music, Weiss's *Die Ermittlung* is able to mourn and to commemorate the suffering and the victims.

By breaking up the source texts into verses, Weiss turns what has been testified to in the legal trial into poetry, which alludes to the legal trial and evokes its memory, but also significantly defamiliarizes it. With the poetic verse form Weiss draws once again from Brecht's "Lehrstück" practice, which uses poetry without rhyme and therefore is suitable to be put to music, as Brecht explains in "Über reimlose Lyrik mit unregelmässigen Rhythmen" (289-290). Following Brecht's "Lehrstück" practice and complying with the structure of the oratorio, Weiss separates the narrated epic parts from the musical elements. While the content, non-scenic practice, and the verse form appeal to the imagination and encourage contemplation, the singing and music convey mourning. By means of the separation between the epic elements and the musical ones, *Die Ermittlung* is simultaneously able to speak to the imagination and to engage the listener in contemplation, whereas the music is supposed to move the listener, to appeal to the emotions. For example, one staging of *Die Ermittlung* read the text to Bach's oratory.

Due to this separation of narrated and musical elements the text of *Die Ermittlung* functions as a libretto, which provides the content and plot. According to Gfrereis, the term

"libretto" originates from the Italian, meaning "kleines Buch" and designates a "… Textbuch einer Oper, Operette, eines Musikdramas, Singspiels usw." (111). Gero von Wilpert notes that librettists used to hire composers to put their work to music and that the written libretto text used to be subordinate to the musical composition, which explains why the quality of the libretto was often low (512). Further he points out that "[e]rst die neuere Zeit … L.i [schafft], in denen sich Wort u. Musik gegenseitig durchdringen und die dank ihres dichter. Wertes auch unabhängig von der Musik bestehen können" (512).

Mayer is the only one to mention the libretto structure in the context of Weiss's oratorio. In his conversation with Weiss, he observes that "… der *Marat* … ja sehr betont als Libretto angelegt [war], insofern als Sie das Musikalische, das Gestische, das Tänzerische ausdrücklich hervorgehoben haben" (10). Compared to Weiss's *Marat*, Mayer notes that *Die Ermittlung* mainly refrains from stage directions with a few exceptions: "Es gibt weder eine Regieanweisung, noch geben Sie irgend etwas an wie "er sagt", "erhebt sich" etc., nur manchmal heißt es "Lachen der Angeklagten" oder "Zustimmung", aber sonst gibt es doch nichts, was etwa auf eine Inszenierung hindeuten sollte" (10). Because of the scarcity of stage directions, Mayer argues that *Die Ermittlung* "ist kein Libretto im Sinne des *Marat*" (10). While Mayer is right that *Die Ermittlung* differs significantly from the *Marat* libretto with regard to the stage directions, the text of *Die Ermittlung* still functions as a libretto for the staging of the oratorio.

In fact, as discussed before, since the play is non-scenic and a "Lehrstück," that is, focused on the spoken word and thus meant to be listened to, it consequently does not need any stage directions. *Die Ermittlung* also aired as a radio play after the premier (Beise).[17] Everything is contained in the epic parts, which can either be recited or sung, both, with or without music.

Weiss emphasizes in his conversation with Ernst Schumacher that the text of his oratorio described here as a libretto is solely based on the dimension of language, as he puts it:

> Chor und Gegenchor und Vorsänger, und da ist nichts vorhanden, was dem Regisseur die Möglichkeit gibt, theatralische Mittel einzusetzen. Dieses Stück baut nur auf der Dimension der Sprache der auf, mit ganz geringen Bewegungen, in denen Personen voreinander hintreten und zu einander sprechen, und das ist auch alles. (89)

The absence of punctuation further does not provide any instruction of how the text should be read and also suggests that it can be sung. In addition, the stage directions – "*Lachen der Angeklagten*", "*Zustimmendes Lachen der Angeklagten*", "*laute Zustimmung* [*von seiten der Angeklagten*]", and "*schweigt*" (italics in original) – do not even need to be enacted. They share that they are audible, unlike, for example, the stage direction "er steht auf." Thus, they comply with the non-scenic structure of *Die Ermittlung*.

Weiss interrupts the text not only by means of verses but also by the absence of speech, for example with the stage direction "*schweigt*" (italics in original). Hermann Langbein recollects, according to Wojak biography *Fritz Bauer*, that the minutes of silence in the courtroom brought Auschwitz closer to the audience in the courtroom: "… jene Minuten des Schweigens, in welchen in dem nüchternen Gerichtssaal Auschwitz am deutlichsten spürbar wurde" (329). The sudden interruption of speech by silence in Weiss's oratorio bears witness to the experienced trauma and suffering of the witnesses, and suggests that the past becomes present again. For example, in the third part of canto four, female witness four responds to the questions of the judge four times with silence as the stage direction "*schweigt*" indicates (*DE*

338, 339, 340; italics in original). Further, as part of the epic narrative, the stage directions might also be read out, which would attempt to have a distancing effect on the spectators.

Central to the oratorio is its choral structure, which it shares with the "Lehrstück." The oratorio features parts for solo and choir. In *Die Ermittlung* several aspects suggest that the nine witnesses and eighteen defendants are each grouped together to function as a choir. The rubric "Personen" designates the witnesses with numbers from one to nine without names: "Zeugen 1 – 9 stellen abwechselnd die verschiedensten anonymen Zeugen dar" (*DE* 258). In his "Anmerkung", Weiss explains that the witnesses have no names so that they become "Sprachrohre", for other witnesses who testified during the trial (*DE* 259). Simultaneously they speak for those who never testified to the crimes in court. As "Sprachrohre" they are not individuals but represent other witnesses and victims, passing on their narratives and memory, and by doing so commemorate them. The epic narration in Weiss's "Lehrstück" oratorio functions to pass on the memory of a specific experience as part of a collective, shared experience instead of presenting juridical truth.

The oratorio's focus on the shared experience of suffering is further suggested by the blending of the narratives of different witnesses, so that the speaker is not always distinct and the different speakers complement their narratives. For example in the second part of canto, "1 Gesang von der Rampe", the testimonials of Zeuge 3, Zeugin 4, and Zeugin 5 consecutively narrate three different experiences of arrival in Auschwitz without interruption (*DE* 265-268). The absence of transitions between different speakers suggests that each of them speaks as part of the collective, which makes them a choir and supports the impression that their narrative is truthful. Weiss further points out in the "Anmerkung" that the absence of victims' names suggests the historical fact that they were deprived of their names in the concentration camp. The

omission of names further belies the witnesses' national and ethnic diversity, also not mentioned in the oratorio, as the following example shows. Zeugin 5 answers the judges' question "Woher stammte diese Lili Tofler" with "Das ist mir nicht bekannt" (*DE* 355). Naumann's trial protocol, however, mentions that Lili is from Slovakia. This raises the question of why Weiss omits her nationality (Naumann 162).

According to Pendas the survivor witnesses in the Auschwitz trial were not a cohesive group since they came from a variety of countries, mainly from Eastern Europe (38). Pendas points out that the defense tried to take advantage of this circumstance "both to shift blame away from their clients and to sow seeds of doubt concerning the reliability of survivor testimony; while they largely failed in the former project, the latter effort was often all to successful" (38). According to Pendas, the West German defense lawyer Laternser questioned and dismissed witnesses from Eastern Europe or East Germany because of the Cold War (38). By means of refraining from mentioning anything that might reveal information about their country of origin or suggest differences among the witnesses, Weiss seems to want to correct this injustice towards the survivor witnesses retrospectively in his play. He only distinguishes them with regard to gender and their position in the concentration camp, for example he mentions in his "Anmerkung" that two witnesses were "Funktionshäftlinge" and that Zeugin 4 and 5 are female (*DE* 259).

While Weiss omits the names of the witnesses, he uses the authentic names of the defendants in the legal trial for the defendants in the play, who in addition also have numbers (*DE* 259). In the "Anmerkung," he explains that he uses the names of the real defendants since they are specific individuals who participated in the mass murder at Auschwitz. However, Weiss points out that he does not include their names to accuse them again, which is the function of the

trial (*DE* 259). Instead, the authentic names of the defendants of the Auschwitz trial serve him as symbols for all those Nazi perpetrators who were never tried in court (*DE* 259). While trials charge specific defendants with distinct crimes, Weiss's oratorio can go beyond this limiting practice and symbolically extend its accusation to everyone who participated in the Auschwitz crime complex. The repeated stage direction "Die Angeklagten lachen," further suggests that the defendants are a collective group, whose joined laughter functions as a chorus in contrast to the lamentation of the witnesses.

The Diction of *Die Ermittlung*

The diction of *Die Ermittlung,* especially the omission of the term "Jude," reflects on the National Socialist language and its inherent ideology. The word "Jude" was used during the Frankfurt Auschwitz trial and since *Die Ermittlung* is based on the legal trial and Naumann's report as well as historical material about the Holocaust, one would expect to come across the term in Weiss's text. In his seminal study, *Writing and Rewriting the Holocaust: Narrative and the Consequences of Interpretation* (1988), James E. Young criticizes Weiss's play for the omission of the word, thus repeating a point previously made by Alvin Rosenfeld in *A Double Dying: Reflections on Holocaust Literature* (1980) that Weiss exploits atrocity for his Socialist ideology instead of connecting it to the history of anti-Semitism (Rosenfeld 157-158). Young criticizes Weiss for naming the Soviet prisoners of war without naming the Jewish victims since the former "now emblematize all other victims" (73).

While Rosenfeld and Young may have a point, this semantic ellipsis might alternatively signify Weiss's attempt to avoid National Socialist language, in which the word "Jude" was perverted, and to alert his audience to it. That perversion had in National Socialism the most horrific consequences: first the National Socialists defined who was Jewish and then they

proceeded to murder everyone designated as such. With regard to the beginnings of National Socialism, the re-definition and appropriation of the word "Jude" by the National Socialists is crucial. In *LTI: Notizbuch eines Philologen* (1947), Viktor Klemperer writes about the new use of the word "Jude":

> 27. März 1933. Neue Worte tauchen auf, oder alte Worte gewinnen einen neuen Spezialsinn, oder es bilden sich neue Zusammenstellungen, die rasch stereotyp erstarren. … Die Auslandsjuden, besonders die französischen, englischen und amerikanischen, heißen heute immer wieder die "Weltjuden". Ebenso häufig wird der Ausdruck "internationales Judentum" angewandt, und davon sollen wohl Weltjude und Weltjudentum die Verdeutschung bilden. Es ist eine ominöse Verdeutschung: in oder auf der Welt befinden sich die Juden also nur noch außerhalb Deutschlands? (35-36)

In this diary entry, Klemperer documents that "Jude" was one of the first words to receive a new meaning. Weiss's omission of the word seeks to address the origins and linguistic structures of National Socialism that the trial is unable to refer to due to its focus on criminal guilt. In the word "Jude," as in other words appropriated by the National Socialists, such as "Heimat" and "Volk," the National Socialist language and ideology resonate thoroughly. The word's omission in *Die Ermittlung* is a deliberate ellipsis that recognizes its perversion, described here, by the National Socialists. The following juxtaposition of Naumann's source text and Weiss's rewriting shows that Weiss deliberately omits the term from his drama. Weiss rewrites the sentence from Naumann's trial record – "Da hat man jüdische Kinder nach Auschwitz gebracht" (Naumann 165) – into the phrase:

> ZEUGIN 5. Da war draußen ein Lastwagen vorgefahren

mit einer Fracht von Kindern (*DE* 325)

In addition, the absence of the word "Jude" in Weiss's "Lehrstück" oratorio might also function as commemoration and mourning of the murdered Jews during National Socialism. The first chapter presented Prosecuting Attorney Gideon Hausner's struggle in preparation of the Eichmann trial to make the absence of those who perished in the Holocaust present. The omission of the word "Jude," a word one would expect to find in a drama about the Holocaust, functions in *Die Ermittlung* like a linguistic void, attempting to signify the absence of Jews within an entire generation. As a linguistic void in *Die Ermittlung*, this omission functions in ways similar to the voids in the Jewish Museum in Berlin.

Daniel Liebeskind called the plan of the Berlin Jewish Museum "Between the Lines." It is a zigzag crossed by a straight line. At the interface of both lines are small empty spaces, which Liebeskind calls "voids" and reach through the entire building. As part of the general exhibition within the building are windows symbolized by black walls, providing outlooks onto the "voids." Since there is nothing to see, the empty spaces represent the absence of Jewish life in Germany, functioning as a paradox in the context of the overall exhibition of the museum, in which visitors learn about the history of Jewish life in Germany and the various contributions. The deliberate omission of the word in *Die Ermittlung* is another means that allows the commemoration and mourning for the Jewish victims of the Holocaust that the legal trial is unable to perform.

Conclusion

The first section analyzes the juridical concepts and practices of West German criminal law used in the Frankfurt Auschwitz trial, such as the investigation of individual criminal guilt, the distinction between murder and manslaughter, and perpetrator and accomplice, with regard to the question of which Auschwitz narrative they created and how they presented Auschwitz. The

judicial concepts and practices divided the Auschwitz crime complex into individual murder and manslaughter cases and sought to convict the defendants mainly as accomplices instead of perpetrators based on their subjective motivations.

Fritz Bauer criticized the concepts and practices of West German criminal law since he had intended the legal trial to better represent the conditions of the Auschwitz concentration camp, its organization, and underlying ideology in order to heal the wounds of the victims and raise awareness among West Germans about their recent history. Since the legal trial failed to meet Bauer's expectations, he considered the trial as "juristische Verfremdung von Auschwitz" ("Auschwiz auf dem Theater" 74). While Bauer's use of the term "Verfremdung" at first glance evokes Brecht's dramaturgical practice of "Verfremdung", which the latter developed for his epic theater, juridical and epic distanciation are significantly different.

Bauer meant by "juristische Verfremdung" that the Frankfurt Auschwitz trial failed to present a profound history of the Auschwitz concentration camp as a state-sponsored institution of mass murder, in which every participant contributed intentionally to the mass murder and therefore should be considered a perpetrator. Judge Hofmeyer's judicial approach seeking to investigate individual criminal guilt, determine judicial truth, convict and punish the defendants, and to render justice is based on the West German penal code, which required, according to Bauer, significant changes and differed from Bauer's representational and didactic conceptualization of the legal trial.

The second section analyzes Weiss's *Die Ermittlung* as an attempt to mediate the juridical distanciation that Bauer criticized. Weiss rewrites the legal trial transcripts by Bernd Naumann into the form of the "Lehrstück" oratorio. As the designation "Lehrstück" oratorio indicates, the play combines practices of Brecht's "Lehrstücke" and the oratorio, such as the non-

scenic structure and epic narration, abstract types instead of characters, the verse form, and the separation of epic and musical elements. The Brechtian "Verfremdungseffekt" evoked by means of these practices and others is intended – unlike "juristische Verfremdung" – to distance the spectators from the narrative and to encourage their critical engagement with what they hear. In this sense, epic distanciation seeks to mediate the juridical distanciation caused by the judicial concepts and practices to ultimately present what the legal trial omitted and misrepresented.

The arrangement of the legal trial materials in *Die Ermittlung* works out the organizational structure and conditions in the Auschwitz concentration camp, and simultaneously commemorates the individual experience of suffering and mourns the dead. The combination of "Lehrstück" and "oratorio" in *Die Ermittlung* allows Weiss to shift the focus of the legal trial from judicial truth and justice to representational and experiential truth and justice regarding the history and structures of Auschwitz and the experience of suffering of the victims. Because of its form, *Die Ermittlung* is able to commemorate and convey dimensions of the past that the Frankfurt Auschwitz trial omits and misrepresents.

Notes

1. Wojak notes in her biography *Fritz Bauer*: "Als juristischer Berater des Suhrkamp-Verlages nahm Fritz Bauer die Entstehung von Peter Weiss' Bühnenstück *Die Ermittlung* frühzeitig wahr" (354). According to Wojak's *Fritz Bauer*, Unseld asked Bauer for some documents and photographs – "vom Modell der Gaskammern, von der Boger-Schaukel, Bericht von Perry Broad" – in preparation for the play (354), to which Bauer responded: "'Es soll an nichts fehlen. Ich werde jetzt dafür sorgen, dass die in Ihrem Brief genannten Dokumente,

Abbildungen usw. so schnell als möglich Ihnen zugehen. Sie und Peter Weiss belästigen mich in keiner Weise; die Staatsanwaltschaft kennt ihre vorrangige Verpflichtung gegenüber Dichtern und Denkern'" (354).

For a list of writers who attended the Frankfurt Auschwitz trial see Marcel Atze and Irmtrud Wojak (Ed.): *Auschwitz-Prozess 4 Ks 2/63 Frankfurt am Main: Buch erscheint anlässlich der gleichnamigen Ausstellung vom 27.03. bis 23.05.2004 im Gallushaus, Frankfurt am Main*.

2. Pendas points out that trials are representational (291). He references James Boyd White's *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law* (Pendas 291).

3. In his *Notizbücher*, Weiss notes the relevance of Naumann's trial record for his project:

> Da vom Frankfurter Auschwitz-Prozeß keine eigentlichen Gerichtsprotokolle vorlagen (wie etwa im Fall Oppenheimer), war ich bei meiner Arbeit, neben meinen eigenen Notizen, auf das Studium der Zeitungsberichte angewiesen. Vorbildlich wurde der Prozeß von der FAZ überwacht, wo Bernd Naumann und seine Mitarbeiter ausführlich über jeden der Verhandlungstage, oft bis in die Einzelheiten des Dialogs, Rapport ablegten. Da B Ns Buch in diesen Tagen erscheint, möchte in noch einmal darauf hinweisen, welchen großen Wert dessen Material für mein Stück bedeutete. Ich spreche B N meinen Dank aus und mache das Lesepublikum auf dieses wichtige Zeitdokument aufmerksam, in dem der Prozeß, der in meinem Oratorium als Konzentrat aufklingt, in der Reichhaltigkeit der alltäglichen Verhandlungen beschrieben wird. (390-391)

Another main source was Hermann Langbein: *Der Auschwitz Prozeß: Eine Dokumentation* (1965). For a thorough analysis of sources Weiss included see Rolf Krause: *Faschismus als Theorie und Erfahrung: Die Ermittlung und ihr Autor Peter Weiss* (1982).

4. In his 1980 book, *A Double Dying: Reflections on Holocaust Literature*, Alvin Rosenfeld heavily criticizes Weiss for exploiting the Holocaust in *Die Ermittlung* for his Socialist ideology (154-159).

5. For the history of the Frankfurt Auschwitz trial, see Pendas chapter "Prelude" (24-52).

6. Wojak quotes Bauer's *Die Kriegsverbrecher vor Gericht* in "Vorwort" of *Die Humanität der Rechtsordnung: Ausgewählte Schriften* (22).

7. Naumann quotes Judge Hofmeyer's statement about the sentence in the closing remarks as follows:

> Was die Höhe der Strafen anbelangt, so kann nicht etwa mit mathematischer Division errechnet werden, wie hoch die Strafe für den jeweiligen Einzelfall ausgefallen ist. Selbst wenn in allen Fällen die Angeklagten wegen Mittäterschaft zu lebenslang Zuchthaus verurteilt werden würden, würde die Division dieser Strafe durch die Anzahl der Opfer niemals auch nur zu einer annährend gerechten Sühne führen. Dazu ist das Menschenleben zu kurz. (526)

8. In the biography *Fritz Bauer,* Wojak quotes Bauer saying in "Heute Abend Keller Klub" that he had hoped that:

> früher oder später einer von den Angeklagten auftreten würde und sagen würde: Herr Zeuge, Frau Zeuge, was damals geschehen ist, war furchtbar, es tut mir sehr leid ... Die Welt würde aufatmen, die gesamte Welt, und die Hinterbliebenen derer, die in Auschwitz gefallen sind, und die Luft würde gereinigt werden, wenn endlich einmal ein menschliches Wort fiele. Es ist nicht gefallen und wird auch nicht fallen. (362)

9. Kowald points out:

> Daneben fand ich vier ausschließlich literarische Werke, die nie vertont wurden und auch nicht für eine Vertonung konzipiert sind, jedoch das Wort "Oratorium" im Titel oder Untertitel tragen: Peter Weiss' Drama *Die Ermittlung: Oratorium in 11 Gesängen* (1965), Franz Fassbinders Roman *Atom Bombe. Ein gesprochenes Oratorium* (1945) sowie zwei Hörspiele, die erst nach 2000 entstanden, nämlich Romuald Karmakars *Warheads-Oratorium* und Martin Speichers *Fragmente einer Eroberung. Ein halbdokumentarisches Oratorium.* (44)

10. Besides contradictory comments about the "Lehrstück" scattered in other texts, "Theorie des Lehrstücks" is the only theoretical text by Brecht devoted entirely to the genre, as Klaus-Dieter Krabiel points out in his thorough study, *Brechts Lehrstücke: Entstehung und Entwicklung eines Spieltyps* (1993). In his 1936 essay, "Vergnügungstheater oder Lehrtheater?", Brecht describes his six "Lehrstücke" – *Der Lindberghflug/Lehrstück, Das Badener Lehrstück, Jasager, Die Maßnahme, Die Ausnahme und die Regel, Die Horatier und die Kuriater* – as belonging to epic theater: "Alles, was man Zeitstück oder Piscatorbühne oder Lehrstück nannte, gehört zum epischen Theater" (43).

11. In the "Anmerkung" to *Die Ermittlung*, Weiss states that neither the court nor the concentration camp should be reconstructed in his play:

> Bei der Aufführung dieses Dramas soll nicht der Versuch unternommen werden, den Gerichtshof, vor dem die Verhandlungen über das Lager geführt wurden, zu rekonstruktieren. Eine solche Rekonstruktion erscheint dem Schreiber des Dramas ebenso unmöglich, wie es die Darstellung des Lagers auf der Bühne wäre. (*DE* 259)

12. In the interview with Mayer, Weiss explains:

> Zunächst soll aus dem ungeheuren Material von Zeugenaussagen, das ich bearbeitet habe, die große Maschinerie eines solchen Lagers angezeigt werden: Wie diese Maschinerie funktioniert hat, wie sie von Komplex zu Komplex führt, von der Ankunft in dieser Institution bis zum Ausgang, nämlich dem Weg durch den Schornstein; wie diese verschiedenen Teile, die ich dann im Untertitel Gesänge benenne, sich mehr und mehr vergrößern, bis sie in den Maßstab des sogennanten Unvorstellbaren gelangen. Für mich ist die Hauptsache bei dieser Arbeit gewesen, dieses Unvorstellbare zu überwinden und es sachlich und vorstellbar zu machen. (9)

13. In an interview with Wilhelm Girnus and Werner Mittenzwei in May 1965, Weiss elaborates his approach in *Die Ermittlung:* "In dem Stück wird ständig nur von unserer Gegenwart aus der Blick geworfen auf diese Vergangenheit und ihre Vorgänge" (73).

14. Marita Meyer also compares and analyses this passage. However, she only compares Naumann to Weiss and does not point out that Weiss combines materials from the Auschwitz and the Eichmann trial (195). Meyer interprets the differences between Naumann and Weiss, as Weiss's poetic rewriting of the source text. The following passage from Naumann's trial transcript and from the trial record of the Eichmann trial shows that and how Weiss combines different source texts to create a connection between the past and the present: "Eine Zeugin hatte ausgesagt, Lili Tofler habe ihrer Erinnerung nach sterben müssen, weil sie in dem Brief bezweifelt hatte, ob sie [Lili Tofler und Gabis] jemals wieder glücklich zusammen leben könnten, falls sie die Hölle von Auschwitz überleben sollten" (Naumann 337). According to the protocol of the Eichmann trial, *The Trial of Adolf Eichmann: Record of Proceedings in the District Court of Jerusalem,* Witness Raja Kagan said the following about the letter of "Lilly

Toffler" (1275) during session No. 70, from June 8, 1961: "And she concluded: I ask myself how I shall be able to live after all that I have seen and known" (1275). Instead of keeping Lili's question of whether she and her friend Gabis will ever be able to live happily together, Weiss replaces it with the question about the possibility of living at all after Auschwitz from Raya Kagan's testimony, she gave in the Eichmann trial. The latter question is more existential and universal and opens the question to a larger audience. Further, Weiss uses the notion of "weiterleben" in his *Notizbücher*:

> Dante und Giotto wandern durch die Konzentrationslager.
>
> Frage: läßt sich dies noch beschreiben.
>
> Szene des völligen Schweigens.
>
> Der tiefsten Trauer.
>
> Können wir weiterleben, nach diesem. (215)

15. Brecht explains the concept of critical attitude ("kritische Haltung"), in his text "Kleines Gespräch mit dem ungläubigen Thomas":

> Diese kritische Haltung des Zuschauers (und zwar dem Stoff gegenüber, nicht der Ausführung gegenüber) darf nun nicht etwa als eine rein rationale, rechnerische, neutrale, wissenschaftliche Haltung angesehen werden. Sie muß eine künsterlische, produktive, genußvolle Handlung sein. Sie repräsent in der Kunst die praktisch gewordene Kritik der Menschheit an der Natur, auch an der eigenen Natur. (68)

16. In his *Notizbücher*, Weiss mentions music in connection with *Die Ermittlung*: “Gespräch mit Nono über Musik zur ERMITTLUNG (Insz. Piscator)” (380; emphasis in original).

Chapter Three

Confronting the Spectators with Their Own Corruptibility: Roland Suso Richter's Courtroom Drama *Nichts als die Wahrheit* (1999)

The previous chapters analyze the Eichmann and Frankfurt Auschwitz trials with regard to their rhetoric and judicial concepts and practices, and each chapter juxtaposes the legal trial with its respective response by Hannah Arendt and Peter Weiss. Arendt and Weiss criticize the rhetoric, judicial concepts, and practices that the trials employ, as well as their limitations in conveying and commemorating certain aspects of the Holocaust. In contrast to the form of the legal trial, Arendt and Weiss employ different genres and use different rhetoric to express what the legal trials cannot. Unlike Arendt and Weiss, who respond in their texts to historical Holocaust trials that they attended as audience members and wrote about for first-generation audiences, Roland Suso Richter presents the fictional trial of the real-life Josef Mengele in his 1999 courtroom drama *Nichts als die Wahrheit*. Josef Mengele was supposed to be tried in the Frankfurt Auschwitz trial, but had escaped to Brazil where he passed away in 1979 and therefore was never tried. Putting Mengele, the so-called *Todesengel von Auschwitz* ("death angel of Auschwitz"), on trial, the film implicitly criticizes the fact that Mengele was never tried in real life. Thereby Mengele stands in for every Nazi perpetrator who escaped legal prosecution. Further, as Christoph Vatter points out in *Gedächtnismedium Film: Holocaust Kollaboration in deutschen und französischen Spielfilmen seit 1945* (2009), with a fictional Mengele trial Roland Suso Richter joins the tradition of Mengele films, which "setzen den KZ-Arzt als besonders grausamen und menschenverachtenden Psychopathen in Szene," such as Franklin J. Schaffner's 1978 *Boys from Brazil* (270).[1] Richter's film seeks to address second- and third-generation spectators whose knowledge of the Holocaust is mediated not by personal experience or direct

connection, but by educational institutions, mass culture, and in this case, film. As such, Richter's fictional film can be described as a form of "postmemory," a concept developed by Marianne Hirsch in *Family Frames: Photography, Narrative, and Postmemory* (1997), which she defines as follows:

> Postmemory is a powerful and very particular form of memory precisely because its connection to its object or source is mediated not through recollection but through an imaginative investment and creation. … I have developed this notion in relation to children of Holocaust survivors, but I believe it may be usefully describe other second-generation memories of cultural or collective traumatic events and experiences. (22)

Richter's *Nichts als die Wahrheit* raises the question of what effect film has on the way we perceive and remember the history of Nazi Germany and the atrocities of the concentration camps, particularly those of Mengele. The film manipulates and distorts the truth about Mengele's atrocities, on the one hand, while simultaneously showing how manipulative the mass media can be with regard to the memory of the Holocaust, on the other.

In his book *Gedächtnismedium Film,* Christoph Vatter argues that Richter's courtroom drama attempts to create the impression of authenticity, that what is presented is plausible and real, by means of the inclusion of media coverage about the fictional Mengele trial: "*Nichts als die Wahrheit* ist … bemüht, sein 'Was wäre, wenn?'-Szenario als möglichst wahrscheinliche Repräsentation des Ablaufs der Hanldung in der zeitgenössischen Bundesrepublik darzustellen" (271). He argues that many scenes serve "der Verankerung der Filmhandlung in einem realen Kontext" (Vatter 276).[2] While Vatter proceeds to analyze thoroughly the film's montage technique, which connects the fictional Mengele trial and the media coverage, he only

marginally touches upon the question of what effect this illusion of authenticity and truth might be supposed to have on Richter's audience. Vatter explains that by means of the media coverage in the film the spectator becomes part of the society presented in the film and is consequently asked to deal with the same questions, e.g. whether or not Mengele's actions are justifiable, what level of culpability does Mengele bear (Vatter 273).[3]

Building on Vatter's analysis of the media coverage and his argument that the defense strategy of Mengele and his lawyer Peter Rohm "darauf ab[zielen], eine unfreiwillige Identifikation des Zuschauers mit Mengele zu fördern" (279), I argue in this chapter that the fictitious authenticity and claim to truth the film makes by means of a variety of techniques are part of Richter's confrontational approach to his audience. That is, Richter seeks to confront his audience by showing viewers how manipulative the mass media can be with regard to the memory of the past: As a mass medium, film, he suggests, always has the potential to misrepresent the past.

The film's self-referentiality about its ability to manipulate its spectators is crucial, especially when considering Lutz Koepnik's observation in his essay, "Reframing the Past: Heritage Cinema and Holocaust in the 1990s" (2002), that German cinema is "a primary site of transmitting memory between generations who have never lived through the actual events" (57). With increasing historical distance to the Holocaust, the role of media in transmitting the past becomes ever more important. Therefore, *Nichts als die Wahrheit* cautions its spectators to be cognizant of their own susceptibility and critical of the information with which they are presented.

In addition to the media coverage of the trial presented in the film that Vatter examines, this chapter analyses the film's twofold structure. First, the film attempts to create the illusion of

authenticity and truth by numerous means in the courtroom drama, such as the title *Nichts als die Wahrheit*, the visual allusions to the historical Eichmann trial in Jerusalem in 1963, the camera movement that pretends to allow the spectator an omniscient perspective, but in fact controls the spectators' view, Mengele's testimony and the form of the trial, the witnesses' testimonies, Rohm's concluding remarks, and Mengele's final address to the spectators in between the credits. The film's illusion of authenticity and truth attempts to manipulate the audience – whose members have probably neither experienced the Holocaust nor attended any of the Holocaust trials – into believing Mengele's self-presentation as an innocent human being, whose murders and human experiments are benevolent acts meant to prevent his victims from suffering, a fate even worse, and to benefit science. At the same time, this chapter analyses how all these aforementioned techniques simultaneously expose the film's techniques of manipulation in order to show the spectators how manipulative the mass media can be with regard to the past. *Nichts als die Wahrheit* challenges its audience members to distinguish on their own between truth and deception, to judge on their own Mengele's guilt or innocence, and to resist the film's and Mengele's efforts at manipulation.

Plot Summary

The film, an American-German co-production, is based on the eponymous novel by Johannes Betz and Beate Veldtrup (1999). It imagines that Joseph Mengele did not die in Brazil in 1979, but is still alive in the 1990s, and asks for a fair trial to tell his story. The film is set in the 1990s after German unification. During that time, the fictional character Josef Mengele, who is based on the actual Josef Mengele (1911-1979), is at the end of his life. The aging and ailing Mengele wants to have the opportunity to tell his version of the truth about his role in the Holocaust as doctor in the Auschwitz concentration camp and chooses to do so in a trial. The fact

that a fair trial is a human right in democratic societies serves Mengele's intention to present himself as a human being and his crimes as acts of benevolence. Putting himself on trial also suggests that Mengele believes in his own innocence and is confident of a verdict of acquittal. Richter's fictional trial serves as a symbolic trial of all those Nazi perpetrators who were never tried since he escaped the German authorities and died in 1979 in Brazil. By putting a Nazi perpetrator on trial in the 1990s in unified Germany, Richter's courtroom becomes the setting for the first Holocaust trial in unified Germany, attempting to remind his spectators of the injustice that most perpetrators have, like Mengele, either already died or will die soon without ever having been legally tried. More importantly, Richter's film reminds his audience of the Holocaust and emphasizes its relevance for the present. By 1990, with the recent German re-unification and the end of the Cold War, the Holocaust had become a more distant past for Germans. Therefore, its memory risks being overshadowed by more current historical events and may become whitewashed and reduced in importance. The structure of the genre of the courtroom drama, juxtaposing the perspective of prosecution and defense, and the absence of a judgment at the end of the trial, allows Richter to create uncertainty and involve his audience in the judging process.

The film begins with elements of the thriller, which continue to permeate the courtroom drama in the second part of the film, such as the kidnapping of Mengele's defense lawyer Peter Rohm, played by Kai Wiesinger, and the plotting of Mengele's murder by his publisher and doctor in order to prevent him from telling about his involvement in the Holocaust. The protagonist Peter Rohm is from Mengele's hometown Günzburg. He has been working on a fictional biography of Josef Mengele in the film entitled *Einer von uns*, which he is unable to finish. For his birthday, he receives as an anonymous gift an SS-uniform that proves to be

Mengele's. Later on the night of his birthday, Rohm is kidnapped and abducted to a foreign country, where an elderly man, played by Götz George, who later introduces himself as Josef Mengele, asks Rohm if he would defend him in a legal trial in Germany. After Rohm's initial refusal to defend the mass murderer, notorious for his experiments on humans, especially on twins in the Auschwitz concentration camp, Rohm finally agrees to take on the defense. Rohm believes that defending Mengele in court will lead him to better understand Mengele and help him to finish his book project.

The first third of the film details the kidnapping of Rohm and lasts about forty-five minutes. The kidnapping follows the genre convention of the political thriller by focusing on the protagonist Rohm with whom the spectator is meant to identify, since neither Rohm nor the spectator know for certain who gave Rohm the gift or kidnapped him. This part creates suspense and seeks to entertain the spectator. The remainder of film then follows Mengele's arrival in Germany and subsequent trial.

Mengele's appearance in Germany and his legal trial are presented as media events. Reporters await him at the airport. Television and print media report on his return and cover his legal testimony during the trial. As a public spectacle, the trial generates protests, attracts many spectators to the courtroom, and generates wide media coverage. While Vatter argues that the media coverage in the film about the Mengele trial creates authenticity, it is self-referential, pointing to the film's own materiality. The courtroom drama presents the indictment, Mengele's and the witnesses' testimonies, and their cross-examination. Rohm's own mother is called as a witness since she unwittingly participated in the Nazi atrocities when as a nurse at a hospital she gave patients lethal injections. This demonstrates Rohm's own personal connection to the past and the crimes of the Holocaust. Unlike Mengele, Rohm's mother feels guilt. However, she is

also presented as a victim of National Socialism, one who was unknowingly coerced into participating in the murder of disabled persons.

At the end of the trial, both the prosecutor and Rohm plead for a maximum sentence. Rohm's plea for Mengele's guilt is surprising since one would expect that as Mengele's defense lawyer, Rohm would be seeking to free him. This unexpected turn at the end indicates that Rohm never genuinely intended to defend Mengele but served rather as an opportunity by which Rohm would gain greater understanding of Mengele and his crimes in the context of their time. In a strict legal context, this would probably be grounds for a mistrial because of legal malpractice by an attorney. Even more importantly, Rohm's plea for Mengele's guilt might lead the audience to believe that Mengele might actually have a case for acquittal, which is why he takes such a surprisingly counterintuitive stand for a defense attorney. The fictional Mengele trial ends without a judgment by the presiding judge, but rather with Rohm's judgment of Mengele as one of the worst Nazi perpetrators, as well as his judgment about the spectator's own corruptibility and susceptibility for manipulation.

The Film's (False) Oath: *Nichts als die Wahrheit*

The title of the film —*Nichts als die Wahrheit*—is an allusion to the legal oath defendants and witnesses recite in court to ensure that the courtroom is a place of truth and that the trial proceedings find the truth. With regard to this function, Richter's film title suggests that the film as well as what Mengele will ostensibly present in court about his atrocities are truthful. However, this is not the case. It is a fictional film about a fictional trial of a fictional character based on the historical Josef Mengele. As noted above, the real Josef Mengele died in 1979 and never appeared in court in the unified Germany of the 1990s. This historical fact is not mentioned until after the closing credits at the very end of the film (1:59:53-1:53:57). The

character Mengele uses fictional arguments to defend himself, such as that his experiments on living human bodies, advanced medical science, and that his murders are acts of euthanasia.

In light of this incongruity, the claim Richter's title makes ironically suggests other films (fictional and documentary) that purport to represent "nichts als die Wahrheit" and of which, therefore, the spectator should be critical. An excellent example of a documentary that claims to present the truth, is *Nazi Concentration Camp* by director John Ford. The film was shown by the prosecution during the Nuremberg trials on November 29, 1945, and used as evidence. According to the official trial record, *Trial of the Major War Criminals Before the International Military Tribunal: Nuremberg, 14 November 1945 - 1 October 1946*, issued by the International Military Tribunal, the film served the prosecution to "represent … in a brief and unforgettable form an explanation of what the words 'concentration camp' imply" (431). The on-screen billing of the film makes an oath to the truth of the documentary:

> "3. To the best of my knowledge and belief, these motion pictures constitute a true representation of the individuals and scenes photographed. They have not been altered in any respect since the exposures were made. The accompanying narration is a true statement of the facts and circumstances under which these pictures were made.
>
> "(Signed) George C. Stevens, Lieutenant Colonel, AUS. (433)

The prosecution of the Nuremberg trial only presented documents as evidence of the Holocaust and refrained from the inclusion of witness testimony since it considered witnesses less reliable. The premise of the prosecution was that film footage was a truthful documentation of the reality of the concentration camps. Consequently, the film served as factual evidence. In *Medien der*

Rechtsprechung (2011), Cornelia Vismann comments on the irony of the use of film, even a documentary film based on footage, as factual evidence:

> Wie ein Sachverständiger erklärt der mit dem Zusammenschnitt beauftragte Western-Regisseur Ford, dass der Film in keiner Hinsicht manipuliert worden sei – so als würde nicht schon der Umstand, dass dieser Film aus Filmen, die eigens für Beweiszwecke angefertigt und nachträglich zusammengeschnitten worden war, eine Manipulation darstellen. (248)

While the title *Nichts als die Wahrheit* overtly suggests to the spectator that the film presents the truth, it ironically and simultaneously illustrates a central theme of the work, that is, the ability of Richter's film and other (mass) media in general to manipulate the truth.

In 1999, the same year *Nichts als die Wahrheit* was released, Eyal Sivan and Rony Brauman released the film *The Specialist: Portrait of a Modern Criminal.* The film is a montage of footage from the Eichmann trial in Jerusalem, the first trial recorded in its entirety and broadcasted on television (Vismann 268). Since Sivan and Brauman reorganize and edit the footage, that is, manipulate the material, Vismann argues that:

> [d]er Film … zu einem Hyperdokument von unklarem Status [wird], was seine Treue zum historischen Ausgangsmaterial betrifft. Die Digitalisierung des Films erlaubt Eingriffe in die Bildqualität, die durch sogenanntes "lightning" verbessert wurde, und die erlaubt Manipulationen, wie etwa das Löschen von Personen im Bild, die Reflektion von Bildern aus Nazi Concentration Camp auf der Glaskabine, in der Eichmann saß. (268-269)

According to Vismann, while the Nuremberg trial and early courtroom dramas such as Fritz Lang's *Fury* (1936) included film footage to present the truth (191), she argues that "Sivans und

Braumans Film … die Film-im-Film-Authentifizierungslogik [durchkreuzt]" (270). Vissman alerts to the fact that in the late 1990s, the use of the film-in-film technique no longer represents truth, but in fact the opposite: the ability of a film to present and manipulate its spectators with fictitious truth.

Further, unlike the oaths in the on-screen billing of *Nazi Concentration Camp*, the title of Richter's film is the German translation of the truncated portion of the complete English oath or affirmation that witnesses have to swear in U.S. courts according to Conduct of Proceedings § 17-8-52 "Oath to be administered to witnesses:" "(a) The following oath shall be administered to witnesses in criminal cases: 'Do you solemnly swear or affirm that the evidence you shall give to the court and jury in the matter now pending before the court shall be the truth, the whole truth, and nothing but the truth? So help you God.'"[4] The omission of the speech act "I swear" in Richter's film title, a premise for truth, subtly foreshadows that neither the film nor what it presents is true. In fact, everything Mengele presents in his defense in the fictional trial is a lie, an extenuation, relativization, and downplaying of his atrocities. The truncation *Nichts als die Wahrheit* questions and undermines the very notion of truth on which the fictional Mengele trial is based, as well as the notion of truth other films, such as *Nazi Concentration Camp*, propose.

The Mise-en-scène of the Glass Booth:
Visual Allusion to the Historical Eichmann Trial and to the Film's Materiality

Nichts als die Wahrheit also challenges the spectator to decide what is real and what is fictional by means of the mise-en-scène of the glass booth. In the "Prozessauftakt" scene, the glass booth has a dual function. The first part of this section argues for how the glass booth aligns itself with authenticity, while the second part argues for how the glass booth draws attention to its own artificiality – a duality, which permeates the entire film. First, the glass booth

symbolically frames the cinematic Mengele trial, placing it in the context of the Eichmann trial in Jerusalem by directly alluding to the famous glass booth in which Eichmann was placed for his own protection throughout his trial (Vatter 279). The image of Eichmann in the glass booth inspired a novel by Robert Shaw, *The Man in the Glass Booth* (1967), also made into a film in 1975 directed by Arthur Hiller. Because of the prevalence of the image of the glass booth in different media, Richter presumably assumed its familiarity to much of his audience. Richter superimposes the image of the glass booth from a real, historical legal trial onto his fictional Mengele trial. At the beginning of the courtroom drama segment of the film Richter first presents the glass booth as empty, without Mengele, allowing the spectator time to recognize the image as an allusion and to draw the connection between the Eichmann trial and the fictional Mengele trial (fig. 1).

Fig. 1. Long shot of the courtroom through the glass booth.

Mengele's entrance into the glass booth inside the courtroom then takes about fifteen seconds. The superimposing of the glass booth onto Richter's film also superimposes the figure of Eichmann onto the character Mengele. The effect of this superimposition is that the spectator

sees the two images of the Eichmann trial and the Mengele trial simultaneously; Richter's technique is designed to create the illusion of authenticity and truth, suggesting, via conflation with the Eichmann trial, that the soon-to-begin Mengele trial is equally real. Since the glass booth is omnipresent, visible from every perspective, but also transparent, as pars pro toto of the Eichmann trial, it functions literally as a lens through which the spectator watches the fictional Mengele trial. Using the glass booth, the film seeks to blur the spectators' vision of what is authentic and what is fictional.

The glass booth in *Nichts als die Wahrheit* differs from the one in the Eichmann trial in terms of material, structure, and function. The glass booth in Jerusalem was mainly intended for Eichmann's protection; it was small, made mostly of wood, and only had small glass panels. Mengele's glass booth, by contrast, is a beautiful showcase made entirely of glass and metal. Since the glass panels reach from the ground to the top of the structure, Mengele is visible in full at all times. As a result of these changes, Mengele's aesthetic modern glass booth simultaneously evokes a memory of the past, but also suggests a reference to contemporary design. The stark glass and metal booth resembles the architecture of new, recently unified Germany with its shiny new government buildings made entirely of glass and steel, a design choice intended to suggest transparency and stability.

Closely connected to this new building aesthetic prevalent in the construction and modernization of the unified Germany and the new Berlin republic is the growth of the museum culture, restoration, and reconstruction of new buildings, which seeks to commemorate and preserve the past for future generations, exemplified by the Deutsche Historische Museum, the Reichstag building, and the Berliner Stadtschloss. Mengele's glass booth itself resembles a showcase in museums, both placing him on exhibit before the courtroom spectators and

protecting him from them. Koepnik notes that "[h]eritage filmmaking is in tune with … the recent passion for museum culture" (51). The reference to Germany's evolving museum culture is also self-referential, since both museums and films as forms of mass culture provide an audience with mediated access to the past. By aligning itself with museums—a form of historical information transfer—the film positions itself as a similar authentic repository of history.

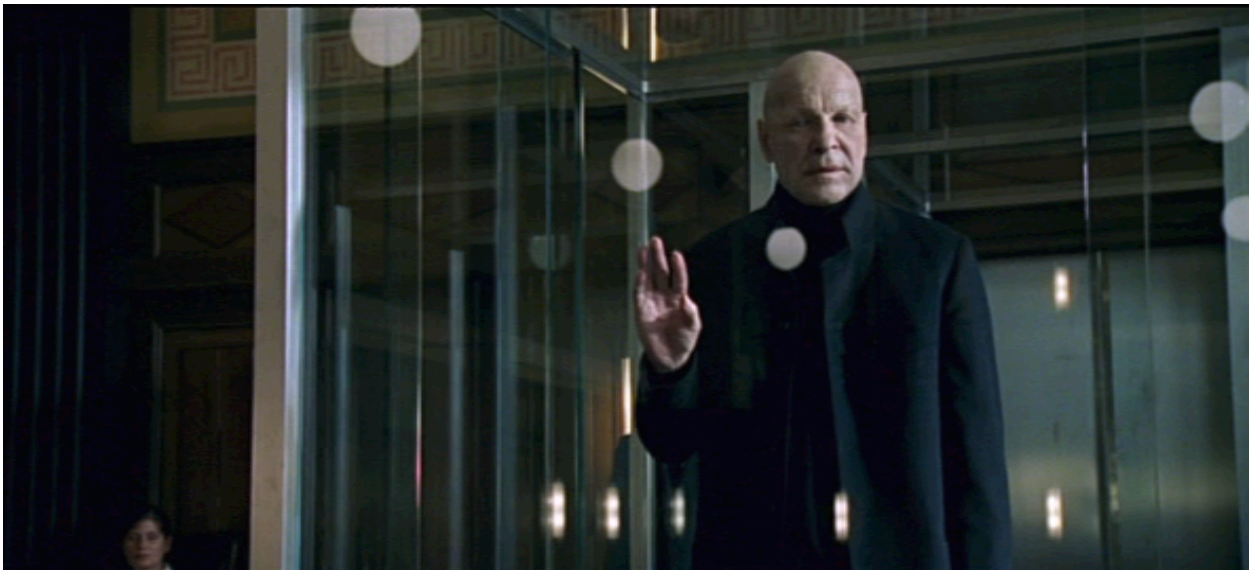

Fig. 2. Medium shot of Mengele with his hand against the glass booth with light reflections of the lamp.

A second function of the glass booth is that it physically frames the space of the courtroom. As such, the glass booth, which is omnipresent in the scene and throughout the trial, mediates the courtroom, that is, the glass booth itself directs the spectator's viewpoint. Almost all the action of the trial is seen through the glass walls of the booth, either from the perspective of Mengele inside looking out or from the perspective of other characters outside looking in. To emphasize the glass booth's role as a framing tool, the four metal support beams of the glass booth's own frame line up with and run parallel to the room. Additionally, the courtroom lights reflect off the booth's glass walls, highlighting the onscreen presence of the transparent wall. The

light reflections and physical framing point the spectator to the materiality of the film, reminding her that she is watching a film—a mediated and fictional account instead of the truth— and thereby undercutting the authenticity suggested by the title, the media coverage in the film, and the visual reference to the Eichmann trial, which had also been a media event.

Referring to the glass booth as a "glass cage," Vatter further notes that "[d]er Glaskäfig … schließlich dazu bei[trägt], dass Mengele von der Kamera nicht unmittelbar erfasst werden kann und so immer nur durch die spiegelnde Scheibe zu sehen ist" (279). At one point in the scene, Mengele presses his hand against the glass panel, highlighting the materiality of the film and creating distance between spectator and subject (fig. 2). Moreover, the fact that Mengele is never fully presented by the camera points to the limitations of film to access and mediate the past, or for that matter the present. It also functions similarly to the truncated title, which undermines the notion of truth it suggests at first glance.

The 90-Degree Camera Rotation in the "Prozessauftakt" Scene: Changing the Spectators' Perspective While Pointing to the Film's Materiality

In addition to the mise-en-scène of the glass booth that challenges the spectator to decide what is fiction and what is reality, what belongs to the past and what to the present, the camera movement, while pointing to the materiality of the film in certain ways—as described in the previous section—is also ambivalent in other ways. The second part of the "Prozessauftakt" scene begins after Mengele has reached the front of the glass booth and sits down sedately on the chair with his hands on his thighs directly across from the audience (fig. 3). This sequence is filmed in one long, high-angle shot, uninterrupted by cuts. The camera angle creates a bird's-eye view that provides the spectator with an ostensibly omniscient perspective distinct from everyone else in the courtroom. Similar to the title *Nichts als die Wahrheit*, the bird's-eye perspective

suggests that the trial is going to shed light on Mengele's atrocities, that it will elicit the truth. However, this ostensibly omniscient perspective is then undermined by the rotation of the camera, which, in fact, controls the spectator's perspective. The bird's-eye view is as unnatural for the spectator as the absence of cuts in this sequence or the slow, accurate, and symmetric 90-degree camera rotation around Mengele's head. These unnatural ways of seeing guided by the motion of the camera again draw the spectator's attention to the materiality of the film, i.e. to the film as medium.

Fig. 3. Long high-angle shot of Mengele in the glass booth.

In his review, "Unsere Leichen leben noch: Roland Suso Richter und Götz George exhumieren Josef Mengele: *Nichts als die Wahrheit,*" published in the *Süddeutsche Zeitung* on September 23, 1999, Michael Althen dismisses Richter's cinematography as meaningless: "Wenn die Kamera fährt, dann ohne Anlass, und wenn sie kreist, dann stets um ein leeres Zentrum" (Althen). In opposition to Althen, this section proposes that the film's camera movement is, in fact, quite deliberate and not formulaic or without reason. In particular, the 90-degree rotation around Mengele's head reveals itself to the viewer as a technical camera

movement, emphasizing the material aspect of the film, while simultaneously demonstrating the film's power to control and manipulate the spectator's perspective by means of a simple camera rotation.

Fig. 4. The 90-degree clock-wise camera rotation alters the composition of the frame.

Beginning on the bottom right of the frame where Mengele sits unmoving, the camera rotates from above in a 90-degree clock-wise motion around the right of Mengele's head. This camera movement changes Mengele's location in the frame from the right side of the frame to the top, altering the mise-en-scène without any movement inside the frame itself (fig. 5). That the same objects are now in a different location on the screen means that the camera has changed the spectators' perspective on those objects. The slow 90-degree camera rotation disrupts and disorients the spectators' view, forcing them to reposition themselves and to see things from the perspective imposed by the camera.

Mengele's Testimony in Court

While various aspects of the film – its title, the mise-en-scène of the glass booth, the camera movement in the "Prozessauftakt" scene, etc. – challenge the audience in an open-ended manner to distinguish between reality and fiction, truth and lie, and to resist manipulation,

Mengele wants the audience to make only one, for him, correct judgment—to find him innocent. The purpose of Mengele's testimony in court is to convince the viewers, in their role as judges, of his truth. Mengele's version of the truth would humanize and rationalize his actions. The primary vehicle by which Mengele can make this argument is his own testimony. That testimony is crucial to the film's narrative, thus complementing Richter's directorial choices.

Fig. 5. Front and back metal frame of the glass booth line up with the top and bottom of the screen. The courtroom floor on either side of the glass booth creates an open frame, thereby pointing to the film's materiality.

The antagonistic structure of the courtroom drama invites the viewer to judge. For example, complying with the genre conventions of the courtroom drama, Richter's film grants Mengele the right to defend himself and also presents contradicting testimonies, Mengele's and Rohm's defense of him, on the one hand, and the survivor witnesses' testimonies and prosecutor's accusation, on the other hand. While conflicting positions on the justifiability of Mengele's crimes could also be presented in the form of an interview or public debate, the claim to truth the

antagonists make is specific to the courtroom setting and crucial for the film's attempt to create uncertainty in its spectators regarding the various versions of truth it presents.

By granting Mengele a fair trial and allowing him to present a justification for his alleged crimes through his own sworn testimony, the legal system preserves his basic human rights—something he never afforded his victims—confirming for Mengele, rather ironically, that his crimes are not monstrous, but humane acts. This self-affirmation granted by the legal system guides Mengele's ultimate defense strategy: to present himself as a human being and his medical experiments as benevolent work for the advancement of science.

In her famous essay, "Reflections on *The Deputy*" (1964), Susan Sontag points out with regard to the Eichmann trial that the form of the legal trial favors the defendant since it assumes that he can be defended:

> The trial is a dramatic form which imparts to events a certain provisional neutrality; the outcome remains to be decided; the very word "defendant" implies that a defense is possible. In this sense, though Eichmann, as everyone expected, was condemned to death, the form of the trial favored Eichmann. (119)

While according to Sontag the form of the legal trial "imparts to events a certain provisional neutrality" (119), Richter's film pretends to be ambivalent. The courtroom drama part of the film seems to grant Mengele the "provisional neutrality" of a real legal trial. In the courtroom, in his function as defense attorney, Rohm pleads for Mengele's innocence, presenting his atrocities as benevolent and humane acts. As one of the main protagonists of the film, Rohm is presented at the outset of the film as a respected family man, and the thriller part of the film invites the spectator to identify with him, thereby encouraging the spectator to believe in Rohm's attempt to defend Mengele and in the possibility of such a defense.

Yet, outside the courtroom, Rohm condemns Mengele's crimes and explains that he only defends him to better understand him. For example, in a meeting with his wife, he responds to her suggestion that he can withdraw from his commitment as Mengele's defense attorney that his defense allows Rohm to better understand Mengele:

> ROHM. Ich hab' noch nicht was ich wollte. Ich will ihn verstehen. Ich will wissen, was uns verbindet. (53:54-54:00)

Further, Rohm tells Mengele in a private conversation outside the courtroom that he does not believe him and has therefore considered resigning:

> ROHM. Als Ihr Anwalt darf ich Ihnen mitteilen, dass ich den Inhalt dieses Ordners für einen Riesenhaufen Scheisse halte. (55:00-55:05)

Mengele, however, is able to convince Rohm to continue the defense by telling him that Rohm's own mother murdered as a nurse in a mental hospital. These conversations outside the courtroom foreshadow Rohm's concluding remarks in which he changes course at the end and declares Mengele guilty. Rohm's conversations outside the courtroom and his plea for a guilty verdict indicate that his defense of Mengele in the courtroom was only a pretense, as was the neutrality the courtroom drama granted to Mengele. So, ultimately the film is neither neutral nor ambivalent towards Mengele's crimes, but seeks to expose his crimes as unforgivable atrocities. Since Richter presents a fictional trial, he does not have to be neutral and the judgment can be a foregone conclusion—characteristics, that, were this a real legal trial, would classify it as a show trial.

Yet, as mentioned above, the film's pretense to truth—through, for example, its title, the camerawork, the glass booth, the granting of a trial, the portrayal of Rohm—continues at first glance with Mengele's testimony in court. Mengele's first testimony surprises the attorney

general, everyone else in the courtroom, and probably most spectators because, unlike the protesters in support of Mengele outside of the courtroom who carry signs saying "Auschwitz-Lüge" (47:51-48:12), he is not a Holocaust denier. This is an important claim and distinguishes Mengele from the radical deniers outside the courtroom by placing him in the mainstream of Holocaust acceptance, thereby lending credence to his own rationality. Prosecutor Vogt's question, "Wie würden Sie das Lager Auschwitz-Birkenau charakterisieren?" (1:02:57-1:03:02), baffles him:

> MENGELE. Es war ein Massenvernichtungslager, Herr Staatsanwalt. Das wissen Sie doch. (1:03:03-1:03:12)

Asked to repeat his response, Mengele explains in detail the atrocities in the Auschwitz concentration camp (1:03:21-1:04:05). However, he insists that he did not serve the National Socialists and never was one (1:04:10-1:04:17), which means that he does not consider himself guilty. Prosecutor Vogt responds with equal bafflement in response to Mengele's confession that he did not follow orders, since the confession implies that Mengele willingly conducted experiments on humans:

> VOGT. Hohes Gericht, ich habe ehrlich gesagt mit dieser Offenheit nicht gerechnet. Hier bietet sich wohl die einmalige Chance, der sogenannten Auschwitz-Lüge durch die Aussage eines Haupttäters ein und für alle Mal das Wasser abzugraben. (1:05:01-1:05:12)

Despite the fact that Holocaust denial is considered a hate crime according to the German *Strafgesetzbuch* (*StGB*) §130, Mengele's allegedly honesty in accepting Auschwitz is a ploy in the film, intended to trick the spectator into believing that he will continue to tell the truth in the remainder of his testimony.[5] Although Mengele and Rohm do not deny the Holocaust, they

relativize and whitewash Mengele's crimes, suggesting that the ends justifed the means. For example, Rohm argues that German medicine made great advances through Mengele's experiments. By establishing an early pattern of honesty, Mengele is able to more easily slide into falsehoods as he attempts to convince the spectator of the justification for his actions. However, a second witness denies his claims: "Es gab keine verwertbaren Ergebnisse" (1:24:04-1:24:07). Rohm then defends Mengele with an excuse common to Nazi perpetrators: that Mengele was not the only one who conducted experiments for the sake of science, again alluding to the value of his medical experiments:

> ROHM. Aber Herr Mengele war nicht der Einzige, der im Sinne und zum Nutzen der deutschen Wissenschaft getötet hat. (1:23:40-1:23:46)

While Mengele attempts to convince and manipulate the court, the spectators in the courtroom, and the film's viewers into believing his truth, the juxtaposition of contradicting testimonies calls on the film's viewers to decide who is right. The film appears to suggest the truthfulness of the witness testimony since both the witness and Rohm resignedly look down during his testimony. Despite the witness testimony arguing that Mengele's experiments did not generate any significant results, Mengele professes, until the very end of the film, his regret in not having had more time to experiment:

> MENGELE. Ein Jahr mehr und wir hätten die gesamte Medizin revolutionieren können. Im Grunde hat sich alles nur verzögert. Was die heutige Medizin zu leisten im Stande ist hat sich alles nur verzögert. (1:58:28-1:58:32)

Through these divergent and contradictory testimonies, the film oscillates between truth and lie, creating an uncertainty and an openness that asks the audience to judge on its own.

Another reason why Richter might refrain from presenting Mengele as a Holocaust denier in the film is that this would turn *Nichts als die Wahrheit* into a debate over the existence of the Holocaust – which would seem to run against the film's intent. While the structure of the courtroom drama allows the film to purport to be ambivalent about Mengele's guilt – allowing testimony for and against it – it is unequivocal about the reality of the Holocaust. Ambivalence regarding Mengele's guilt raises the question of how the Holocaust can and might be remembered and approached by current and future generations – but not if it took place at all or whether it should be remembered. Further, Mengele's acknowledgment of the existence of the Holocaust tricks the viewers into wondering whether his justifications might be plausible to finally confront them with their own corruptibility through media. While Holocaust denial is unequivocal and radical and the majority of viewers would probably not buy into it, Richter's strategy of having Mengele justify himself seeks to create uncertainty in the viewer and shows more subtly how manipulative films and other forms of (mass) media can be.

Historian Deborah Lipstadt, an expert in the study of Holocaust denial, addresses the susceptibility to justifications of the Nazi atrocities in the "Introduction" to her book *The Eichmann Trial* (2011). Reflecting on her experience as defendant in the libel suit against the prominent Holocaust denier David Irving, Lipstadt explains that it was "one of my greatest fears … that my trial might become a 'Did the Holocaust happen?' exchange. This is what had occurred during the trial of Holocaust denier Zündel" (Lipstadt xxi). Irving, whom Lipstadt called in her 1995 book *Denying the Holocaust: The Growing Assault of Truth and Memory* a "Hitler partisan wearing blinkers" (xvi), brought a libel suit against her in 2000 (xvi). Lipstadt wanted to avoid by all means that the legal trial would become a debate: "I believed the public had to be shown that denial was not an 'other side,' an 'opinion,' or a 'view.' My object was to

demonstrate that it was a tissue of lies with no historical standing at all" (Lipstadt xxii). She remembers that another leading historian could not understand why she took the charges seriously because of the "total absurdity of denial" (xxiv). While her colleague was convinced that "'[n]o one will believe it anyway,'" Lipstadt explains that she had to take the legal trial seriously because of, for example, comments on the internet: "There were many people who, though not fully accepting deniers' claims, might wonder if there was not some justification to Irving's positions" (xxiv). Further, the interviews of German families that Harald Welzer, Sabine Moller, and Karoline Tschugall conducted in the late 1990s for their study *"Opa war kein Nazi": Nationalsozialismus und Holocaust im Familiengedächthnis* (2002) show that the second and third generations after the Holocaust interpret and remember their family members' involvement in the Holocaust often as either victims themselves or heroes, that is, they consider their family members as members of the resistance – which is what Mengele claims when he presents his atrocities as acts of euthanasia, saving his victims from worse (Welzer, Moller, Tschugall 54). Lipstadt's approach and Welzer, Moller, and Tschugall's results confirm what might be one of the underlying assumptions of the film, that is, with growing historical distance to the Holocaust in the late 1990s and early 2000s, people will remain no less susceptible to false historical presentations and manipulations of the truth than previously, for example, by means of mass media.

Reflecting On Mediation: Witness Testimony and the Production of Memory in the "Zeugenbefragung" Scene

In the "Zeugenbefragung" scene, which lasts about twenty-five minutes or one-quarter of the film (1:21:18-1:46:43), a total of nine witnesses testify against Mengele (Vatter 283). This lengthy scene of witness examination and cross-examination builds the rising action of the film

and illustrates two of the film's key arguments. First, the openness of the courtroom drama—the back-and-forth between the prosecutor's examination of incriminating witness testimonies and Rohm's clever and manipulative defense of Mengele—invites the audience to judge whose arguments and testimonies are more convincing, to once again confront the spectator with her own susceptibility to rationalization and corruptibility. Second, the scene, particularly the testimony of the fifth witness, directly addresses the question of how memory works and how witness memories can be conflated—a self-referential discussion that reflects on the role of film as a memory medium, a "Gedächtnismedium" as Vatter calls it, a medium that remembers the past, but also creates and mediates memory about the past.

The witnesses are a heterogeneous group and can be divided into several categories: witnesses one, two, three, and five are eyewitnesses who survived Mengele's experiments, of whom the second witness, a pathologist, was forced to work with Mengele while at Auschwitz. In addition to the survivor witnesses, an historical expert, a plumber who installed a pipeline in the hospital in which Rohm's mother used to work, and Rohm's mother all testify to Mengele's crimes as well as their own involvement. The witness interactions with the prosecuting and defense attorneys highlight the openness of the trial proceedings: on the one hand, the survivor witness testimonies contradict Mengele's version of events and incriminate his actions; on the other hand, however, Rohm's clever appeal to logic allows him to turn the testimonies against the witnesses and use them in Mengele's defense. For example, he questions witnesses two and three as to whether they actually saw Mengele commit the crimes to which they testified. Neither of them is able to confirm this. Rohm then argues that witness three and his twin brother would have been killed in Auschwitz's gas chambers had Mengele not saved them for his own experiments on twins.[6] Rohm's perfidious defense strategy is not only intended to defend

Mengele but also to subtly manipulate the audience into considering Mengele's crimes from his perspective, to question the validity of the witness testimonies, and to open the spectator to the possibility of a legitimate rationale for Mengele's actions and experiments.

The "Zeugenbefragung" scene also plays an important role in the film's contemplation of memory and its own mediation of the past. Critically this part of the scene breaks from the film's illusion of reality and presentation of "truth." Instead, this reflection on memory reveals the film as a mediator of the past and forces the spectator to admit the potential for artifice and manipulation within the filmic presentation of historical memory. Midway through the scene, the fifth witness—a woman in a wheelchair who testifies to her experience as a subject in Mengele's twin experiments—takes the stand. Whereas Rohm attempts to spin the other witness testimonies in Mengele's favor or discredit their truthfulness, here he questions the accuracy of the witness's memory. Rohm's skepticism is based on his comparison of her sworn legal testimony to another testimony she had previously given at the Shoah Research Center. By comparing the differences in her multiple recountings of supposedly the same story, Rohm insinuates that she is not telling the truth in a strict legal sense and, furthermore, that victim memories in general can be fallible:

> ROHM. Sie hat ihre Geschichte immer und immer wieder erzählt. Und sie hat sich die Geschichten von anderen Leuten erzählen lassen. Und dann hat sie hier mal was eingefügt und da was ausgelassen. Eben wie's ihr so gepasst hat. Und so hat sich im Laufe der Jahre ihre Geschichte zurechtgeschliffen. Mein Job hier ist perfide genug, Herr Vogt. Und Sie machen es alles nur noch schlimmer, dadurch dass Sie Ihre Hausaufgaben nicht machen!
>
> VOGT. Was bleibt mir denn übrig? Nach fünfzig Jahren ist doch keine Erinnerung so, wie sie mal war. (1:33:53-1:34:57)[7]

The film uses the testimony and cross-examination of the third survivor witness to reflect on and explore the impact that time and others' memories have on one's individual memory. The film's internal discussion on the influence of the memories of others on individual memory goes beyond Vatter's analysis, which argues with regard to this scene that "[a]m Beispiel einer der folgenden jüdischen Zeuginnen geht *Nichts als die Wahrheit* auf die Problematik der Rekonstruktion von Erinnerungen und deren Formung und Ausgestaltung zu kohärenten Erzählungen ein" (285). Rohm points out that increasing temporal distance makes memory unreliable and that individual memory is never isolated but always part of collective memory, influenced by and simultaneously shaping the memories of others. In his book *On Collective Memory*, sociologist Maurice Halbwachs examines the impact of society on individual memory. He observes exactly what Rohm accuses the witness of, namely, that:

> [s]ociety from time to time obligates people not just to reproduce in thought previous events of their lives, but also to touch them up, to shorten them, or to complete them so that, however convinced we are that our memories are exact, we give them a prestige that reality did not possess. (51)

Based on this and other observations, Halbwachs concludes that the act of remembering is a social act that always takes place within the influence of society, and that individual memory is always collective memory:

> [I]ndividual memory is nevertheless a part or an aspect of group memory, since each impression and each fact, even if it apparently concerns a particular person exclusively, leaves a lasting memory only to the extent that one has thought it over – to the extent that it is connected with the thoughts that come to us from the social milieu. One cannot in fact think about the events of one's past without

> discoursing about them. … [T]he framework of collective memory confines and binds our most intimate remembrances to each other. (53)

However, since it is crucial in a legal trial that the eyewitness only testifies to aspects that she witnessed herself, Rohm emphasizes the altered, socially influenced component of the witness's testimony in an attempt to undermine her reliability and defend Mengele (Vatter 286).

Beyond just the fallible memory of an individual witness, the film uses this discussion of memory creation and manipulation to self-referentially reflect on and point to its own role to create and mediate memory of the past through the context of film. As a form of mass media communication, films have the power to significantly shape what becomes part of the cultural and collective memory – an argument explored in the research of Harald Welzer in *Das kommunikative Gedächtnis: Eine Theorie der Erinnerung* (2002). Building on Halbwachs's theory of collective, socially influenced memory, Welzer examines in *Das kommunikative Gedächtnis* the impact of media on memory. Welzer writes:

> …daß unsere lebensgeschichtlichen Erinnerungen, also das, was wir für die ureigensten Kernbestandteile unserer Autobiographie halten, gar nicht zwingend auf eigene Erlebnisse zurückgehen müssen, sondern oft aus ganz anderen Quellen, aus Büchern, Filmen und Erzählungen etwa, in die eigene Lebensgeschichte importiert werden. (12)

In the course of his interviews with World War II veterans, Welzer discovered that many of their wartime memories were actually based on scenes from well-known war movies, as he notes in *Das kommunikative Gedächtnis*:

> Werden bildhafte Versatzstücke und Spielfilmszenen einerseits ununterscheidbar mit autobiographischen Erlebnisschilderungen verwoben, dienen andererseits

> gerade filmische Vermittlungen und insbesondere die des Spielfilms in der Wahrnehmung der Befragten als historische Belege dafür, wie die Vergangenheit wirklich war.
>
> Dadurch, daß die Bilder zu Nationalsozialismus und Holocaust in den vergangenen zwei Jahrzehnten im deutschen Fernsehen immer präsenter geworden sind und das Kino schon von Beginn an gerade das Genre des Kriegsfilms pflegt, schiebt sich ein riesiges Inventar von Bildmaterial vor die Deutungen jener Geschichten, die Kinder und Enkel von ihren Eltern und Großeltern erzählt bekommen. (175)

The doubly fictionalized survivor testimony in Richter's film—fictional as a film, but also fictional within the film—serves as an example of the ability to produce false memories on a smaller scale and, furthermore, illustrates the profound impact of films on a mass audience, especially with regard to such historically important events as the German Nazi past. As the temporal distance to the Holocaust increases, *Nichts als die Wahrheit*, as previously suggested by its title, cautions its spectators to view films about the past critically and to be aware of the unreliability of film as a memory medium, especially film's mediation, perhaps even manipulation, of the past.

Translation of Witness Testimony as Mediation of the Past

The discussion between Rohm and Vogt on the fallibility of memory in the "Zeugenbefragung" scene directly provokes the viewer to consider the role of film in shaping individual and collective memory; however, the scene also more subtly broaches this idea when presenting the translation of the second witness's testimony, not least when it exposes the editing technique of this translation. While *Nichts als die Wahrheit* attempts to create an authenticity and

an illusion of reality to challenge the spectator's own moral position, it simultaneously undercuts this artifice through its use of translation and a halting editing technique that foregrounds the film's manipulation of the information it transmits to the viewer, consequently reminding the viewer of her own distance to past events. The film's use of translation and montage as editing techniques suggest that the spectators see only a mediated version of the past and not necessarily the rigorous truth.

The second survivor testimony is distinct from the others, since it is the only testimony not delivered in German—but rather in Hungarian—and, as a result, requires translation for the German-speaking court and audience. The Hungarian witness has an interpreter positioned directly beside him; however, the translation into German is not simultaneous or voiced-over, but rather sets in when the witness pauses after each unit of meaning. Since all other survivor witnesses in the film speak German, and some even have Eastern-European accents, this raises the question of why Richter, who addresses a German-speaking audience, includes the Hungarian original and the German translation instead of, for example, providing simultaneous translations via headphone—as happened in the Nuremberg trials and the trial of Adolf Eichmann—or leaving out the Hungarian altogether.[8] What are the functions of this translation and the style of its presentation, and what is its intended effect?

The second survivor witness is a pathologist and former inmate in the Auschwitz-Birkenau concentration camp. Because of his background as a physician, he was forced during his internment at Birkenau to assist Mengele with his experiments on humans, especially on twins (1:22:00). Although never actually introduced by name, the character's Hungarian origin and the details of his testimony suggest that he is based on a doctor named Miklós Nyiszli. In 1960, Nyiszli published a memoir entitled *Auschwitz: An Eyewitness Account of Mengele's*

Infamous Death Camp, in which he details his role as Mengele's assistant at the concentration camp. In the film, the second witness responds in Hungarian to the state attorney's question about the kind of medical experiments he conducted; he pauses between the clauses of his answer to allow for the German translation:

> WITNESS TWO. (Hungarian) Amputationen von Armen und Beinen
>
> (Hungarian) Organentnahmen
>
> (Hungarian) Absichtliche Infizierung mit Typhuserregern
>
> (Hungarian) akute Anämie durch exzessive Blutentnahme
>
> (Hungarian) Schusswunden im Kopf.
>
> (Hungarian) Wir sollten untersuchen, ob die Zwillinge
>
> (Hungarian) auf diese Gewalteinwirkungen
>
> (Hungarian) verschieden reagiert haben. (1:22:29-1:23:20)

As the response quoted above indicates, the witness divides his sentence into different units of meaning, which, in conjunction with the intermittent translations, function as interruptions, halting the oral fluency. The eyewitness breaks down the procedures into different sections. In his enumeration of the experiments, the injury—designated by a nominal subheading such as "Amputationen"—precedes the naming of the body part, e.g., "Arme und Beine," "Kopf," and other details about the medical experiments, e.g., "Typhuserreger," "exzessive Blutentnahme." Although the syntax allows for pauses, the German translation actually constitutes a literal interruption of the Hungarian original. Yet, since the film's main language is German, the interruption is actually the other way around, i.e., the Hungarian testimony disrupts the German trial. For the film's viewers who only understand the German translation, the Hungarian testimony functions as caesum or hypodiastole, a mark of pause that cuts off and

separates the testimony (Lanham 31, 37, 87). In a similar manner for the witness, the German translation then acts as an aposiopesis, a "becoming silent," causing the sudden silencing of the witness amidst the testimony and leaving the sentence unfinished, the image incomplete (Lanham 20). However, since the enumerative nature of the testimony allows for pauses, the interpreter does not interrupt the witness in the sense of cutting him off. Rather, these language shifts impede the testimony's narrative imagery and offer the spectators more time to visualize and reflect on what they hear.

This appeal to the spectator's imagination – Hirsch identifies it as a powerful form of memory to connect to the past – is closely connected to the non-scenic practice of the courtroom drama, which refrains from any visualization of the past but mediates it through narration (Hirsch 22). Instead of representing the past in imagery for easy consumption, Richter challenges the spectator to listen carefully and to imagine what she hears; and by omitting direct visualization, *Nichts als die Wahrheit* points to the gap between the present and the past, suggesting that the past cannot easily be accessed. Narration and historical film footage can help this process of accessing the past – although both might also be subject to manipulation as discussed above.

The translation from Hungarian into German in the scene further contributes to the sense of historical distance and self-referentially reflects on film's mediation of the past. Peter France argues in his article "The Rhetoric of Translation" that "[t]ranslating … is a *mediation*" (255; italics in original). Although France focuses on written, not spoken, translation i.e., not on (simultaneous) interpretation, the concept of mediation is also applicable to it since the procedure is more or less the same. France discusses various translation theories, for example those advocating that "the ideal translation 'does not read like a translation'" (259) and

Schleiermacher's "'foreignizing' rhetoric of translation" (260). He concludes that translation is self-referential:

> [F]ar from being an unobtrusive servant, translation draws attention to itself, the "madness" of the translated text. In rhetorical terms, this is akin to the "false rhetoric" that most theorists repudiated; instead of offering an apparently unmediated communication with the original, it draws attention to itself, whether to underline the gap between the "origin" and the "trace" … or to glory in its own creativity. (France 261)

Since the witness testimony is not immediately accessible to those viewers who do not understand Hungarian, the communication of the original Hungarian witness testimony to a German-speaking audience requires the interposition of an interpreter. In a similar manner, the past is not immediately accessible but can only be mediated for example through film, art works, or narration. Since the past is not accessible and generations born after the Holocaust have not experienced it firsthand, the film tries to communicate and transmit the memory of the past between different generations and thus becomes significant for what Hirsch defines as "postmemory" (22).

By means of mediating the past through what Hirsch calls "imaginative investment and creation" (22), *Nichts als die Wahrheit* functions for its audience as a source of postmemory, an attempt to bridge the gap between the past and present. The film attempts earnestly to take on this role as historical bridge, while simultaneously acknowledging its inevitable mediation of history. The "Zeugenbefragung" scene's inclusion of translation doubles this mediation processes and thus subtly alerts the viewer to the film's self-referential awareness of its narrative intervention.

Strict Separation of Visual and Sound Elements as Emphasis of the Historical Distance to the Past

Throughout the second witness testimony in the "Zeugenbefragung" scene, Richter utilizes a strict separation of visual and sound elements in the film, a directorial move that reflects the separation of the viewer from the historical past and emphasizes the film's role as a mediator of this connection. By presenting the second witness's audible testimony as disembodied from his physical presence, the film points to the fact that in the not-so-distant future there will no longer be eyewitnesses to the Holocaust, which makes the role of film in transmitting an increasingly distant historical past ever more important. Koepnick suggests a slightly more general form of this idea for "heritage films" as a whole—of which *Nichts als die Wahrheit* is a member—arguing that this genre of film attempts to make its spectators "feel a certain historical distance to the victims depicted in their narratives" (Koepnick 76-77).

Richter's separation of audio-visual components in the "Zeugenbefragung" scene finds a theoretical grounding in Sergei Eisenstein's montage technique. Despite having developed his original montage theory before sound films, Eisenstein intended not only to keep different images distinct but also different montage elements, such as sound and images, to enhance the effect of montage. Thus, in his 1928 manifesto "A Statement [On Sound]" co-authored with Vsevolod I. Pudovkin and Gorgi V. Alexandrov, Eisenstein distinguishes between a sound recording that "will proceed on a naturalistic level, exactly corresponding with the movement on the screen, and providing a certain 'illusion' of talking people, of audible objects, and so on" and what he refers to as "A CONTRAPUNTAL USE of sound," that is, a use of sound that does not match the image (318; emphasis in original).

Comparable to the montage of different elements in *Nichts als die Wahrheit*, this scene moves back and forth between a naturalistic and a contrapuntal use of sound. When the Hungarian witness as a speaker is both visible and audible, Richter employs a typical naturalistic use of sound. When the German-speaking translator speaks from outside the frame and Rohm is shown listening, its use of sound is a non-diegetic and contrapuntal, since the visible and the audible are kept separate. During the last response of the second witness, the camera focuses on the judge's face listening and reacting to both the Hungarian and German words. The Hungarian witness is not shown on the screen as his voice and the interpreter's voice narrate together. Instead, the camera captures the frozen look on the judge's eyes; she does not blink. The close up on the judge suggests that she understands Hungarian since she reacts to the Hungarian words with facial expressions of disgust and horror. She does not move her lips, only swallows heavily and drops her gaze. It is written on her face that she is disgusted by what she hears. She seems to transform the words she hears into visual images.

Instead of showing the witness delivering his testimony, the film forces the viewer to watch the judge witnessing the out-of-view narration, which by extension makes the spectator a witness as well. While witnessing the judge's attentive listening and reactive facial expressions, the viewer hears the voice-over dictate instructions: in place of passive observation, the viewer is asked to listen and imagine actively, to witness and judge. The contrapuntal use of sound in this scene—that is, the separation of the sound element from the visual element, the speech from the speaker—models a situation parallel to that in the future when witnesses will no longer be alive, and will no longer be able to deliver their experiences for themselves. Importantly, this loss of first-hand experiences and testimonies means that future generations will no longer have direct access to primary accounts of the Holocaust, and it reinforces the growing historical distance

between generations, an historical gap that mass media, including films like *Nichts als die Wahrheit*, attempt to bridge.

Concluding Remarks by the Prosecutor, Rohm, and Mengele

The concluding remarks of the prosecutor, Rohm, and Mengele all work to maintain the film's structural duality of authenticity and artifice—on the one hand, presenting Rohm's defense of Mengele as a genuine legal strategy and the film as a faithful recounting of history, while, on the other hand, exposing Rohm's duplicitous defense as a lie and the film as a heavily mediated fiction. To begin the concluding statements, the prosecutor refers to Mengele as "einer der schlimmsten Verbrecher der Menschheitsgeschichte," pointing out that Rohm's defense strategy gradually shifts throughout the trial from the context of malicious human experimentation to compassionate euthanasia, thereby deliberately misreading the historical facts (1:47:12-1:47:15). In reality, Mengele's crimes have nothing to do with euthanasia: he experimented with living human bodies, because he wanted to advance his career and he enjoyed the sadistic work. In an interview with Thomas E. Schmidt in *Die Welt* entitled "Gut gemeint ist nicht gut: Michel Friedman kritisiert den Mengele-Film *Nichts als die Wahrheit,*" Michel Friedman takes issue with precisely this historical inaccuracy of conflating Mengele's crimes with euthanasia in the film:

> Der dramaturgische Konflikt des Films, aus der Gegenwart das Thema Euthanasie einzuführen, ist falsch. Mengele steht nicht für die Euthanasiedebatte, sondern für Menschenversuche. … Meine Kritik … moniert das historische Verständnis des Films und seine Weise der Übersetzung des historischen Stoffes. Das Non-Fiktionale muss im Detail stimmen, damit die Transformation ins Künstlerische gelingt. Historische Tatsachen sind nicht disponibel. Wer Mengele in einem Film

> in der Gegenwart zur Disposition stellt, muss wissen, was Mengeles Rolle im Dritten Reich war – und muss diese Rolle thematisieren. (Friedman)

While Friedman's criticism is understandable, he does not consider that the film's historical inaccuracy concerning Mengele's role in the Holocaust might also be a deliberate strategy to present the conflict that James E. Young in *At Memory's Edge: After-Images of the Holocaust in Contemporary Art and Architecture* (2000), calls "the truth of what happened" and "the truth of how it is remembered" (39). As quoted above, the prosecutor in fact emphasizes in his concluding remarks that Mengele's crimes have nothing to do with euthanasia, that his human experiments and murders were not benevolent acts—an argument that Friedman ignores in his haste to criticize the defense's attempted excuse of Mengele's behavior. The film, rather, challenges the spectator to see through the perfidy of Mengele's deceptions and identify them as lies. In this way, Friedman's valid criticism of the historical conflation in the film shows at the same time exactly what the film aims to present: the impact of media in shaping (and manipulating) our memory of the past, which might differ significantly from the historical truth.

In response to the prosecutor's contestation that Mengele's crimes can neither be explained nor justified as euthanasia but instead belong to the Nazi crimes of mass murder, Rohm, in his concluding remarks, at first appears to maintain his commitment to this defense strategy, arguing that Mengele's killings were benevolent acts to prevent his victims from something worse. In his defense of Mengele, Rohm begins his speech with a reference to the book *Die Freigabe zur Vernichtung unwerten Lebens* (1:51:07-1:51:30). Unlike Rohm's fictional Mengele biography, this is an actual book by Karl Bindig and Alfred Hoche published in 1920 with the subtitle *Ihr Maß und ihre Form*. Referencing this book, Rohm asks that the spectators identify with Mengele and understand his motivations. Ultimately, Mengele applauds Rohm's

defense effort, an act suggesting his belief in the earnestness and legitimacy of Rohm's performance as his lawyer.

However, after his arguments in support of Mengele's innocence—and even his far-fetched benevolence—Rohm abruptly changes course and pleads for a maximum sentence:

> Ich habe versucht Josef Mengele und seine Taten aus der Zeit heraus zu verstehen in der sie geschehen sind. Stattdessen habe ich ertragen müssen, dass Herr Mengele bis heute nicht begreifen will, dass das, was er damals im KZ von Auschwitz getan hat, zu den schlimmsten Verbrechen gehört, die sich man nur vorstellen kann. Wir haben ertragen müssen, dass er diese Verbrechen als ein Akt der Gnade und der Sterbehilfe entschuldigen wollte. Bis heute hat Josef Mengele nicht die kleinste Regung der Reue gezeigt. Eine größere Menschenverachtung ist nicht vorstellbar. Keiner hat so pervers und kaltherzig gemordet wie Mengele. … Josef Mengele ist schuldig. Ich beantrage eine lebenslange Freiheitsstrafe. (1:54:47-1:56:25)

The final words of Rohm's concluding remarks clarify quite explicitly his position on the guilt of his client, an abrupt reversal that illuminates the subterfuge of his defense strategy as an effort to lure the spectators into believing Mengele so that ultimately they are forced to confront and admit their own potential moral corruptibility, their potential to believe that Mengele is innocent and that his crimes can be whitewashed. On the one hand, the opening part of Rohm's concluding remarks, in which he defends Mengele, contrasts with the prosecutor's concluding remarks and draws the spectator into Mengele's mindset. At the same time, the sudden turn in his speech denounces Mengele's excuses, exposes his guilt, and finally confronts the spectators with their own susceptibility to the belief that Mengele could be innocent and his crimes

whitewashed. Rohm's concluding remarks mark the end of the courtroom drama, but it is Mengele who has the last word in the film, thereby continuing the oscillation between truth and lie, authenticity and mediation, until the very end.

After the end of the trial and Rohm's reunion with his wife, Mengele addresses the spectators directly, repeating and insisting on his defense despite the fact that it has been contradicted several times throughout the film, most recently in the concluding remarks of both the prosecutor and Rohm. The camera shows Mengele in an extreme close-up; his visual closeness to the spectator mirrors his attempt to persuade the spectator to identify with him (fig. 7). He asks the spectators to compare themselves to him: "Was sehen Sie? Sehen Sie wenigstens ein bißchen von sich selbst in mir?" (1:59:42 – 1:59:50). By addressing the audience in this way, Richter, through the voice of Mengele, proposes that the spectator contemplate her own connection to the past and the afterlife of the past in the present.

Fig. 7. Extreme close-up of Mengele's face.

This connection of past and present is suggested, for example, by Rohm's connection to Mengele. The title of Rohm's fictional Mengele biography within the film is called *Einer von*

uns, which suggests a similarity, a single origin shared by both Mengele and Rohm; the title also recalls the fact of Rohm's mother's involvement in the Holocaust, a deeply troubling issue for Rohm that creates a tangential complicity for him as well. Beyond Rohm's connection, the film, at the level of the mise-en-scène, further suggests a similarity between the prosecuting attorney and Mengele. While the prosecutor confronts Mengele with his crimes, Mengele's own face, faintly reflected in the glass booth, looms over the prosecutor's face, suggesting an equivalence or transposition of sorts between the two men (1:02:49; fig. 8). The reflection of Mengele's head in one of the walls of the glass booth calls to mind the earlier editing technique of montage used in the scene and represents another attempt by the film to coerce the spectator into drawing a connection between the prosecutor and the defendant, and by extension, between the viewer and the defendant. This use of reflections on glass has been commonly employed as a cinematic technique of audience manipulation, as for example in *The Specialist*, which uses modern digitization to reflect images of the film shown during the Eichmann trial on Eichmann's glass booth. As an attempt to connect the spectator to the defendant, the scene foreshadows Mengele's direct address to the spectator—his last appeal for clemency and understanding.

Fig. 8. Reflection of Mengele's head on the glass booth superimposed over the prosecutor.

Mengele's speech to the viewer at the end of the film interrupts the credits, which continues the obfuscation of reality and fiction, of truth and dishonesty, until the very end. Vatter points out:

> Durch den direkten Blick in die Kamera durchbricht die Filmfigur Mengele die geschlossene Filmhandlung und nimmt einen unmittelbaren Kontakt zum Zuschauer auf. … [Mengele] verlässt damit den Handlungsspielraum von *Nichts als die Wahrheit* und tritt in die Realität des Kinopublikums ein. (280)

The film maintains the illusion that it might be real until nearly the very end. Finally, after the credits end, the film reveals itself as a fiction—a short sentence of historical fact appears on the screen: "Josef Mengele musste sich nie vor einem deutschen Gericht verantworten. Er starb am 7. Februar 1979 in Brasilien" (1:59:53-2:00:01).

Conclusion

The film *Nichts als die Wahrheit* operates on two functional planes: on the one hand, it attempts to create an authenticity and legitimacy that manipulates its spectators into believing the film to be historical, Mengele truthful, and his rationale during the Holocaust reasonable; on the other hand, the film simultaneously undercuts many of the scenes, techniques, and efforts at authenticity by revealing its own artifice and manipulation, thereby exposing its own role and the role of mass media, in general, in mediating the memory of the past and acting as arbiter between the historical facts and the understanding of them today. In this chapter, I argue that both facets of this dualistic structure—contradictory yet also complementary—function as a warning and a challenge to the spectator: the genuineness of Mengele's defense challenges the spectators to be wary of the moral equivocation of Nazi perpetrators and to consider their own possible

responses, or susceptibilities, to the historical circumstances; while the film's exposure of its own historical mediations warns the spectator to view critically the potential for mass media manipulation, it also urges her to reflect on the limitations and increasing distance of historical memory.

The illusion of reality and truth is created by several means. First of all, the title *Nichts als die Wahrheit* makes an explicit claim to truth, suggesting from the very beginning that the film is going to present the truth. This claim for authenticity and truth continues with regard to the mise-en-scène of the "Prozessauftakt" scene by including Mengele's glass booth, seeking to suggest the verisimilitude of the Mengele trial to the historical Eichmann trial, implying that the fictional Mengele trial is real. In addition to the mise-en-scène, the camera's adoption of a "bird's-eye-view" perspective in the "Prozessauftakt" scene pretends to provide the spectator with an omniscient perspective, that is, providing an access to truth by means of the fictional trial. Further, the fact that unlike most National Socialists and Neo-Nazis Mengele is not a Holocaust denier seemingly lends his testimony more credibility. The first witness testimony scene analyzed above creates authenticity by presenting the fallibility of memory and by reflecting on the creation of memory, that is, the social and communicative aspects of remembering. The scene with the Hungarian witness, whose testimony is translated, creates the illusion of authenticity, since it appeals to the imagination instead of presenting visual images of the past. Rohm's concluding remarks first defend Mengele, creating the illusion that Mengele can be defended, that his atrocities can be explained and justified. Additionally, Mengele's final words interrupt the film's credits and thus break through the closure offered by the plot of the film; that is, Mengele's words disrupt the fictional framework of the film, suggesting that he and his address to the audience are real.

While the film creates the illusion of authenticity and truth, it simultaneously reveals its own manipulative strategies, suggesting that other mass media are similarly manipulative with regard to the memory of the Holocaust and the National Socialist past. By doing so, the film functions as a warning for the spectator to be critical of mediations of the past; the film appeals to the spectator's ability to judge and resist the manipulations of truth and lies presented. Although the title suggests the film's truth, the truncated judicial phrase *Nichts als die Wahrheit*, omiting the speech act "I swear," implies that neither this film nor any other that claims to present the truth is actually able to do so. While the mise-en-scène of the glass booth in the "Prozessauftakt" scene evokes the memory of the Eichmann trial in Jerusalem and functions as a lens through which the spectator follows the events in the courtroom, the contemporary design of the glass booth, as well as its omnipresence, suggested by its reflections, points to the mediatedness of the past and the materiality of the film. This is similar for the camera movement. While the "bird's-eye-view" perspective suggests an omniscience, the 90-degree camera rotation reveals itself as a technical movement, pointing to the materiality of the film. Further, it reveals the ability of film to control, i.e., manipulate, the spectator's perspective. The camera rotation alters the spectator's view on Mengele in a way similar to that of Mengele who seeks to convince the court, the spectators in the courtroom, as well as the spectators of the film to consider his atrocities as benevolent acts instead of mass murder and inhuman experimentation on human subjects. The first witness testimony scene self-referentially reflects on the problem of mediation. That is, it suggests that memory, too, is a form of mediation since memories change over time and are influenced, if not manipulated and corrupted, by the memories of others and the information the mind takes in. By including this reflection on the fallibility of memory, the film points to its own ability to manipulate the memory of the past. The scene depicting the

Hungarian witness's testimony further points to both the film's attempt and ultimate failure to bridge the gap between the past and the present, emphasizing that this gap can never be fully bridged by any means. Although Rohm begins his concluding remarks with a defense of Mengele, he eventually changes course and confronts the film's second and third generation audience with their corruptibility, insinuating that they, too, could be taken in and come to believe Mengele's manipulation.

Richter's fictional courtroom drama *Nichts als die Wahrheit* differs significantly from Arendt's and Weiss's responses to the legal trials. Arendt and Weiss are critical of the legal trials they attended, question their judicial concepts and practices, and by doing so, put the Eichmann and the Frankfurt Auschwitz trials themselves on trial so as to commemorate and convey aspects the legal trials are unable to. In turn, second-generation filmmaker Richter puts the memory of the Nazi past on trial, that is, puts under close scrutiny how the second and third generations remember the Nazi atrocities, exemplified by those of Mengele. Putting the memory of the past, the way the past is remembered, on trial includes the bearers of this memory. While a legal defense of Mengele's crimes might be possible – and might be necessary as a thought experiment in a democratic society like Germany – any justification and excuse of Mengele's, or any other Nazi perpetrator's atrocities, is impossible since it goes directly against the historical facts. Further, to claim that Mengele might have done the morally right thing by killing innocent people, goes against most people's morality and is morally offensive. By means of a mass medium, Richter cautions his viewers to be (more) critical of the presentation of the Nazi past in mass media. *Nichts als die Wahrheit* ironically and subtly reminds viewers that after all, the National Socialists heavily relied on – and benefitted from – the emergence of new mass media, such as radio, for their propaganda to manipulate their audience.

Notes

1. In *Gedächtnismedium Film*, Vatter lists in addition to *Boys from Brazil* other films, in which Mengele appears as a character, such as, Steven Spielberg's *Schindler's List (1993)* and Tim Blake Nelson's 2001 *The Grey Zone* (Vatter 270).

2. In *Das kommunikative Gedächtnis: Eine Theorie der Erinnerung* (2002), Harald Welzer comments on the intended effect of film to present truth:

> Die Produktion von historischer Wahrheit findet gerade auch im Spielfilm statt: Besonders, weil hier Geschichten erzählt und nicht analysiert und bewertet werden, vermittelt sich in ganz besonderer Weise die Suggestion, es hier mit historischen Situationen zu tun zu haben, die zwar nachgestellt sind, nichtsdestotrotz aber der vergangenen Wirklichkeit entsprechen. (188)

Welzer further points out that it is no coincidence that "Regissuere von Historienfilmen größten Wert auf die Authentizität der Drehorte und der Ausstattung [legen]" (188). Richter does not represent an actual historical event, but a hypothetical scenario involving a protagonist who is based on a historical figure, Josef Mengele. Although Richter does not present an actual historical event, he attempts to present the hypothetical scenario of Mengele's trial as if it were real. The research of film scholar Gertrud Koch, for example, in *...kraft der Illusion* (2006), focuses on how films create illusions of reality.

3. Vatter argues that by means of the media coverage:

> … die Geschehnisse im Gerichtssaal einer breiten Öffentlichkeit zugänglich gemacht [werden], die sich mit den Herausforderungen eines derartigen Prozessen [sic] muss – und der Zuschauer wird ein Teil dieser im Film dargestellten

deutschen Gesellschaft und muss sich ebenfalls den aufgeworfenen Fragen stellen. (273)

4. The exact wording may vary by state. The above quotation is from the state of Georgia. (http://law.justia.com/codes/georgia/2010/title-17/chapter-8/article-3/17-8-52). According to §64 of the German *Strafprozessordnung* (StPO), witnesses have to swear the following oath:

> (1) Der Eid mit religiöser Beteuerung wird in der Weise geleistet, dass der Richter an den Zeugen die Worte richtet:
>
> "Sie schwören bei Gott dem Allmächtigen und Allwissenden, dass Sie nach bestem Wissen die reine Wahrheit gesagt und nichts verschwiegen haben"
>
> und der Zeuge hierauf die Worte spricht:
>
> "Ich schwöre es, so wahr mir Gott helfe."

5. According to §130 (3) *Strafgestzbuch,* entitled "Volksverhetzung," Holocaust denial is considered a hate crime:

> (3) Mit Freiheitsstrafe bis zu fünf Jahren oder mit Geldstrafe wird bestraft, wer eine unter der Herrschaft des Nationalsozialismus begangene Handlung der in §6 Abs. 1 des Völkerstrafgesetzbuches bezeichneten Art in einer Weise, die geeignet ist, den öffentlichen Frieden zu stören, öffentlich oder in einer Versammlung billigt, leugnet oder verharmlost. (84)

6. This also evokes the paradox Jean-François Lyotard presents in *The Differend: Phrases in Dispute* (1983):

> His [the plaintiff's] argument is: in order for a place to be identified as a gas chamber, the only eyewitness I will accept would be a victim of this gas chamber; now, according to my opponent, there is no victim that is not dead; otherwise this

> gas chamber would not be what he or she claims it to be. There is, therefore, no gas chamber. (4)

7. Psychologist Elizabeth Loftus researches what has been termed “false memory.” Her theories are especially influential for witnesses in legal trials.

8. Cornelia Vissman analyzes the simultaneous interpretation in the Nuremberg trials and the technology in *Medien der Rechtsprechung*. Hannah Arendt comments on the interpretation during the Eichmann trial.

Chapter Four

Uwe Timm's Memoir *Am Beispiel meines Bruders* (2003): Reflecting on the 1967 Hamburg Trial and Christopher Browning's *Ordinary Men* (1993) as Ways to Investigate One's Connection to the Past

Uwe Timm's memoir *Am Beispiel meines Bruders* resumes where Roland Suso Richter's film *Nichts als die Wahrheit* leaves off. In the final words of the film, the character Mengele provokes the spectators to reflect on their own connection to the past: "Was sehen Sie? Sehen Sie wenigstens ein bißchen von sich selbst in mir?" (1:59:42-1:59:50). In his memoir Timm's examination of his brother's war journal and letters to the family written during his time as a member of the *SS-Totenkopfdivision,* an elite unit of the SS in World War II, in order to reconstruct his brother's character, life, and war experience leads him to investigate himself. He wonders how he would have acted if he had been born earlier, which leads him to the contemplation of his intrinsic connection to the past, investigating how much of the past, such as the values and language of his parents, are still present in him today. The examination of his brother's writings and Timm's self-investigation resemble the thorough search for truth and antagonistic structure of legal trials, while simultaneously criticizing judicial practices, and employing alternative ones.

The metaphor of the legal trial refers to the memoir's interrogative practice as well as the thoroughness with which the narrator examines the questions of who his brother was, in what familial and social conditions he grew up, how these shaped his character, and ultimately influenced his decision to join the SS elite unit – questions which go beyond the judicial scope of criminal guilt. The legal trial metaphor further describes Timm's conflict with his brother's SS membership, which results in the antagonistic composition of the memoir. Timm is unable to

reconcile the family's stories about the brother as a loving and caring son with the brother's own narrative describing himself as a killer as recorded in his war journal. The conflict with his brother results in Timm's conflict with himself and his crisis.

Besides its interrogative and antagonistic structure, the memoir only once explicitly mentions a legal trial: the postwar trial, conducted at the Hamburg regional court in 1967, against fourteen former members of the *Reservepolizeibattaillon 101,* Reserve Police Battalion 101, a special unit of the German Order Police during World War II (*BB* 101). The memoir further alludes to the 1967 Hamburg trial in its repeated references and allusions to Christopher Browning's historical study *Ordinary Men*: *Reserve Police Battalion 101 and the Final Solution in Poland* (1991). The interrogation protocols of 210 former members of the Reserve Police Battalion 101 in preparation for the 1967 Hamburg trial served as Browning's main source in tracing the process from ordinary men to brutal killers.

Several scholars have commented on the references to Browning's *Ordinary Men* in Timm's memoir (Finlay 193; Sathe 58). For example, in his essay, "Jackboots and Jeans: The Private and the Political in Uwe Timm's *Am Beispiel meines Bruders*," Frank Finlay explains the function of Browning's study in Timm's memoir as follows: "His attempts to understand his brother's private and political selves also share Browning's method and perspective, namely of starkly juxtaposing 'the monstrous deeds of the Holocaust … with the human faces of the killers' (Browning xiv)" (Finlay 193). Nikhil Sathe observes in "'Ein Fressen für mein MG': The Problem of German Suffering in Uwe Timm's *Am Beispiel meines Bruders*" that "Timm cites Christopher Browning's study of a reserve unit in Poland, *Ordinary Men*, for example, to illuminate the possibility of being excused from participation in mass killings (103-4)" (58).

Nonetheless, the significance of the Hamburg trial, on which *Ordinary Men* is based, and Timm's use and criticism of judicial practices have not been examined yet in this context.

This chapter analyses and juxtaposes these three approaches – the legal trial, Browning's historical study, and Timm's memoir – to the atrocities of regular men from Hamburg who became Nazi perpetrators, and as such were instrumental in the extermination of the Polish Jewry, to show the similarities and differences between them and the discursive shift from 1967 to 2003. The Hamburg trial presents a first stage, collecting and generating documents and information about the Reserve Police Battalion 101 in its attempt to determine the criminal guilt of the defendants and to render justice. In a second stage, Browning analyses the documents of the legal trial and its preliminary investigations with regard to their historical context and the question of how the men could become such brutal killers.

Timm's literary adaptation of the interrogative and antagonistic judicial practices in combination with Browning's question and methodology represent a third stage. To work out the connections, the similarities and differences, between these three discursive forms, this chapter first describes in chronological order the three different approaches to the same subject: the legal proceedings in Hamburg from 1967, Browning's 1991 historical study of the interrogations, and Timm's memoir from 2003. This chapter will then analyze Timm's memoir, exploring it as a response to Browning's study and the Hamburg trial. Finally, this chapter analyses the relation between the Hamburg trial, Browning's evaluation of what has been testified to in the trial, and Timm's literary adaptation and reworking of both the judicial practices of the Hamburg trial and Browning's methodology and questions in his memoir.

The 1967 Hamburg Trial

In *Das Reservepolizeibattaillon 101 vor Gericht: NS-Täter in Selbst- und Fremddarstellungen* (2007), Jan Kiepe writes a brief history of the 1967 trial in Hamburg. After five years of investigation, the Hamburg trial against fourteen former members of the *Reservepolizeibattaillon 101* began on October 30, 1967, at the Hamburg regional court (Kiepe 71). Based on interrogations of 210 former members conducted by the State Prosecutor in Hamburg from 1962 to 1967, the fourteen defendants, most of whom were from the Hamburg region, were charged with complicity to murder out of base motives (Kiepe 69; Browning 145). They all participated in various functions in the mass killings of about 38,000 Jews in Poland, among them women, children, and the elderly, from April 1942 to November 1943 (Kiepe 69).

Sixty-eight witnesses testified during the trial (Kiepe 66). The first witness was Heinz Bumann, a former member of the Police Reserve Battalion 101. He testified to the possibility of withdrawal from the order to shoot Jewish women, children, and the elderly without any consequences (Kiepe 66; Browning 2). Buman himself accepted Major Wilhelm Trapp's offer to not participate in the mass murder of the Jews in Poland (Kiepe 79). However, there was no evidence of the defendants' presence during Trapp's roll call: "Das Gericht hielt fest, dass der Battaillonskommandeur Trapp ein Freistellungsangebot gemacht hatte. Dies gewusst zu haben, konnte jedoch keinem Angeklagten, der den unteren Chargen angehört hatte, nachgewiesen werden" (Kiepe 79). The Hamburg jury court initially sentenced five defendants with complicity to murder (Kiepe 78, 82). After the appeal proceedings only two served their sentence (Kiepe 82).

Historical Interpretation of the Interrogation Protocols:

Christopher Browning's *Ordinary Men* (1991)

In his 1991 study, *Ordinary Men*, Browning, as a historian, takes up where the Hamburg trial leaves off, mentioning it only in regard to its judgment (145). Although he points to the injustice that the prison sentences were fairly light in view of the atrocities, he emphasizes that the case of the Reserve Police Battalion 101 was nonetheless exceptional, since it "was one of few that led to the trial of any former members of the Order Police" (145-146). Given that the legal trial was one of only six against Reserve Police Battalions (Kiepe), Browning argues that the trial of Reserve Police Battalion has to be considered exceptional since the majority of members of police battalions were never tried (146). Because of his disappointment about the light prison sentences, Browning expresses the hope "that the admirable efforts of the prosecution in preparing this case will serve history better than they have served justice" (146). Browning's evaluation of the sources generated by the legal trial indicates, according to Helga Schnabel-Schüle's "Ego-Dokumente im frühneuzeitlichen Strafprozeß," that the legal trial as a process of establishing truth and working through the past is more significant than the defendants' guilt and the prison sentences (301). While the legal trial might have failed to render justice, its documents are of great value as historical sources.

Browning recalls discovering the interrogation protocols while investigating complex historical questions of how, for example, the Germans planned and conducted the extermination of Jewish communities in Poland from May 1942 to February 1943 (xvi). Working thoroughly through the Central Agency for the State Administrations of Justice's collection of legal trial records for German trials of Nazi crimes committed against Polish Jews, he discovered the

indictment of the legal proceedings of the Reserve Police Battalion 101 (Browning xvi). In the preface, he describes the deep impression the indictment of the Hamburg trial had on him:

> Though I had been studying archival documents and court records of the Holocaust for nearly twenty years, the impact this indictment had upon me was singularly powerful and disturbing. Never before had I encountered the issue of choice so dramatically framed by the course of events and so openly discussed by at least some of the perpetrators. Never before had I seen the monstrous deeds of the Holocaust so starkly juxtaposed with the human faces of the killers. (Browning xvi)

Because of Browning's sense of the ordinariness of the men in combination with their participation in mass murder, he attempts to understand how these seemingly average and normal men could become such brutal killers despite the choice they were given not to participate.

To pursue this question, Browning began analyzing the protocols of the interrogations of the Reserve Police Battalion 101, archived in the Office of the State Prosecutor in Hamburg, which ultimately became the main source material for *Ordinary Men* (146). The approach of examining interrogation protocols as historic sources turns the legal trial into a preliminary procedure, which generates documents and information that historians examine with regard to questions different from those of the legal trial. Unlike the Hamburg trial, which seeks to establish objectives facts to determine the criminal guilt of the defendants, Browning is interested in how the policemen experienced their participation in the mass murder of the Jews in Poland. This question is rather subjective, neither seeks to accuse nor to punish, but traces the process that turned seemingly ordinary men into brutal mass murderers (Browning xix, 37).

The former members of the Reserve Police Battalion 101 serve Browning as samples to answer this central question of how and why ordinary people, such as the men from Hamburg, did not resist but instead decided to participate in mass murder. Related to this question, Browning seeks to trace turning points during Reserve Police Battalion's time in Poland, such as: "What happened in the unit when they first killed? What choices, if any, did they have, and how did they respond? What happened to the men as the killing stretched on week after week, month after month?" (Browning 37).

Unlike the legal trial, Browning is not interested in the legal question of individual criminal guilt. Unlike a court trial, which seeks to punish and to render justice, Browning examines the historical context, conditions, and myriad factors that contributed to the transformation of these average working-class men from Hamburg into brutal killers. While the principle of the legal trial, *in dubio pro reo*, assumes a defendant's innocence until his guilt is proven, Browning's interest in understanding the men is based on two related assumptions that inform his historical approach. First of all, he considers the killers as human beings instead of demons: "Clearly the writing of such a history requires the rejection of demonization. The policemen in the battalion who carried out the massacres and deportations, like the much smaller number who refused or evaded, were human beings" (Browning xx). Browning's attempt to understand consequently leads him to the realization that he could have been a killer under the same circumstances: "in the same situation, I could have been either a killer or an evader – both were human – if I want to understand and explain the behavior of both as best as I can" (xx). Yet, he emphasizes that explaining and understanding are not to be equated with excusing and forgiving them their atrocities (xx).

Browning's approach recognizes a different standpoint, which is absent in the accounts of the members of the Reserve Police Battalion 101. Instead of expressing empathy towards their victims, they consider themselves as victims of mass murder themselves, that is, they claim that having participated in mass murder traumatized them – without considering the pain and suffering they inflicted on their victims: "Even twenty or twenty-five years later those who did quit shooting along the way overwhelmingly cited sheer physical revulsion against what they were doing as the prime motive but did not express any ethical or political principles behind this revulsion" (74). While Browning suggests that they might only consider their own suffering and not the suffering they inflicted upon others, he continues following the judicial principle *in dubio pro reo* while studying their statements. He grants the former members interrogated the benefit of the doubt, acknowledging that their educational background might have prevented them from "a sophisticated articulation of abstract principles" (74), such as "ethical principles" and "humane instincts" towards their victims (74).

Browning defines his methodology as "*Alltagsgeschichte* – 'the history of everyday life' – achieved through a 'thick description' of the common experiences of ordinary people" (xix; italics in original). Given the men's demographics – the majority of them was from the Hamburg area, "by reputation one of the least nazified cities in Germany," from a lower-class background, with no formal school education after the age of fourteen or fifteen – which means that their formative period falls in the pre-Nazi era (Browning 48) – Browning considers them "ordinary men," and adds: "[t]hese men would not seem to have been a very promising group from which to recruit mass murderers on behalf of the Nazi vision of a racial utopia free of Jews" (48).

Browning's questions, methodology, approach, and analysis of sources lead him to conclude that a combination of different factors contributed to the transformation of ordinary

men into brutal killers, such as the "pressure of conformity" (71); values, especially obedience (74); career ambitions (75); "a twofold division of labor," in which "[t]he bulk of the killing was to be removed to the extermination camp, and the worst of the on-the-spot 'dirty work' was to be assigned to the Trawnikis" (77); and the "depersonalization of the killing process" at the massacre at Lomazy (85), as well as habituation: "killing was something one could get used to" (85). The historian concludes from the transcripts of the judicial interrogations that "the story of Reserve Police Battalion 101 demonstrates mass murder and routine had become one. Normality itself had become exceedingly abnormal" (Browning xix). Browning ends his study with the provocative question "[i]f the men of Reserve Police Battalion 101 could become killers under such circumstances, what group of men cannot?" (189). With this question, he asks his readers to contemplate how they would have acted under similar circumstances and urges their prevention.

Uwe Timm *Am Beispiel meines Bruders*

Timm combines concepts and procedures of legal trials with questions, the approach, and methodology of Browning. Although Timm only once explicitly mentions the Hamburg trial in his memoir, his implicit criticism of the legal trial, its concepts and procedures, and his repeated references to Christopher Browning's *Ordinary Men*, indicate that they function as subtexts for his memoir, significantly informing the question, approach, sources, methodology, and conclusions of his memoir. Timm mentions the 1967 Hamburg trial in the memoir as follows:

> Vom Juli 1942 bis November 1943 wurden von den Männern des Reservepolizeibattallions 101 nach *Vollzugsmeldung* 38000 Juden erschossen. 1967 wurde gegen 14 Mitglieder des Battaillons ein Prozeß in Hamburg eröffnet. Drei Offiziere wurden zu jeweils acht Jahren, zwei Unterführer zu einmal fünf, einmal sechs Jahren Gefängnis verurteilt. Die anderen verließen als freie Männer

> das Gericht. Keiner der Angeklagten zeigte ein Unrechtsbewusstsein. Alle beriefen sich auf Befehl und Gehorsam. Die Strafen wurden später stark reduziert. (*BB* 101; italics in original)

In a precise declarative sentence Timm provides factual background information about the crimes of the Reserve Police Battalion 101 for which they were tried, including dates and the number of victims. Timm briefly summarizes their crimes, which Browning traces in detail in his study, with regard to the number of victims they murdered. Striking is Timm's use of the Nazi term "*Vollzugsmeldung*" (*BB* 101) as opposed to neutral terms like "Bericht" or "Aufzeichnung." This technical term, typical of Nazi ideology, is also an economic term that complies with the factual information provided in the sentence and suggesting that the mass killings were planned and rationalized. The term and the factual information provided echo Timm's brother's notion of "Buchführung" – a term by which he refers to his activity of keeping a war journal (*BB* 120, 146, 155). The rational activity of bookkeeping involves the exact meticulous recording of figures and dates, of expenses, and income. While it appears to be diametrically opposed to the reflective activity of keeping a journal and to Timm's associative and fragmentary composition of the memoir, it reflects the rationality and brutality with which the National Socialists conducted the genocide of the Jews.

The brief and factual mentioning of the atrocities of the Reserve Police Battalion 101 and the Hamburg trial implies Timm's criticism of the legal trial, its concepts and procedures, regarding: 1) the trial's omission of the perspective of the victims and the underlying conditions of the crimes; 2) the trial's incapability to render justice; and 3) the trial's inability to evoke a sense of guilt in the convicts. The dominance of factual information in the memoir's trial passage, such as dates, numbers of perpetrators and victims, and years of imprisonment, suggests

that the legal proceedings reduce the Nazi atrocities to the number of victims and terms of imprisonment, that is, to criminal guilt and the judicial sentence. Consequently, the judicial approach excludes, for example, the experience of the suffering of the victims, the underlying conditions and motivations of the crimes, and their implications for the future.

Additionally, although Timm does not explicitly comment on the atrocities and the judicial procedure, the juxtaposition of numbers allows for their easy comparison, pointing to the injustice that the perpetrators only received short prison sentences for their atrocities. For example, the extremely high number of 38,000 victims contrasts with the short amount of time, precisely sixteen months, in which the Reserve Police Battalion 101 perpetrated their mass killings; the high number of the victims further contrasts with the significantly lower number of five hundred members of the Police Reserve Battalion 101, further suggesting their efficient brutality; the fact that there were five hundred members of the Police Reserve Battalion 101, in turn, contrasts with the fact that only fourteen were brought to trial; and the high number of 38,000 victims contrasts with the short prison sentences of up to a maximum of eight years. Timm omits the indictment, the testimonies, and judgment, and instead reduces the legal trial to its sentence. This is consistent with the judicial purpose of convicting the defendants, punishing them, and rendering justice – which failed in this specific case.

A comparison of a passage from Browning and Timm about the sentence of the Hamburg trial shows how Timm reworks the information provided by Browning in his memoir so as to contextualize his brother's narrative, while also criticizing and countering the legal approach that diminished the crimes, by imposing such short prison sentences:

> From late 1962 to early 1967, 210 former members of the battalion were interrogated, many of them more than once. Fourteen were indicted: Captains

> Hoffmann and Wohlauf; Lieutnant Drucker; Sergeants Steinmetz, Bentheim, Bekemeier, and Grund; Corporals Grafmann* and Mehler*; and five reserve policemen. The trial began in October 1967, and the verdict was rendered the following April. Hoffmann, Wohlauf, and Drucker were sentenced to eight years, Bentheim to six, Bekemeier to five. Grafmann and the five reserve policemen were declared guilty, but at the judges' discretion … they were given no sentence. (Browning 145)

While Browning lists the names of the defendants in conjunction with their sentence, *Am Beispiel meines Bruders* condenses this detailed information, grouping the convicts solely by the number of years of imprisonment. The memoir omits the names of the defendants since they are irrelevant for the purpose of illustrating the legal trial's failure to render justice. Further, since Browning states in his introduction that he had to change most of the men's real names for confidentiality reasons, this information becomes even more superfluous for the memoir (Browning xx).

In lieu of mentioning the defendants' names, Timm only refers to them by their rank. This complies with the legal assumption that their rank determined their involvement in the crimes and consequently their sentence. The anonymity in the memoir further corresponds to the convicts' absence of any sense of guilt, something indicated by their defense strategy. They argued that they were only following orders – which is contrary to testimonies by others. Browning does not mention the convicts' absence of any sense of guilt or their claim only to have followed orders in the context of the judgment in this passage. By inserting the convicts' lack of sense of guilt in the memoir, the memoir further points to the failings of the legal trial –

that is, that it failed to confront the perpetrators with their crimes and to evoke in them any feeling of guilt or empathy for their victims.

Timm's implicit criticisms of the legal trial further coincide with his major criticisms of his brother's war journal and letters to the family. He notices the lack of empathy towards the victims and their almost complete absence in the brother's writings, an aspect Sathe focuses on in his article in the context of the question of German suffering. For example, Timm notes that the destruction of houses in Ukraine "wird von ihm niedergeschrieben, ohne auch nur einen Augenblick eine Verbindung zwischen den zerstörten Häusern in der Ukraine und den zerbombten Häusern in Hamburg zu sehen" (*BB* 89). Timm cannot understand his brother's inconsistency in drawing connections between the suffering of his own family in Hamburg, which he calls inhumane, and the suffering he himself causes in Ukraine: "Die Tötung von Zivilisten hier normaler Alltag, nicht einmal erwähnenswert, dort hingegen Mord" (*BB* 90; Sathe 63). This is similar to Browning's findings that the former members of the Reserve Police Battalion 101 never mention anything about their victims and the suffering they caused but present themselves as victims, suffering from the gruesome task of killing others (74).

Timm attempts to oppose both the legal trial's rationalization of the killings and the brother's writings by including quotations from literary works by Holocaust survivors, such as Primo Levi and Jean Améry, to give the victims a voice. For example, he quotes extensively from Jean Améry's "An den Grenzen des Geistes," an essay in his book *Jenseits von Schuld und Sühne: Bewältigungsversuche eines Überwältigten* (1966) about the suffering of the victims, who are deprived of everything that used to be able to constitute meaning and give consolation:

> *Wie die Gedichtstrophe von den sprachlos stehenden Mauern und den im Winde klirrenden Fahnen verloren auch die philosophischen Aussagen ihre*

> *Transzendenz und wurden vor uns teils zu sachlichen Feststellungen, teils zu ödem Geplapper: Wo sie etwas meinten, erschienen sie trivial, und wo sie nicht trivial waren, dort meinten sie nichts mehr. Dies zu erkennen bedurften wir keiner semantischen Analyse und keiner logischen Syntax: ein Blick auf die Wachttürme, das Schnuppern nach dem Fettbrandgeruch der Krematorien genügte.* (*BB* 59-60; italics in original; Améry 43)

Because of the legal trial's focus on criminal guilt and its punitive purpose, it disregards the underlying conditions and values, how, and why the men from Hamburg became mass murderers – questions the narrator also raises about his brother. Timm asks who his brother was and in what familial and social conditions he grew up in order to understand how he became a mass murderer. Obedience is one of the values the narrator mentions throughout the memoir that he himself also learned from his parents:

> Der Junge kann sich nicht erinnern, von den Eltern je zu einem Nichtgehorsam ermuntert worden zu sein, auch nicht von der Mutter – raushalten, vorsichtig sein ja, aber nicht das Neinsagen, die Verweigerung, der Ungehorsam. Die Erziehung zur Tapferkeit – die ja immer als Tapferkeit im Verband gedacht war – führte zu einer zivilen Ängstlichkeit. (*BB* 69)

Timm's realization that his parents emphasized obedience and courage as central values in his own upbringing serves him as one possible explanation of why the brother joined the SS elite unit. He connects values like obedience and courage to camaraderie; that is, they usually assume value when shared by others. Timm's observation corresponds to Browning's claim that peer pressure is one reason why the majority of the members of the Reserve Police Battalion 101 did not resist; many of those who stepped out faced chicanery from their comrades (Browning 71,

74). Further, the fact that Timm explains his inability to write about his brother while his mother and sister were still alive indicates that these values are still part of him today. Once they died, he says, "war ich frei, über ihn [den Bruder] zu schreiben, und frei meint, alle Fragen stellen zu können, auf nichts, auf niemanden Rücksicht nehmen zu müssen" (*BB* 10).

Reflecting the values of his parents' and brother's generations prompts Timm to contemplate in what way certain conditions and values of the past are still present today:

> Über den Bruder schreiben, heißt auch über ihn schreiben, den Vater. Die Ähnlichkeit zu ihm, meine, ist zu erkennen über die Ähnlichkeit, meine, zum Bruder. Sich ihnen anzunähern, ist der Versuch, das bloß Behaltene in Erinnerung aufzulösen, sich neu zu finden. (*BB* 18)

Timm wonders how similar he is to his brother since they grew up in the same familial structures and social milieu. He investigates how much of the past, such as the values of his father and Nazi language, are still part of him today and how he would have acted if he had been born earlier. Although Timm does not explicitly articulate these questions in the memoir, Sven Hanuschek in his essay, "Kippfiguren in Uwe Timms Doppelbiografie *Am Beispiel meines Bruders* (2003)," identifies the narrator's search as "[ein] wesentliches Motiv für die ganze Rekonstruktion" (9). In an interview with Gerrit Bartels in *Die Tageszeitung,* entitled "'Ich wollte das mit aller Härte,'" from September 13, 2003, Timm explains that the following hypothetical questions underlie his project:

> Aus dem kurzen Leben meines Bruders ergeben sich viele Fragen auch für mich: Woher komme ich? Was für eine Erziehung habe ich genossen? Was steckt davon noch in mir? Und ganz wichtig: Wie hätte ich gehandelt? Ich würde es mir zwar

> wünschen, aber ich kann leider nicht sagen, ich hätte mich ganz verweigert. (Timm)

Timm's approach towards his brother, critical but seeking to understand, to consider him as a human being, and wondering whether he might have reacted the same way under similar circumstances, contrasts, for example, with the brother's dehumanization of Russians. It resembles in this regard Browning's approach, seeking to understand without excusing or forgiving his brother. For example, he counters his brother's sadness about the destruction of Hamburg with the short sentence: "Juden war das Betreten des Luftschutzraums verboten" (*BB* 37-38), thereby undermining his brother's sense of victimhood by shifting the focus to the actual victims (Sathe 62). Unlike Browning's historical study, however, Timm is emotionally involved because of his family ties. Therefore, his reconstruction of is brother's life turns into a search for his own identity and precipitates a crisis.

The thought that he himself might not have resisted under similar conditions leads Timm to be more self-critical. For example, he recalls feeling like a traitor when he resigned his party membership (*BB* 147). He does not further specify of which party he used to be a member. While his membership in the *Deutsche Kommunistische Partei* (*DKP*) from 1973-1981 is well known, the actual party he refers to in this context seems to be irrelevant. Timm's contemplations turn into a self-interrogation, which is grounded in the understanding of his intrinsic connection to the past, a point Jürgen Habermas makes in his essay, "Vom öffentlichen Gebrauch der Historie: Das offizielle Selbstverständnis der Bundesrepublik bricht auf," published on November 7, 1968, in *Die Zeit*. That text is a response to an article by historian Erich Nolte published in the *Frankfurter Allgemeine Zeitung* and set off the so-called *Historikerstreit* in 1986-1987, about the debate of the meaning of the Holocaust and its aftermath in Germany:

> Nach wie vor gibt es die einfache Tatsache, daß auch die Nachgeborenen in einer Lebensform aufgewachsen sind, in der *das* möglich war. Mit jenem Lebenszusammenhang, in dem Auschwitz möglich war, ist unser eigenes Leben nicht etwa durch kontingente Umstände, sondern innerlich verknüpft. Unsere Lebensform ist mit der Lebensform unserer Eltern und Großeltern verbunden durch ein schwer entwirrbares Geflecht von familialen, örtlichen, politischen, auch intellektuellen Überlieferungen – durch ein geschichtliches Milieu also, das uns erst zu dem gemacht hat, was und wer wir heute sind. Niemand von uns kann sich aus diesem Milieu herausstehlen, weil mit ihm unsere Identität, sowohl als Individuen wie als Deutsche, unauflöslich verwoben ist. (12; italics in original)

Finlay points out that Timm's awareness that his "identity is relational, developed collaboratively with others, and that a key conduit for the transmission of values is a family," is implied from the memoir's outset (193). The memoir begins with Timm's first memory of his brother, which simultaneously constitutes his first memory of himself: "Erhoben werden – Lachen, Jubel, eine unbändige Freude – diese Empfindung begleitet die Erinnerung an ein Erlebnis, ein Bild, das erste, das sich mir eingeprägt hat, mit ihm beginnt für mich das Wissen von mir selbst, das Gedächtnis" (*BB* 7). The concurrence of Timm's first memory of himself and the recollection of his brother indicates their interconnectedness. Further, the memoir ends with the last words of the brother's journal: "*Hiermit schließe ich mein Tagebuch, da ich für unsinnig halte, über so grausame Dinge wie sie manchmal geschehen, Buch zu führen*" (*BB* 154; italics in original). The beginning and ending of the memoir create a frame from which Timm cannot escape. Ending the memoir with a quotation from his brother's final journal entry shows that, unlike the legal trial, there is no closure for Timm himself. Unlike the legal trial, *Am Beispiel*

meines Bruders does not consider the past to be over, but examines and presents its afterlife in the present.

Another major difference between the legal trial and Timm's memoir is the focus on the question of justice. While the Hamburg trial attempts to render justice, but, fails to do so, as indicated by the short prison sentences, *Am Beispiel meines Bruders* omits the question of judicial justice, and instead examines whether the brother felt any sense of guilt: "Erkannte er etwas wie Täterschaft, Schuldigkeit, Unrecht?" (*BB* 88). According to Timm, the journal entry, "[*s*]*cheinbar haben diese Leute hier unten noch nichts mit der SS zu tun gehabt,*" is the only passage in which the brother calls into question "diesen Mythos von der anständigen, tapferen Waffen-SS" (*BB* 88; italics in original). He further quotes his brother's last journal entry from September 19, 1943, three times: "*Hiermit schließe ich mein Tagebuch, da ich für unsinnig halte, über so grausame Dinge wie sie manchmal geschehen, Buch zu führen*" (*BB* 120, 147, 154; italics in orginial). The second time he quotes it, he wonders whether this can be interpreted as an admission of guilt that also includes "die Gegner und Opfer … die russischen Soldaten und Zivilisten? Die Juden?" (*BB* 147-148). The passage does not provide any information about the victims. Therefore, Timm's interpretation is rather speculative and not supported by textual evidence (Sathe 68). However, Timm is aware that he needs to be careful and has to interpret his brother's writings and his father's stories critically and objectively: "Ich … muß mich davor hüten, aus der Beschreibung des Erinnerungsvorgangs in wunschgelenkte Mutmaßungen zu kommen" (*BB* 76).

This impulse, of which Timm is aware, to remember the brother and father as members of the resistance, confirms the observations of social psychologists Harald Welzer, Sabine Moller, and Karoline Tschuggnall, in their study of family memories, *"Opa war kein Nazi":*

Nationalsozialismus und Holocaust im Familiengedächtnis (2002). Their analysis of forty family conversations and 142 interviews about the experience and memories of World War II and the Holocaust, shows a

> paradoxe Folge der gelungenen Aufklärung über nationalsozialistische Vergangenheit: Je umfassender das Wissen über Kriegsverbrechen, Verfolgung und Vernichtung ist, desto stärker fordern die familiären Loyalitätsverpflichtungen, Geschichten zu entwickeln, die beides zu vereinbaren erlauben – die Verbrechen "der Nazis" oder "der Deutschen" und die moralische Integrität der Eltern oder Großeltern. (Welzer, Moller, and Tschuggnall 53)

Connected to the question of whether his brother realized his guilt in the past, Timm contemplates whether his brother would acknowledge his guilt today if Browning's study, his own journal, or this memoir confronted him with it (Sathe 68-69):

> Was würde der Bruder, hätte er überlebt, zu diesem Buch *Ganz normale Männer* sagen? Wie würde er sich heute zu seiner Militärzeit stellen? Wäre er Mitglied in einem der Kameradschaftsverbände der SS? Was würde er sagen, wenn er heute diesen Satz lesen würde: *75m raucht Iwan Zigaretten, ein Fressen für mein MG?* (*BB* 150; italics in original)

The questions concerning his brother's sense of guilt will never be answered since the brother is dead. But the hypothetical question of how the brother might react or might have reacted to his and others' atrocities during the Nazi era, further opens up Timm's family story to the reader who is, in turn, encouraged to wonder how she would have acted.

In order to carry out his explanation of his brother, Timm carefully reads his brother's war journal entries and letters to the family:

> Ich wollte die Eintragungen des Bruders mit dem Kriegstagebuch seiner Division, der *SS-Totenkopfdivision*, vergleichen, um so Genaueres und über seine Stichworte Hinausgehendes zu erfahren. Aber jedesmal, wenn ich in das Tagebuch oder in die Briefe hineinlas, brach ich die Lektüre bald schon wieder ab. (*BB* 9; italics in original)

Timm mediates his brother's story through quotations from the latter's writings and family memories. Since Timm is sixteen years younger than his brother, a "*Nachkömmling,*" and the brother died when he was about three years old, he has only one vague first-hand memory about him (*BB* 7, 8). His knowledge of his brother is limited to a few basic facts, for instance, that the brother was born in 1924 and worked as a furrier before joining the *SS-Totenkopfdivision* as a "Panzerpionier" in December 1942 (*BB* 12): "Der Bruder hatte Kürschner gelernt. Er war gern Kürschner gewesen erzählte die Mutter" (*BB* 39). He is described as 1,85m tall with blond hair and blue eyes (*BB* 12). During his time in the SS, he sent letters to the family and began keeping a journal in Russia:

> Die Eintragungen in seinem Tagebuch beginnen im Frühjahr 1943, am 14. Februar, und enden am 6.8.43, sechs Wochen vor seiner Verwundung, zehn Wochen vor seinem Tod. Kein Tag ist ausgelassen. Dann, plötzlich, brechen sie ab. (*BB* 14)

According to a letter addressed to his father from September 30, 1943, the brother was wounded on September 19, 1943: "*[I]ch bekam ein Panzerbüchsenschuß durch beide Beine die die (sic!) sie mir nun abgenommen haben. Daß (sic!) rechte Bein haben sie unterm Knie abgenommen und daß linke Bein wurde am Oberschenkel abgenommen*" (*BB* 8; italics in original). He died about

two weeks after he wrote the letter: "Am 16.10.1943 um 20 Uhr starb er in dem Feldlazarett" (*BB* 8).

Timm's thorough reading of his brother's written testimonies resembles a judicial investigation since he interrogates the documents to find answers to the questions presented above. Unlike in legal proceedings, Timm does not accuse his brother of a specific crime – he assumes, for example, his brother's guilt of having shot a Russian soldier in ambush – but implicitly charges his brother with being guilty for joining the SS voluntarily, for not resisting, and for not showing any sign of remorse. In addition, Timm accuses the brother for his lack of empathy for the victims and his failure to acknowledge the suffering he has caused. A prosecutor could never indict a defendant for these acts in a legal trial like the 1967 Hamburg trial, since trial proceedings investigate criminal guilt, and not moral guilt. The juxtaposition of quotations from the brother's war journal and letters to the family, on the one hand, and the narrator's contradictions of them, which constitutes Timm's story, on the other, is antagonistic and thus resembles the conflicting parties in a trial. What complicates matters, however, is that unlike the defendant in a trial, the brother cannot defend himself any more since he is dead. Only his writings are able to accomplish this task.

In addition to Timm's interrogative approach, the interrogation of the brother's writings also resembles Browning's methodology of "*Alltagsgeschichte,*" since he analyzes the war letters and journal entries of his brother as well as his parents' memories in order to reconstruct the historical, social, and familial conditions of his brother's life, which contributed to his becoming a mass murderer (Browning xix). While the interrogation protocols of 210 men Browning empirically examines serve the historian as samples, that is, as a random selection of perpetrators, in the effort to determine the transformation of ordinary men into mass murderers,

Timm only examines his brother, whose war experience and biography he considers representative of the life of a German man born between World War I and II. The exemplary function of the brother's biography is already suggested by the title *Am Beispiel meines Bruders*. The term "Beispiel" implies that the memoir intends to serve as an "exemplum" to demonstrate something by means of the brother's specific life story. Lanham defines "exemplum" as "an illustrative story or anecdote" (Lanham 74). An exemplum is further a paradigm, a "model, example, lesson" (Lanham 107). According to Finlay, Timm's family story is representative of many during the first half of the twentieth century (Finlay 194). As such, the function of the memoir as example is to historically contextualize the life of the Timm family. It provides a lesson about the past and the various influences of how the brother became a perpetrator.

The title *Am Beispiel meines Bruders*, further alludes to Browning, whose book title *Ordinary Men* is translated in German as *Ganz normale Männer*: *Das Reserve-Polizeibatallion 101 und die "Endlösung" in Polen* (1993). The term "Beispiel" implies that the brother is unexceptional, ordinary, that his life is representative for many men. Timm's brother is a specific example of an ordinary man who became a Nazi perpetrator. The illustrative and didactic functions of the example aim to explain complex abstract phenomena, something that distinguishes the works of Browning and Timm from legal trials. While in legal trials the defendant is always a specific person charged with specific crimes, and thus cannot be replaced, Browning's empirical samples and Timm's brother as a specific example of an average German man who became a Nazi perpetrator are representative of historical conditions and thus can be substituted – that is, other samples and examples would have shown the same results. While the brother's story is replaceable as an example of an average German who became a mass murderer, the memoir emphasizes the brother's extraordinariness for the Timm family, that he is

irreplaceable as a family member. Going beyond Browning's historical study, Timm's notion of example further suggests that his approach and questions are applicable to readers of the second and third generation, that is, that they can imitate his approach. The presentation of Timm's brother as both a specific person and as example allows readers to draw connections to him and his situation. It thereby encourages them to explore their own family history and to contemplate how they would have acted. As the end of the memoir suggests, this might be an open-ended and continuous process of investigation and reflection.

Browning recalls that the reading of the indictment of the Hamburg trial made such a deep impression on him that he decided to examine the legal case of the Reserve Police Battalion further. In Timm's case, it is the following passage from his brother's war journal that initially prevented him from reading the passage further, but which eventually encouraged him to deal with the subject of his brother as a killer:

> *März 21.*
>
> *Donez*
>
> *Brückenkopf über den Donez. 75 m raucht Iwan Zigaretten, ein Fressen für mein MG.*
>
> (*BB* 16, 17, 33, 98, 150; italics in original)

In "'Ein Fressen für mein MG': The Problem of German Suffering in Uwe Timm's *Am Beispiel meines Bruders*" Sathe analyses this passage with regard to Timm's irreconcilable conflict between his brother as a loved family member and a brutal killer: "Echoing throughout Timm's book, this passage is a constant reminder that any attempt to get closer to his brother and understand his motivations and come to terms with his death will force Timm to confront the

reality of his actions" (Sathe 57). Further, Timm's working through of this passage shows progression, indicating a growing resistance to the brother:

> Das war die Stelle, bei der ich, stieß ich früher darauf … nicht weiterlas, sondern das Heft wegschloß. Und erst mit dem Entschluß, über den Bruder, also auch über mich zu schreiben, das Erinnern zuzulassen, war ich bereit, dem dort *Festgeschriebenen* nachzugehen. (*BB* 16-17; italics in original)

He explains that writing about the brother simultaneously means writing about himself, which points once again to their interconnectedness. Timm does not further elaborate why this passage prevented him from reading the journal. But his reflections in the following repetitions on the content and the violent rhetoric indicate that the crime and the brother's language, which shows no sign of remorse or guilt, appall him. Through repetitions and reflections the narrator slowly works through this passage.

In the brother's journal entry, the male Russian surname "Iwan" is used as a derogatory term (Sathe 57). It functions as a pars pro toto and indicates that the brother does not consider the Russian soldier as an individual but as representative of all Russians (Sathe 57). The derogatory pars pro toto is part of the linguistic dehumanization, which precedes and seemingly legitimizes the killings. Timm reflects on the phenomenon of how language prepares and facilitates the killings: "Es ist die angelernte Sprache, die das Töten erleichtert: Untermenschen, Parasiten, Ungeziefer, deren Leben schmutzig, verkommen, vertiert ist. Das auszuräuchern ist eine hygienische Maßnahme" (*BB* 91) – an aspect Browning observes as well (73, 85). In this context, he notes that his brother's journal entries contain neither explicit justifications for killing nor any ideological declarations, but rather record the daily war routine: "In dem Tagebuch findet sich keine ausdrückliche Tötungsrechtfertigung, keine Ideologie, wie sie in dem weltanschaulichen

Unterricht der SS vorgetragen wurde. Es ist der *normale* Blick auf den Kriegsalltag" (*BB* 91). This observation corresponds to Browning's finding that anti-Semitism is only rarely mentioned in the interrogations and that the Reserve Police Battalion 101 got used to war: "With few exceptions the whole question of anti-Semitism is marked by silence. … It would seem that even if the men of Reserve Police Battalion 101 had not consciously adopted the anti-Semitic doctrines of the regime, they had at least accepted the assimilation of the Jews into the image of the enemy" (Browning 72-73).

While Browning's study has to adhere to the standards of historical scholarship and accuracy, such that the reader expects it to be complete, Timm's memoir may even engage in selective remembering. Therefore, the reader cannot know for sure whether Timm might have omitted anti-Semitic quotations from his brother's war letters and journal in his memoir. The genre convention of the memoir implies that it is only a selection of memories centered around a specific event, that is, that the memoir, unlike a historical study, makes no claims of being a complete account. How and which memories are passed on among family members of different generations is the focus of Welzer, Moller, and Tschugall's *"Opa war kein Nazi": Nationalsozialismus und Holocaust im Familiengedächtnis*. Their evaluation of the family interviews and memories finds, for example, that different generations alter and reinterpret memories of family members with the effect that some aspects and facts get lost although they may want to be truthful and may even believe that they are. Already the title *"Opa war kein Nazi"* – a quotation from one of the interviews – indicates that German family memory, for example, refuses to remember relatives as National Socialists. Instead, children and grandchildren consider their relatives for example as either victims or members of the resistance. While the memory of Nazis as victims is historically wrong, and it is in general certainly

problematic to remember a Nazi as a member of the resistance, Welzer, Moller, and Tschugall do see a value in this reframing:

> denn immerhin lässt sich ja aus den umgedichteten Geschichten von Heldentum, Widerstand und Zivilcourage der Großeltern die vielleicht praktisch wirksame Alltagstheorie ableiten, dass individueller Widerstand auch in totalitären Zusammenhängen möglich und sinnvoll ist, dass es, emphatisch gesagt, auf die Verantwortung des Einzelnen ankommt. (78)

Although there may not be any anti-Semitic comments and any ideological remarks in the brother's war journal, the brother's language confirms Browning's observation of the acceptance of Russians as enemies because the dehumanization of the Russian soldier in the brother's journal increases. The Russian soldier, smoking a cigarette in the distance, turns from a stereotypical Russian "Iwan" into "ein Fressen," food for the machine gun, for the brother, depriving him of any human status and right to live, and justifies the killing. The vulgar term "Fressen," further suggests the brother's pleasure in killing. It is an allusion to the German idiomatic expression "ein gefundenes Fressen," meaning that something one has been waiting for eventually becomes true. As such it is a euphemism that conceals the murder. While the description of the Russian soldier is limited to his dehumanization, the brother personifies his machine gun. The personification contrasts with the active and explicit statement that he killed a Russian soldier in ambush. The euphemism, the personification of the machine gun, the omission of the personal pronoun "I," and omission of a verb, that is, an activity, in this entry prevent even the slightest emergence of any sense of guilt. The absence of reflection is further indicated by the use of the verb "rauchen" in the present tense, which suggests that the brother records this situation without any distance.

After Timm's initial fear of reading the war journal, he decides to confront his anxiety by repeating the passage (*BB* 9). The next time he quotes it two times; at the beginning and the end of a paragraph, so that it functions as a frame. At the beginning of the paragraph the quotation functions as a trigger for Timm's imagination and writing process. Based on the scarce information the brother provides, Timm pictures meticulously the situation of the Russian soldier smoking, inhaling and exhaling the smoke. He contemplates the soldier's thoughts, invents his biography, and conceives of the landscape. Just as his father makes corrections to the brother's sketch of a lion, Timm inserts a narrative into the void his brother created by killing the Russian soldier and counters his telegraphic style with meditative questions, empathizing with the Russian soldier. Timm shifts from the perspective of his brother and his machine gun to the point of view of the Russian. The shift in perspective also suggests that the Russian solider might still be alive if his brother had regarded him as a human being. Opposing the brother's perspective and emphasizing the death of the Russian soldier, Timm resembles a prosecutor arguing in favor of the victim.

In response to the question, "An was wird er [der russische Soldat] gedacht haben?", Timm considers several hypothetical answers, listed in an incomplete question: "An den Tee, etwas Brot, an die Freundin, die Mutter, den Vater?" (*BB* 17). Unlike his brother's dehumanizing and violent rhetoric, Timm's questions present and "imagine" the Russian soldier as a human being with needs, thoughts, feelings, and a family (Sathe 59). This passage is one of the few fictional passages in the memoir (Sathe 59). It demonstrates and performs the ability of fiction to imagine and to empathize – a crucial ability for Timm. The narrator's criticism of the Hamburg trial pertains to the legal trial's incapacity to evoke either empathy for the victims or a sense of guilt in the defendants, an incapacity caused by the trial's focus on facts and criminality rather

than war crimes. The fragmentary question as a response suggests that this question will remain unanswered, and thus signifies the Russian soldier's death.

Timm's rhetoric differs from his brother's telegraphic journal entry. Like the majority of the brother's journal entries, the passage recording the killing of the Russian soldier is brief, factual, and in note form, with no personal information about the brother himself and no expression of feelings, either about himself, or any others, besides his family – in this sense, it resembles Timm's summary of the Hamburg trial (*BB* 101). While the brother records factual information, such as dates, distances, places, and war activities, like "Jede Stunde warten wir auf Einsatz. Ab ½ 10 Alarmbereitschaft," Timm describes everything in meticulous detail, imagines, and asks questions to clarify (*BB* 141; italics in original).

At the end of the passage, the quotation functions like an echo and a response to the last question, "An was wird er gedacht haben, der Russe, der Iwan, in dem Moment?" (*BB* 17). It is a variation of Timm's initial question since the narrator inserts his brother's terminology, thereby combining his own with his brother's words. This insertion "Iwan" interrupts Timm's question and contrasts with the contemplation of what the Russian soldier might have thought right before he died. The question further emphasizes once more the Russian soldier's death since it will remain unanswered. In response to this question, Timm again reiterates the brother's sentence. Because of the omission of the preposition "an," the phrase, "Ein Fressen für mein MG," does not fit grammatically as a response. The ellipsis creates a rupture pointing to the opposite: the Russian soldier's obliviousness to being considered someone's "Fressen" while smoking. The brother's quotation at the end of this contemplative passage abruptly ends Timm's peaceful fictional, empathetic narrative and brings himself as well as the reader back to the brutal reality that his brother killed a Russian soldier without showing any remorse.

The phrase is repeated one last time towards the end of the memoir when Timm places it as a concluding remark of a paragraph. In four rhetorical questions in the subjunctive, which echo those the narrator considers in the context of the Russian soldier, he contemplates his brother's response today to the past. He wonders how his brother would react to Browning's book *Ordinary Men*, what he would think about his time in the *SS-Totenkopfdivision*, and whether he would be a member of one of the "*Kameradschaftsverbände*" of the SS (*BB* 150; italics in original). These hypothetical questions climactically lead to the ultimate question: "Was würde er sagen, wenn er heute diesen Satz lesen würde: *75 m raucht Iwan Zigaretten, ein Fressen für mein MG?*" (*BB* 150; italics in original).

While this hypothetical question will never be answered, the reading of literary works by Holocaust survivors and Browning's historical study further provide Timm with an access to the past and allow him to find answers. Timm reflects on his perusal of the interrogations of the former members of the Reserve Police Battalion 101 presented in Browning's book and his discovery that the members "als der Befehl kam, jüdische Zivilisten zu erschießen, Männer, Frauen und Kinder, den Befehl hätten verweigern können, ohne Disziplinarverfahren befürchten zu müssen" (*BB* 100). Timm's reaction to Browning's findings – that out of five hundred Reserve Police Battalion members only twelve decided to not partake in the mass killings – echoes Browning's shock mentioned above (Browning xvi):

> Diejenigen – also die meisten, man müsste sagen, fast alle –, die nicht vortraten, nicht nein sagten, die gehorchten, töteten, nach anfänglichen Skrupeln, von Mal zu Mal selbstverständlicher, rücksichtsloser, mechanischer – Tatbeschreibungen, die zu lesen man sich zwingen muß – das Unfaßliche. (*BB* 100)

Unlike the historian Browning, Timm expresses his shock in response to the atrocities committed by the Reserve Police Battalion 101 in the form of a fragmentary syntax.

The demonstrative pronoun "Diejenigen" designates the emphatic beginning of two parts of one sentence: "Diejenigen … die nicht vortraten" and "Diejenigen … Tatbeschreibungen, die zu lesen man sich zwingen muß" (*BB* 100). This rhetorical figure, in which one word or part of a sentence refers to two other parts, is called *apokoinu* (Wilpert 43). The word or phrase that connects them both, in this case "Diejenigen," is called *koinon* (Wilpert 43). The elliptic and emphatic apokoinu construction is often used in ancient Greek and Roman epics, as well as in Middle High German literature, such as the *Nibelungenlied* (Wilpert 43). Thus in this context it ironically evokes the genre of the epic – many of which share the glorification of war and violence.

Timm is neither able to complete each individual sentence, nor to connect both sentences syntactically in one complete sentence. The elliptical syntax suggests a break with the rhetorical tradition of the apokoinu as glorification of war and violence, suggesting that the mass murderers of the Reserve Police Battalion 101 are not to be considered heroes. Instead of praising heroic deeds, the elliptical apokoinu construction expresses the narrator's shock about the Reserve Police Battalion's 101 atrocities, echoing his shock in response to his brother's war journal.

The Relation between the Hamburg Trial, Browning's *Ordinary Men*, and Timm's *Am Beispiel meines Bruders*

The Hamburg trial, Browning's interpretation of it, and Timm's memoir all deal with the same topic, the crimes and atrocities committed by seemingly ordinary men from Hamburg during World War II, but they approach it from different perspectives and with different purposes. The legal trial investigates the individual criminal guilt of the defendants based on

evidence and witness testimonies to determine the sentence and to render justice. The prison sentences in the Hamburg trial were relatively short compared to the atrocities of the convicts. Further, the legal trial was incapable of confronting the defendants with their guilt and to evoke any sense of empathy with the victims. The legal trial's focus on the crimes disregards their underlying structures and ideology and the suffering inflicted on the victims. The judicial sentence encloses the crimes in the past and thus neither encourages the defendants to draw connections between the past and the present nor prompts their relatives to reflect on how they, themselves, are connected to the atrocities. A byproduct of the judicial practice of determining judicial truth is that the legal trial produces knowledge and documents about the Holocaust, such as specific dates, numbers of victims, and testimonies, and interrogation protocols, which may then further be examined by scholars from different fields and perspectives. In this sense, the Hamburg trial functions as the first stage of working through the past by producing fundamental knowledge and facts about the past.

The interpretation and evaluation of what has been testified to prior to and by the legal trial by the historian Browning marks a second stage. Browning's study begins where the trial leaves off; he analyzes and evaluates the interrogation protocols of 210 former members of the Reserve Police Battalion 101 prior to the legal trial with regard to the question of how these seemingly ordinary men could become mass murderers. Despite Browning's crucial differences from the legal trial with regard to his questions and methodology, he still employs the judicial principle *in dubio pro reo*, assuming that, for example, a sample interrogation is truthful and accurate, unless proven otherwise. While the defendant in a legal trial is a specific individual, on trial for and accused of specific crimes, the historian uses the 210 interrogation protocols as samples for his study, which assumes that different samples would have come to similar

findings. Browning further draws from Stanley Milgram's findings that "'[m]en are led to kill with little difficulty'" (173). By now a famous and well-known social psychological experiment, Milgram asked test persons to inflict an actor/victim with electric shocks to determine their obedience. Although Browning acknowledges that the conditions in which Milgram conducted his experiment differ significantly from those in Józefów, where the Reserve Police Battalion 101 killed, he finds Milgram's findings confirmed in the testimonies of the Reserve Police Battalion 101 (174). Browning's own research in combination with social psychologist Milgram's research, leads him to conclude in his study that almost any group of men could become mass murderers under similar circumstances.

The thorough investigation of his brother's written testimonies resembles a judicial investigation since Timm interrogates the documents to find out answers to the questions presented above. However, Timm's approach is not accusatory: he assumes, for example, his brother's guilt of having shot a Russian soldier in ambush. Instead of investigating the brother's criminal guilt, the memoir examines the underlying conditions and values, how, and why his brother became a mass murderer. Timm implicitly criticizes the legal trial for failing to take the perspective and experience of suffering of the victims into account. He attempts to oppose both the legal trial's rationalization of the killings and the brother's writings by including quotations from literary works by Holocaust survivors, such as Primo Levi and Jean Améry, to give the victims a voice. This inclusion of voices of victims might be an attempt of an alternative justice to the failed judicial justice.

In addition to rendering alternative justice, Timm further examines whether the brother felt any sense of guilt. Timm is disappointed and shocked that his brother joined the SS voluntarily, did not resist, and failed to show any sign of remorse. In addition, he judges the

brother for his lack of empathy for the victims and his failure to acknowledge the suffering he has caused. Opposing the brother's perspective and arguing in favor of his victims, Timm resembles a prosecutor representing a plaintiff. Because of the memoir's antagonistic structure, going back and forth between quotations from his brother and Timm's comments and responses, it resembles the conflicting parties in a legal trial. Unlike in legal proceedings, there is no closure for Timm himself, which indicates that Timm does not consider the past to be over, but rather examines and presents its afterlife in the present as well as in his own connection to his brother's crimes.

The interrogation of the brother's writings in *Am Beispiel meines Bruders* resembles Browning's methodology of "*Alltagsgeschichte,*" since Timm analyzes the war letters and journal entries of his brother to reconstruct the historical, social, and familial conditions of his brother's life, which contributed to his becoming a mass murderer (Browning xix). Timm's critical approach resembles Browning's, but unlike Browning Timm is emotionally involved because of his family ties. The investigation of the social, familial, and ideological structures in which his brother grew up go beyond the trial and Browning's general historical interest, because Timm wonders how much of his brother is still present in him today since they grew up in the same family. Therefore, the investigation of his brother's war journal and letters turns into a search for his own identity and a crisis, wondering how he would have acted – a crucial difference to Browning, who acknowledges the possibility that under these circumstances everyone could become a mass murderer, but does not further thematize his own shock about this fact since it is a historical study and not a personal memoir.

While Browning samples the interrogation protocols of 210 men, Timm only examines his brother, whose war experience and biography he considers representative of the life of a

German man born between World War I and II. Both Browning and Timm find similar answers to their question of how ordinary men from Hamburg could become mass murderers, for example, peer pressure, as well as the normality of war. While the brother's story is replaceable as an example of an average German who became a mass murder, the memoir simultaneously emphasizes the brother's extraordinariness for the Timm family, that he is irreplaceable as a family member.

Further, the legal trial and Browning's study proceed teleologically and come to a definite end – the trial ends with the judgment and Browning concludes his examination by adducing multiple reasons how the defendants became perpetrators. However, *Am Beispiel meines Bruders* does not lead Timm to any closure; Timm's inner conflict is not resolved. Going beyond Browning's historical study, Timm's notion of an "example" seeks to confront readers with their own past and with that of their family members. The "example" suggests that Timm's approach and questions might be applicable to readers of the second and third generation, that is, to encourage them to imitate his approach. The presentation of Timm's brother as both a specific person and as an example allows readers to draw connections to him and his situation, and by doing so encourages them to contemplate their intrinsic connection to the past as well as to investigate their own family history.

Conclusion

Timm continues Arendt's and Weiss's criticism of the legal trial's incapacity to adequately work through the Nazi past for reasons similar to theirs. Nevertheless his approach resembles key characteristics of judicial proceedings, which he combines with Browning's historiographical questions, approach, and methodology. Timm's findings regarding his brother's participation in the Nazi mass murder resemble Browning's. He goes beyond Browning, though,

when he investigates his own intrinsic connection to the past and contemplates how he would have acted if he had been born earlier. Timm's self-investigation is a result of his relationship with his brother, with whom, despite not having really known him in person, he identifies. However, unlike Mengele's appeal to the viewer to identify with him so as to justify and whitewash his crimes in *Nichts als die Wahrheit*, Timm neither excuses nor forgives his brother for his crimes or lack of a sense of guilt.

Conclusion

Despite their differences, especially with regard to form and to the forty year gap between publication dates, the literary trials examined in this dissertation share numerous characteristics: they allude in myriad ways to legal trials in general and to historical Holocaust trials in particular, such as the Eichmann trial in Jerusalem, the Nuremberg trials, the Frankfurt Auschwitz trial, and the Hamburg trial. While these references are explicit in Arendt's *Eichmann in Jerusalem*, Weiss's oratorio, and Richter's fictional Mengele trial, they are subtle in Timm's memoir, but nonetheless crucial. The authors quote and refer to the atrocities as they are documented in the (unofficial) trial records and historical sources. The artistic trials work through, change, rework, and rearrange the transcripts of the legal trials and other structural elements of the trials in such ways that they critically reflect upon and engage with the legal trial, its form, concepts, practices, and purposes. By doing so, the artistic works not only criticize but also correct what they consider the pitfalls of the legal trial proceedings in order to more adequately work through the past.

Further, the artistic trials share a common effort to examine and make visible the origins and ideology of National Socialism, including its manifestations in Nazi terminology, which made possible the atrocities and that, they fear, survive into the present day. For example, Arendt emphasizes Eichmann's use of phrases and proverbs, which are empty formulas and which testify, according to her, to his inability to consider a differing standpoint; Weiss omits the word "Jude" since the National Socialists perverted it; and Timm italicizes Nazi terminology, illuminating the fact that some words are still commonly used today without knowledge of their origin. The focus of the fictional trials on the suffering of the victims and National Socialist ideology aims to encourage readers and spectators to reflect upon and contemplate their own

connection to the past. They seek to appeal to their audiences' imagination – Arendt by contemplating how utterly different the world would be if more people used their own judgment during National Socialism; in Weiss and Richter's case by means of a non-scenic presentation of the atrocities; and Timm by imagining the perspective of the victim. In doing so, they seek to evoke the question of how each audience member would have acted in a similar situation and how, in such situations, they would judge what they are presented.

The involvement of reader and spectator also owes a debt to the practices of Brechtian epic theater, which the literary trials employ despite their different genres. Theatrical elements evoking practices of epic theater, such as the montage technique with its principle of interruption, the inclusion of dramatic and epic parts, and ironic narrator comments that seek to achieve a "Verfremdungseffekt," *distanciation effect*, can be found in narrative texts, such as Arendt's and Timm's, as well as in Weiss's drama and Richter's cinematic courtroom drama. In his letter to Arendt quoted in the introduction, Jaspers responds that he likes "Ihre Auffassung" that the Nazi atrocities exceed criminal guilt "… aber sie müßte anders herauskommen (wie, das weiß ich noch nicht)" (*Briefwechsel* 99). He rejects "Dichtung" as an approach to the atrocities of the Holocaust – having Shakespeare's great villains in mind, who possess demonic "Größe." These Brechtian practices of epic theater and the *Lehrstück* employed in the literary trials refuse to see "Größe" in the crimes of the Nazi perpetrators. Instead they recognize and bring out the Nazi perpetrators' banality – something crucial to Jaspers. For example, Browning's title *Ordinary Men*, already suggests that the men of the Police Reserve Battalion were normal, average men; he rejects their demonization since it would mean that a search for the cause of their atrocities is superfluous as evil does not require any explanation (Browning xx); and he even makes a point that "[t]hese men would not seem to have been a very promising group from

which to recruit mass murderers on behalf of the Nazi vision of a racial utopia free of Jews" (Browning 48). Timm, whose memoir is informed by Browning's approach, agrees with Arendt's thesis of the banality of evil when he calls his memoir a *Beispiel*, and by doing so, he points out that his brother and his life are representative of many German men during that time – an observation that does not in any way seek to relativize his guilt and excuse his crimes. In fact, on the contrary, this realization makes both Browning and Timm contemplate their own intrinsic connection to the past – in the hopes of appealing to the reader in a similar way.

The use of these practices and techniques from epic theater in the fictional trials connects them closely to the legal trials, while simultaneously allowing them to go beyond the latter. In *Theaters of Justice: Judging, Staging, and Working Through in Arendt, Brecht, and Delbo* (2010), Yasco Horsman references Tretiakov, who argues that Brecht's *Lehrstücke* show "'the transition from the theater into the tribunal … [Brecht] transforms the spectator's chair into that of the judge'" (Horsman 93, quoting Tretiakov).

Another technique shared by the artistic trials in which the reader and spectator is turned into a judge is the re-writing or omission of a judgment at the end.[1] Whereas legal trials intend to attain closure with the judgment, the artistic trials seek to reopen the legal cases and by doing so, revisit the past. Engaging readers and spectators in critical thinking and the act of rational judging appears to be crucial for the authors in their attempt to work through the Holocaust and its origins. They all share the underlying assumption that the Holocaust could have been prevented if more people had relied on their own rational judgment and had been empathetic – that is, considered things from someone else's perspective – as a basis for resistance. Richter carries this idea so far as to ask his viewers directly to consider the perspective of the perpetrator

Mengele – a thought experiment that allows him to show the viewer that it is impossible to whitewash and excuse Mengele's guilt and respectively that of the National Socialists.

Further, the open-endedness of the fictional trials suggests that there is no fair judgment and no justice – as already pointed out by Arendt in her letter to Jaspers. The absence of a judgment at the end also seems to be a refusal to consider the past and its structures to be over – another aspect Arendt touches upon, when she says that "die Deutschen sind … mit Tausenden oder Zehntausenden oder Hunderttausenden belastet, die innerhalb eines Rechtssystems adäquat nicht mehr zu bestrafen sind … . (91). By exhuming Mengele, Richter shows that the structures of the past might still be alive and active in the late 1990s. Similarly, Timm demonstrates in his memoir that although his brother and father might be dead, many of their values continue to live on in him. Revisiting the past also serves the epideictic function of commemoration – first and foremost that of the victims and their suffering, for which the Eichmann trial had allowed. Unlike Arendt and Weiss, as second-generation filmmakers and writers, Richter and Timm further reflect on the effect that time, i.e., temporal distance, has on memory and the perception of the past and how memories can be manipulated and distorted, for example through mass media.

The comparison of legal trials and literary trials by first and second generation authors and filmmakers shows the influence of the legal trials on the artistic trials as well as the influence of the first generation on the second. The visual references to the Eichmann trial in Jerusalem in Richter's *Nichts als die Wahrheit* – he places the fictional character Mengele in a glass booth for example – suggest that the film not only remembers the Holocaust but also one of the first major media events that confronted a world audience with the Nazi atrocities. Reflecting on the Eichmann trial as a media event includes the realization that it is mediated event, that is, that it

can and may be manipulated. Richter's film takes this capability of mass media, film in particular, to manipulate and distort facts to another level by having the defense attorney argue that Mengele's crimes can be explained as merciful acts of euthanasia, which also shows the trickiness of lawyers.

While Timm only mentions the Hamburg trial marginally, he shows the Holocaust trials' continuous significance for the process of working through the past. The recording of facts testified to in the legal Holocaust trials are crucial documents, serving as the basis for our knowledge about and access to the past – now and in the future, as Timm's thorough reading of Browning shows. Although highly skeptical of the outcome of the legal concepts and practices of the Hamburg trial, Timm shows their usefulness when, for example, the interrogative approach of legal trials is adapted and applied to his brother's war journal and letters to the family.

This dissertation contributes to current scholarly debates by comparing legal Holocaust trials to their artistic engagements, arguing that both of these attempts of working through the past are complementary and that artistic trials are able to convey and commemorate aspects of the past that legal trials omit or misrepresent.

Notes

1. These observations not only hold true for the works examined in this dissertation, but also for other fictional works that either directly engage with legal trials and their documents or include a fictional trial, such as Robert Shaw's *The Man in the Glass Booth* (1967), Edgar Hilsenrath's novel *Der Nazi und der Frisör* (1977), and Robert Schindel's novel *Gebürtig* (1992).

Works Cited

Adorno, Theodor Wiesengrund. "Was bedeutet Aufarbeitung der Vergangenheit?" Adorno, Theodor W., and Rolf Tiedemann. *Kulturkritik und Gesellschaft*. 1 Aufl ed. Frankfurt am Main: Suhrkamp, 1977. His Gesammelte Schriften; Bd. 10. 555-572.

Althen, Michael. "Unsere Leichen leben noch: Roland Suso Richter und Götz George exhumieren Josef Mengele: *Nichts als die Wahrheit*." http://michaelalthen.de/. 23 September 1999. Web. <http://michaelalthen.de/filmkritiken/nichts-als-die-wahrheit/>.

Améry, Jean. "An den Grenzen des Geistes." *Jenseits von Schuld und Sühne: Bewältigungsversuche eines Überwältigten.* Stuttgart: Klett-Cotta: 1980. 18-45.

Arendt, Hannah. *Eichmann in Jerusalem: A Report on the Banality of Evil*. Introduction by Amos Elon. New York: Penguin, 2006.

---. *Eichmann in Jerusalem: Ein Bericht von der Banalität des Bösen*. Zürich/München: Piper, 2009.

---. "Der Auschwitzprozess." *Nach Auschwitz: Essays und Kommentare I.* Eds. Eike Geisel and K. Bittermann. Tiamat ed. Vol. 1. Berlin: 1989. 99-136.

---. "Der Dichter Bertolt Brecht." *Die Neue Rundschau*. 1/1950.

---. "Der Fall Eichmann und die Deutschen: Ein Gespräch mit Thilo Koch (1964)." *Gespräche mit Hannah Arendt*. Ed. Adelbert Reif. München: Piper, 1976. 35-40.

---. *Responsibility and Judgment.* New York: Random House, 2003.

---. *Über das Böse: Eine Vorlesung zu Fragen der Ethik.* Zürich/München: Piper, 2007.

---, Karl Jaspers. *Hannah Arendt, Karl Jaspers: Briefwechsel 1926-1969*. München: Piper, 1985.

---, Adelbert Reif. *Gespräche mit Hannah Arendt*. München: R. Piper, 1976.

Aristotle. *Rhetorik*. Transl. and Ed. by Gernot Krapinger. Stuttgart: Reclam, 2010.

--- *Poetics*. Translated and Edited by Preston H. Epps.The University of North Carolina Press, 1970.

Bauer, Fritz. *Die Humanität der Rechtsordnung: Ausgewählte Schriften*. Eds. Joachim Perels and Irmtrud Wojak. Frankfurt am Main/ New York: Campus Verlag, 1998.

---. "Im Namen des Volkes: Die strafrechtliche Bewältigung der Vergangenheit." *Die Humanität der Rechtsordnung: Ausgewählte Schriften*. Eds. Joachim Perels and Irmtrud Wojak. Frankfurt am Main/ New York: Campus Verlag, 1998. 77-91.

---. "Wir aber wollen Male Richten Euch zum Gedächtnis." *Dortmunder Vorträge.* Hrsg.: Kulturamt der Stadt Dortmund. H. 46 in der Reihe Dortmunder Vorträge (1960).

---. *Die Kriegsverbrecher vor Gericht*. Zürich, New York: Europa Verlag, 1945.

---, Peter Weiss. "Auschwitz Auf Dem Theater? Ein Podiumsgespräch im Württembergischen Staatstheater Stuttgart Am 24. Oktober 1965 aus Anlaß der Erstauffürhung der *Ermittlung.*" *Deutsche Nachkriegsliteratur und der Holocaust.* Eds. Stephan Braese, et al. Frankfurt/New York: Campus Verlag, 1998. 71-97.

Beise, Arnd. "Ein Markstein der Literaturgeschichte: Peter Weiss' *Die Ermittlung* ist als Hörbuch und in einer kommentierten Neuausgabe neu zugänglich gemacht." *literaturkritik.de.* 5 May 2007. Web. <http://www.literaturkritik.de/public/rezension.php?rez_id=10749>.

Benjamin, Walter. *Versuche über Brecht.* Ed. Rolf Tiedemann. Frankfurt am Main: Suhrkamp, 1972.

Best, Otto F. *Handbuch literarischer Fachbegriffe: Definitionen und Beispiele*. Frankfurt am Main: Fischer Handbücher, 1972.

Bloxham, Donald: *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory*. Oxford University Press, 2001.

Braese, Stephan (Ed.). *Rechenschaften: Juristischer und literarischer Diskurs in der Auseinandersetzung mit den NS-Massenverbrechen*. Göttingen: Wallstein 2004.

---, "'In einer deutschen Angelegenheit' – Der Frankfurter Auschwitz-Prozess in der westdeutschen Nachkriegsliteratur." Irmtrud Wojak (Ed.): *'Gerichtstag halten über uns selbst…': Geschichte und Wirkung des ersten Frankfurter Auschwitz Prozesses.* Frankfurt/New York: Campus Verlag, 2001. 217-243.

Brecht, Bertolt. "Das epische Theater." *Schriften zum Theater 3: 1933 – 1947.* Ed. Werner Hecht. Frankfurt am Main: Suhrkamp. 1963-1964. 51-65.

---. "Kleines Gespräch mit dem ungläubigen Thomas."*Schriften zum Theater 3: 1933 – 1947.* Ed. Werner Hecht. Frankfurt am Main: Suhrkamp Verlag, 1963. 65-69.

---. "Über experimentelles Theater." *Schriften zum Theater 3: 1933 – 1947.* Ed. Werner Hecht. Frankfurt am Main: Suhrkamp Verlag, 1963. 79-106.

---. "Kurze Beschreibung einer neuen Technik der Schauspielkunst, die einen Verfremdungseffekt hervorbringt." *Schriften zum Theater 3: 1933 – 1947.* Ed. Werner Hecht. Frankfurt am Main: Suhrkamp Verlag, 1963. 155-164.

---. "Der V-Effekt als eine Prozedur des täglichen Lebens." *Schriften zum Theater 3: 1933 – 1947.* Ed. Werner Hecht. Frankfurt am Main: Suhrkamp. 1963-1964. 174-177.

---. "Non Verbis, Sed Gestibus!" *Schriften zum Theater 3: 1933 – 1947.* Ed. Werner Hecht. Frankfurt am Main: Suhrkamp Verlag, 1963. 201.

---. "Über die Verwendung von Musik für ein episches Theater." *Schriften zum Theater 3: 1933 – 1947.* Ed. Werner Hecht. Frankfurt am Main: Suhrkamp Verlag, 1963. 267-281.

---. "Über gestische Musik." *Schriften zum Theater 3: 1933 – 1947.* Ed. Werner Hecht. Frankfurt am Main: Suhrkamp Verlag, 1963. 281-285.

Brecht, Bertolt. "Zu den Lehrstücken." *Schriften zum Theater 4: 1933 – 1947.* Ed. Werner Hecht. Frankfurt am Main: Suhrkamp Verlag, 1963. 78-82.

---. "Zu 'Der Aufhaltsame Aufstieg des Arturo Ui.'" *Schriften zum Theater 4: 1933 – 1947*. Ed. Werner Hecht. Frankfurt am Main: Suhrkamp, 1963-1964. 162-168.

---. "Über reimlose Lyrik mit unregelmäßigen Rhythmen." *Ausgewählte Werke in Sechs Bänden*. Jubiläumsausgabe zum 100 Geburtstag; 1 Aufl ed. Frankfurt am Main: Suhrkamp Verlag, 1997. 288-296. Web.

---, Reiner Steinweg. *Die Maßnahme: Kritische Ausgabe mit einer Spielanleitung*. 1 Aufl ed. Frankfurt am Main: Suhrkamp, 1972. Edition Suhrkamp.

Bilsky, Leora. "Between Justice and Politics: The Competition of Storytellers in the Eichmann Trial." *Hannah Arendt in Jerusalem.* Ed. Steven E. Aschheim. Berkeley: University of California Press, 2001. 232-252.

Brooks, Peter and Gewirtz Paul, eds. *Law's Stories: Narrative and Rhetoric in the Law.* New Haven: Yale University Press, 1996.

Browning, Christopher R. *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland*. New York, NY: Aaron Asher Books, 1992.

Cicero, Marcus Tullius, James M. May, and Jakob Wisse. *Cicero on the Ideal Orator (De Oratore)*. New York: Oxford University Press, 2001.

Cohen, Robert. "Brief an Uwe Timm über sein Buch *Am Beispiel Meines Bruders*." *Das Argument* (254), 2004: 8-9.

Douglas, Lawrence. *The Memory of Judgment: Making Law and History in the Trials of the Holocaust*. New Haven: Yale University Press, 2005.

---. "Film as Witness: Screening *Nazi Concentration Camps* before the Nuremberg Tribunal." Yale Law Journal (105 n2). November 1995 (1995): 449-481.

Eisenstein, Sergei M. "A Dialectic Approach to Film Form." *Theory and Criticism: Introductory Readings.* Eds. Gerald Mast, Marshall Cohen, and Leo Braudy. 4th ed. New York: Oxford University Press, 1992. 138-154.

---. "A Statement on Sound." *Theory and Criticism: Introductory Readings*. Eds. Gerald Mast, Marshall Cohen, and Leo Braudy. 4th ed. New York: Oxford University Press, 1992. 317-319.

Felman, Shoshana. *The Juridical Unconscious: Trials and Trauma in the Twentieth Century.* Cambridge: Harvard University Press, 2002.

---, Dori Laub. *Testimony: Crises of Witnessing in Literature, Psychoanalysis, and History.* New York/London: Routledge, 1992.

Finger, Jürgen, Sven Keller, Andreas Wirsching (Eds.). *Vom Recht zur Geschichte: Akten aus NS-Prozessen als Quellen der Zeitgeschichte.* Göttingen: Vandenhoeck and Ruprecht, 2009.

Frank, Finlay. "Jackboots and Jeans: The Private and the Political in Uwe Timm's *Am Beispiel meines Bruders*." *Germans as Victims in the Literary Fiction of the Berlin Republic.* Eds. Stuart Taberner and Karina Berger. Rochester (N.Y.): Camden House, 2009. 191-204.

France, Peter. "The Rhetoric of Translation." The Modern Language Review v100 (2005).

Friedman, Michel. "Gut gemeint ist nicht gut: Michel Friedman kritisiert den Mengele-Film *Nichts als die Wahrheit*." Interview with Thomas E. Schmidt. *Die Welt*. September 20, 1999. Web. http://www.welt.de/print-welt/article584488/Gut-gemeint-ist-nicht-gut.html

Fritz Bauer Institut, ed. '*Gerichtstag halten über uns selbst…' Geschichte und Wirkung des ersten Frankfurter Auschwitz-Prozesses: Jahrbuch 2001 zur Geschichte und Wirkung des Holocaust.* Frankfurt am Main: Campus Verlag, 2001.

Fröhlich, Claudia. "Der 'Ulmer Einsatzgruppen-Prozess' 1958: Warhnehmung und Wirkung des ersten großen Holocaust-Prozesses." Vollnhals, Clemens and Jörg Osterloh (Eds.). *NS-Prozesse und deutsche Öffentlichkeit: Besatzungszeit, frühe Bundesrepublik und DDR.* Weinheim: Vandenhoeck & Ruprecht, 2011. 233-262.

Gewirtz, Paul. "Victims and Voyeurs: Two Narrative Problems at the Criminal Trial." *Law's Stories: Narrative and Rhetoric in the Law.* Ed. Peter Brooks and Paul Gewirtz. New Haven: Yale University Press, 1996. 135-161.

Gfrereis, Heike, ed. *Grundbegriffe der Literaturwissenschaft.* Stuttgart/Weimar: Metzler, 1999.

Habermas, Jürgen. "Vom öffentlichen Gebrauch der Historie: Das offizielle Selbstverständnis der Bundesrepublik bricht auf." *Die Zeit*. 7 November 1986. 12-13.

Halbwachs, Maurice, and Lewis A. Coser. *On Collective Memory*. Chicago: University of Chicago Press, 1992. Heritage of Sociology.

Hanuschek, Sven. "*Kippfiguren:* Uwe Timms Doppelbiographie *Am Beispiel meines Bruders* (2003)." *Uwe Timm – Lauter Lesarten: Beiträge Zur Poetik Der Gegenwartsliteratur.* Ed. Olaf Kutzmutz. Tagungsband ed. Bundesakademie für kulturelle Bildung Wolffenbüttel, 2009. 42-59.

Hausner, Gideon. *Justice in Jerusalem*. New York: Schocken Books, 1968. Print.

Hirsch, Marianne. *Family Frames: Photography, Narrative, and Postmemory*. Cambridge: Harvard University Press, 1997.

Horsman, Yasco. *Theaters of Justice: Judging, Staging, and Working Through in Arendt, Brecht, and Delbo*. Stanford University Press: 2011.

International Military Tribunal. *Trial of the Major War Criminals before the International Military Tribunal: Nuremberg, 14 November 1945-1 October 1946*. Volume II. Nuremberg, Ger:, 1947; 1949.

Jaspers, Karl. *Die Schuldfrage.* Heidelberg: L. Schneider, 1946.

Kershaw, Ian. *Popular Opinion and Political Dissent in the Third Reich: Bavaria 1933-1945.* Oxford: Clarendon Press, 1983.

Kiepe, Jan. *Das Reservepolizeibattaillon 101 Vor Gericht: NS-Täter in Selbst-Und Fremddarstellungen.* Hamburg: LIT Verlag, 2007.

Klemperer, Viktor. *LTI: Notizbuch eines Philologen.* Berlin: Aufbau Verlag, 1947.

Knott, Marie Luise. "Die verlorene Generation und der Totalitarismus: Hannah Arendt liest Bertolt Brecht." *Dichterisch Denken: Hannah Arendt und die Künste.* Ed. Wolfgang Heuer and Irmela von der Lühne. Göttingen: Wallstein Verlag, 2007. 50-62.

Koch, Gertrud, Christiane Voss (Eds.). *...kraft der Illusion.* München: Wilhelm Fink Verlag, 2006.

Köhler, Lotte and Hans Saner (Eds.). *Hannah Arendt/Karl Jaspsers: Briefwechsel 1926-1969*. München: Piper, 1985.

Koepnick, Lutz. "Reframing the Past: Heritage Cinema and Holocaust in the 1990s." New German Critique No.87 (Autumn 2002): 47. Web.

Krause, Peter: *Der Eichmann-Prozess in der deutschen Presse*. Campus Verlag, 2002.

---. "'Eichmann und wir'. Die bundesdeutsche Öffentlichkeit und der Jerusalemer Eichmann-Prozess 1961." Vollnhals, Clemens and Jörg Osterloh (Eds.). *NS-Prozesse und deutsche Öffentlichkeit: Besatzungszeit, frühe Bundesrepublik und DDR.* Weinheim: Vandenhoeck and Ruprecht, 2011. 283-306.

Kowald, Cäcilie. "Das Deutschsprachige Oratorienlibretto 1945-2000: Annäherung an eine Vernachlässigte Gattung." Dissertation TU Berlin, 2007. Web.

Krabiel, Klaus-Dieter. *Brechts Lehrstücke: Entstehung und Entwicklung eines Spieltyps.* Stuttgart: Metzler, 1993.

Krause, Rolf. *Faschismus als Theorie und Erfahrung: 'Die Ermittlung' und ihr Autor Peter Weiss*. Frankfurt am Main/Bern: Lang, 1982.

Krummacher, Friedrich Arnold. *Die Kontroverse: Hannah Arendt, Eichmann und die Juden.* Nymphenburger Verlagshandlung, 1964.

Langbein, Hermann. *Der Auschwitz Prozeß: Eine Dokumentation*. 2 Vol. Wien: Europa Verlag, 1965.

Lanham, Richard A. *A Handlist of Rhetorical Terms*. Berkeley: University of California Press, 1991.

Laqueur, Walter. "Hannah Arendt." *America, Europe, and the Soviet Union: Selected Essays*. New Brunswick: Transaction Books, 1983. 159-175.

Lindner, Burkhardt. "Protokoll, Memoria, Schattensprache: 'Die Ermittlung' von Peter Weiss ist kein Dokumentartheater." *Rechenschaften: Juristischer und literarischer Diskurs in der Auseinandersetzung mit den NS-Massenverbrechen*. Ed. Stephan Braese. Göttingen: Wallstein, 2004. 131-145.

Lipstadt, Deborah E. *The Eichmann Trial: Jewish Encounters*. New York: Schocken Books, 2011.

Lyotard, Jean-François. *The Differend: Phrases in Dispute*. Translation by Georges Van Den Abbeele. Manchester: Manchester University Press, 1988.

Marrus, Michael Robert. *The Nuremberg War Crimes Trial, 1945-46: A Documentary History*. Macmillan, 1997.

McGlothlin, Erin Heather. *Second-Generation Holocaust Literature: Legacies of Survival and Perpetration*. Rochester, NY: Camden House, 2006.

Meyer, Marita. *Eine Ermittlung: Fragen an Peter Weiss und an die Literatur des Holocaust.* Röhrig Universitätsverlag: 2000.

Mitscherlich, Alexander and Margarete: *Die Unfähigkeit zu trauern: Grundlagen kollektiven Verhaltens.* München: Piper Verlag, 2009.

Monaco, James. *How to Read a Film: The Art, Technology, Language, History, and Theory of Film and Media*. New York: Oxford University Press, 1981.

Mulisch, Harry. *Criminal Case 40/61, The Trial of Adolf Eichmann: An Eyewitness Account.* Translated by Robert Naborn. Philadelphia: University of Pennsylvania Press, 2005.

Naumann, Bernd: *Auschwitz: Bericht über die Strafsache Mulka u. a. vor dem Schwurgericht Frankfurt*. Berlin/Wien 2004/ Bonn: 1965.

---. *Auschwitz: A Report on the Proceedings Against Robert Karl Ludwig Mulka and Others Before the Court at Frankfurt*. Transl. by Jean Steinberg. With an introd. by Hannah Arendt. New York: Praeger, 1966.

Nichts als die Wahrheit. Dir. Richter, Roland Suso. Perf. Götz George, Kai Wiesinger. Nil Film Art and Entertainment, 1999. DVD.

Noelle-Neumann, Elisabeth, Winfried Schulz, Jürgen Wilke (Eds.). "Reportage." *Fischer Lexikon der Publizistik und Massenkommunikation*. Frankfurt am Main: Fischer Taschenbuch Verlag, 2009. 150-151.

Nyiszli, Miklós. *Auschwitz: An Eyewitness Account of Mengele's Infamous Death Camp*. New York: Seaver Books, 1986; 1960.

Osiel, Mark. *Mass Atrocity, Collective Memory, and the Law*. New Brunswick: Transaction Publishers, 1999.

Pendas, Devin O. *The Frankfurt Auschwitz Trial 1963 – 1965: Genocide, History, and the Limits of Law*. Cambridge: Cambridge University Press, 2010.

Perelman, Chaim and Lucie Olbrechts-Tyteca. *The New Rhetoric*: *A Treatise On Argumentation.* Translated by John Wilkinson and Purcell Weaver. Indiana: University of Notre Dame Press, 1969.

Posner, Richard A. *Law and Literature: Revised and Enlarged Edition*. Cambridge: Harvard University Press, 1998.

Reichel, Peter. *Vergangenheitsbewältigung in Deutschland: Die Auseinandersetzung mit der NS-Diktatur von 1945 bis heute.* München: C.H. Beck, 2001.

Reif, Adelbert, ed. *Gespräche mit Hannah Arendt*. München: Piper, 1976.

Richter, Roland Suso: *Nichts als die Wahrheit.* Nil Film Art and Entertainment/Munich, 1999. Film.

Rosenfeld, Alvin H. *A Double Dying*: *Reflections on Holocaust Literature*. Bloomington: Indiana University Press, 1980.

Rückerl, Adalbert. *NS-Verbrechen vor Gericht: Versuch einer Vergangenheitsbewältigung*. Heidelberg: C.F. Müller Juristischer Verlag, 1982.

Salloch, Erika. *Peter Weiss'* Die Ermittlung*: Zur Struktur Des Dokumentartheaters*. Frankfurt am Main: Athenäum, 1972.

Sathe, Nikhil. "'Ein Fressen Für Mein MG': The Problem of German Suffering in Uwe Timm's *Am Beispiel Meines Bruders*." *Victims and Perpetrators: 1933 – 1945. (Re)Presenting the Past in Post-Unification Culture.* Eds. Laurel Cohen-Pfister and Dagmar Wienroder-Skinner. New York/Berlin: Walter de Gruyter, 2006. 49-71.

Schlüter, Hermann. *Grundkurs der Rhetorik*. München: Deutscher Taschenbuch Verlag, 1988.

Schmitz, Helmut. "Family, Heritage, and German Wartime Suffering in Hanns-Josef Ortheil, Stephan Wackwitz, Thomas Medicus, Dagmar Leupold, and Uwe Timm." *Germans as Victims in the Literary Fiction of the Berlin Republic.* Eds. Stuart Taberner and Karina Berger. Rochester (N.Y.): Camden House, 2009. 70-85.

Schnabel-Schüle, Helga. "Ego-Dokumente im frühneuzeitlichen Strafprozeß." *Ego-Dokumente: Annäherung an den Menschen in der Geschichte.* Ed. Winfried Schulze. Selbstzeugnisse der Neuzeit 2, Berlin 1996. 295-317.

Schoenberner, Gerhard. "*Die Ermittlung* von Peter Weiss: Requiem oder Lehrstück?" *Gewerkschaftliche Monatshefte*. Heft 12 (1965): 728-35.

Sontag, Susan. "Reflections on *The Deputy*." Eric Bentley (Ed.). *The Storm About 'The Deputy'.* New York: Grove Press, 1964. 117-123.

State of Israel Ministry of Justice. *The Trial of Adolf Eichmann: Record of Proceedings in the District Court of Jerusalem*. Volume 1-9. Jerusalem: The Ministry, 1992.

Steinweg, Reiner. *Das Lehrstück: Brechts Theorie einer Politisch-Ästhetischen Erziehung*. Stuttgart: J. B. Metzler, 1972.

---. *Brechts Modell der Lehrstücke: Zeugnisse, Diskussion, Erfahrungen*. 1 Aufl ed. Frankfurt am Main: Suhrkamp, 1976. Edition Suhrkamp.

Strafgesetzbuch mit Einführungsgesetz, Völkerstraftgesetzbuch, Wehrstrafgesetz, Wirtschaftsstrafgesetz, Betäubungsmittelgesetz, Versammlungsgesetz, Auszügen aus dem Jugendgerichtsgesetz und dem Ordnungswidrigkeitengesetz sowie anderen Vorschriften des Nebenstrafrechts. Textausgabe mit ausführlichem Sachregister und einer Einführung von Professor Dr. jur. Thomas Weigend. 50. Aufl. München. Deutscher Taschenbuch Verlag: 2012.

Strafprozessordnung mit Einführungsgesetz, Gerichtsverfassungsgesetz, EGGVG, Jugendgerichtsgesetz, Straßenverkehrsgesetz. Textausgabe von Prof. Dr. Dr. h.c. mult. Claus Roxin. 49. Aufl. München: Beck, 2013.

Szondi, Peter. *Theorie des modernen Dramas 1880 – 1950.* Frankfurt am Main: Suhrkamp Verlag, 1963.

Timm, Uwe. *Am Beispiel meines Bruders*. München: Deutscher Taschenbuch Verlag, 2007.

---. "'Ich wollte das in aller Härte.'" *Die Tageszeitung*. Web. 23 Sept. 2013. <http://www.taz.de/1/archiv/archiv/?dig=2003/09/13/a0245>.

Ueding, Gert. *Die Rhetorik des Schreibens: Eine Einführung.* Königstein/Ts.: Athenäum, 1985.

Vatter, Christoph. *Gedächtnismedium Film: Holocaust und Kollaboration in deutschen und französischen Spielfilmen Seit 1945*. Würzburg: Königshausen und Neumann, 2009.

Vissman, Cornelia. *Medien der Rechtsprechung*. Eds. Alexandra Kemmerer and Markus Krajewski. Frankfurt am Main: S. Fischer Verlag, 2011.

Vollnhals, Clemens and Jörg Osterloh (Eds.). *NS-Prozesse und deutsche Öffentlichkeit: Besatzungszeit, frühe Bundesrepublik und DDR.* Weinheim: Vandenhoeck and Ruprecht, 2011.

Völklein, Ulrich. *Josef Mengele: Der Arzt von Auschwitz*. 160 Vol. Göttingen: Steidl, 2000.

Wamhof, Georg. *Das Gericht als Tribunal oder: Wie der NS-Vergangenheit der Prozess gemacht wurde.* Göttingen, 2009.

Weigel, Sigrid. "Zeugnis und Zeugenschaft, Klage und Anklage. Zur Differenz verschiedener Gedächtnisorte und –diskurse." *Gedächtnis, Geld und Gesetz: Vom Umgang mit der Vergangenheit des Zweiten Weltkrieges*. Ed. Jakob Tanner and Sigrid Weigel. Zürich: Hochschul-Verlag an der ETH, 2002. 39-62.

Weinke Annette. "'Bleiben die Mörder unter uns?' Öffentliche Reaktionen auf die Gründung und Tätigkeit der Zentralen Stelle Ludwigsburg." Vollnhals, Clemens and Jörg Osterloh (Eds.). *NS-Prozesse und deutsche Öffentlichkeit: Besatzungszeit, frühe Bundesrepublik und DDR.* Weinheim: Vandenhoeck and Ruprecht, 2011. 263-282.

Weiss, Peter. *Die Ermittlung: Oratorium in 11 Gesängen.* Peter Weiss. *Stücke 1*. 1 Aufl ed. Frankfurt am Main: Suhrkamp, 1976; 1977. 257-449.

---, Jon Swan, and Ulu Grosbard. *The Investigation: A Play*. 1st ed. New York: Atheneum, 1966.

---. *Notizbücher, 1960-1971*. 1 Aufl ed. n.F., Bd. 135 Vol. Frankfurt am Main: Suhrkamp, 1982.

---, Ernst Schumacher. "Engagement im Historischen: Ernst Schumacher unterhielt sich mit Peter Weiss." *Peter Weiss im Gespräch.* Ed. Rainer Gerlach and Matthias Richter. Frankfurt am Main: Suhrkamp, 1986. 82-93.

---, "'Die Bundesrepublik ist ein Morast': Spiegel-Interview mit dem Dramatiker Peter Weiss." *Peter Weiss im Gespräch.* Ed. Rainer Gerlach and Matthias Richter. Frankfurt am Main: Suhrkamp, 1986. 82-93.

---, Hans, Mayer. "Kann sich die Bühne eine Auschwitz-Dokumentation Leisten? Peter Weiss im Gespräch mit Hans Meyer." *Peter Weiss Jahrbuch* 4 (1965): 8-30.

---, "Notizen zum Dokumentartheater." *Rapporte*. 2 Vol. Frankfurt am Main: Suhrkamp, 1971. 91-104.

Welzer, Harald. *Das kommunikative Gedächtnis: Eine Theorie der Erinnerung.* München: Beck, 2002.

---, Sabine Moller, Karoline Tschugall. *"Opa war kein Nazi": Nationalsozialismus und Holocaust im Familiengedächtnis.* 3 Aufl ed. Frankfurt am Main: Fischer Taschenbuch Verlag, 2002.

Wenzel, Mirjam. *Gericht und Gedächtnis: Der deutschsprachige Holocaust-Diskurs der sechziger Jahre.* Göttingen: Wallstein Verlag, 2009.

White, James Boyd. *Heracles' Bow: Essays On the Rhetoric and Poetics of the Law.* Madison: The University of Wisconsin Press, 1985.

Wittmann, Rebecca. *Beyond Justice: The Auschwitz Trial.* Cambridge/Mass.: Harvard University Press, 2005.

Wilpert, Gero von. *Sachwörterbuch der Literatur*. Stuttgart: Kröner, 1998.

Wojak, Irmtrud. *Fritz Bauer 1903-1968: Eine Biographie*. München: C.H. Beck, 2009.

Young, James E. *Writing and Rewriting the Holocaust: Narrative and the Consequences of Interpretation*. Bloomington: Indiana University Press, 1988.

Young-Bruehl, Elisabeth. *Hannah Arendt: For Love of the World*. New Haven: Yale University Press, 2004.

Yablonka, Hanna. *The State of Israel vs. Adolf Eichmann*. New York: Schocken Books, 2004.