

Painting Pasts and Futures:  
Transitional Justice, Museums, and Aesthetic Interruptions

by

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## Abstract

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Stories about political transformation often suggest that a political community must acknowledge and grapple with its difficult past in order to move on to a sunnier future. This thesis explores the problems and possibilities of this narrative as projected in both transitional justice theory and museums.

Several theorists in the field of transitional justice, like Ruti Teitel, Mark Osiel, and Kathryn Sikkink, organize moments of mass atrocity, transition, and the future into finite, bounded moments. By neatly confining “violence” to the past and “peace” to the future, these narratives conceptualize political communities on a clean trajectory of evolution towards democracy. As such, these theorists position criminal prosecutions, a central transitional justice mechanism, as a means through which a political community can return to, grapple with, and over-come a violent past. Here, post-war trials are figured as devices that deliver political community to a democratic order.

Political and cultural theorist, Walter Benjamin, describes discursive projections premised on notions of progress as a system that restrains, disciplines, and guides political transformation. Benjamin and Jacques Derrida claim that the violence of law’s imposition and conservation is obscured by these very notions of sequential temporality which establish law as the means to projected and affective ends. I take inspiration from these thinkers and argue that transitional justice theory’s “ends-oriented” rhetoric permits political communities and correlative state institutions to narrate themselves away from legacies of violence, and responsibility. Further, they attempt to foreclose the notion that political transformation is infinitely on-going.

Aesthetics sites, like the museum, may reaffirm the worlds crafted through transitional justice theory’s organization of bounded time. As such, I examine three museum exhibitions in order to show how museums similarly organize time in a manner that confines periods of violence, transition, and democracy into bounded temporalities: “Memorium Nuremberg Trials” (Nuremberg, Germany); “The Nuremberg Trials: What is Justice?” The United States Holocaust Memorial Museum (Washington DC, US), and; “On Trial: Auschwitz/Majdanek,” Jewish Museum (Berlin, Germany). Yet the time of transitional justice projected in these exhibitions is not totalizing, and is infinitely vulnerable to spatial, material, and aesthetic disruption.

## Acknowledgments

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While my PhD dissertation is merely a modest suggestion to think transitional justice theory otherwise, and while I contend with (as many of us do) the feeling that my writing self is always somehow lagging behind my thinking self (as if they could be so easily separated), I would still like to take advantage of this space to thank folks who have enriched my life whilst a PhD student.

Work-shops, writing retreats, and the Graduate Student Handbook told me how to tackle oral examinations, hone healthy writing habits, and ensure that I had satisfied the program's language requirements. While "milestones" marked moments on the imagined linear trajectory of PhD life, "annual reviews" disclosed where I might have come-up short. While these pastoral tactics were deployed in an effort to support me through the PhD process, the most important aid I received over the last six years was from Dr. Stacy Douglas. Under her rigorous, creative, and clear supervision, I was afforded the space to pursue my project on my own terms—and at a pace—that felt right for me. While her sophisticated challenges always centered on my academic work, they also challenged my way of being beyond the walls of the University, leaving deep traces on my intellectual, political, and ethical frameworks. She helped me find my voice not only as a graduate student, but as a person. Thank-you, Stacy.

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## Introduction

There is a secret agreement between past generations and the present one. Our coming was expected on earth. Like every generation that preceded us, we have been endowed with a form of messianic power, a power to which the past has a claim. That claim cannot be settled cheaply.

—Walter Benjamin<sup>1</sup>

“PEACE MUSEUM PREVIEW OPENS AT SPECIAL COURT” read the headline. It caught my attention. My glasses were stowed, so I squinted, brought my phone closer, and read on:

Sierra Leone’s new Peace Museum opened a three-day preview exhibition Thursday at its future location on the Special Court complex in Freetown... the museum will tell the story of Sierra Leone’s decade-long civil war and its return to peace, and honor the victims of the conflict. It will also contain an archive of war-related materials, including the permanent archives of the Special Court.<sup>2</sup>

The press release reminded me of a report published months earlier concerning \$195,000USD the United Nations Peace-building Fund donated to the Government of Sierra Leone to assist in their establishment of the Peace Museum.<sup>3</sup> At the time, Sierra Leone’s struggle to commemorate victims and heroes, name perpetrators, and

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<sup>1</sup> Walter Benjamin, “Concept of History,” in *Walter Benjamin, Selected Writings Volume 4, 1938-1940*, eds. Howard Eiland and Michael W. Jennings, trans. Edmund Jephcott and others (Cambridge: The Belknap Press of Harvard University Press, 2006), 290 [II Theses].

<sup>2</sup> Special Court for Sierra Leone, “Peace Museum Preview Opens at Special Court,” press release, April 29, 2011, <http://www.rscsl.org/Documents/Press/2011/pressrelease-042911.pdf>

<sup>3</sup> UN General Assembly, A/HRC/16/78, “Assistance to Sierra Leone in the Field of Human Rights: Report of the United Nations High Commissioner for Human Rights,” February 22, 2011, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.78.pdf>; “About Us,” Sierra Leone Peace Museum, accessed April 2, 2017, <http://www.slpeacemuseum.org/about-us/background.html>. I use scare quotes through-out my dissertation in order to draw attention to words that are mobilized problematically in transitional justice theory.

memorialize traumatic events in the “pursuit of justice” did not surprise me.<sup>4</sup> Rather, plans to monumentalize state-based transitional justice mechanisms did.<sup>5</sup> I remember being puzzled by the monumentalization of the Special Court for Sierra Leone. I could not help but wonder how curators might represent the tribunal as a device that clarified the history of the civil war, as that which inaugurated a lasting peace in the country.<sup>6</sup> Indeed, experiences of violence often grip individuals in a myriad of ways for many reasons. Calls for such experiences to be acknowledged and accepted, for violence to be explained and documented, and for social and political solidarity to support the establishment of systems of accountability, are understandable emotional and political responses after war or state repression. Trials, truth commissions, redress, and restitution are construed by governments, international organizations, and interest-based groups as vital systems that answer such calls for truth, and reconciliation. These mechanisms are commonly fashioned

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<sup>4</sup> For an overview of Sierra Leone’s state-driven attendance to the history of its civil war, see Paul Basu, “Palimpsest Memoriscapes: Materializing and Mediating War and Peace in Sierra Leone,” in *Reclaiming Heritage: Alternative Imaginaries of Memory in West Africa*, eds. Ferdinand de Jong and Michael Towlands (Walnut Creek: Left Coast Press, 2007), 231-259; Mariane Ferme and Danny Hoffman, “Hunter Militias and the International Human Rights Discourse in Sierra Leone and Beyond,” *Africa Today* 50, no. 4 (2004): 73-95; Paul Basu, “Reanimating Cultural Heritage: Digital Curatorship, Knowledge Networks, and Social Transformation in Sierra Leone,” in *The International Handbook of Museum Studies: Museum Transformations*, eds. Annie E. Coombes and Ruth B. Phillips (Chichester: John Wiley & Sons, 2015), 337-364; Paul Basu, “Recasting the National Narrative: Postcolonial Pastiche and the New Sierra Leone Peace and Cultural Monument,” *African Arts* 46, no. 3 (2013): 10-25.

<sup>5</sup> Monuments have been conceived in a variety of ways by public memory scholars, but I take inspiration from Johannes Snyman’s definition. For him, monuments are “signs that remind one to remember, namely, that which one can take pride in remembering, and which demarcate a decisive moment as a (new) beginning—a triumph or victory.” Johannes Snyman, “Interpretation and the Politics of Memory,” *Acta Juridica* (1998): 317. James Young further argues that monuments are didactic, and thus, typically and authoritatively strive to fix and stabilize the meaning of events over time. James E. Young, *The Texture of Memory: Holocaust Memorials and Meaning* (New Haven: Yale University Press, 1993), 32.

<sup>6</sup> Hybrid tribunals, broadly construed, draw on a blend of both domestic and international law. Further, the establishment of hybrid-courts can be jointly financed by domestic governments and international organizations. See Laura Dickinson, “The Promise of Hybrid Courts,” *American Journal of International Law* 97, no. 2 (2003): 295-310; Cesare Romano, André Nollkaemper, and Jann Kleffner, eds, *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo and Cambodia* (Oxford: Oxford University Press, 2004).

as the doorway to a more stable, democratic future. They operate as affective devices that promise to right past wrongs, vindicate individuals and communities, and deliver justice.

Yet the sequence of events conveyed in the press release—violence, trial, peace—seemed too formulaic for me to imagine the anticipated permanent exhibition as suspect at best. The messy experience of violence, the traces it leaves within us, our attempt and constant failure to represent and communicate the depth of these marks, are particular, and singular. How will this be captured? Will the multiple and fluid ways individuals attend to experiences violence on an on-going basis be affirmed? How might universalizing narratives of political and social progress towards peace conceal these differences? Will the Sierra Leone Peace Museum re-inscribe brute meta-narratives? How, and at what cost?

These questions brought me to think deeply about the fundamental presuppositions upon which dominant narratives in transitional justice theory are based. In its most basic and popular iteration, transitional justice is a period within which a political community returns to—in order to deal with—a violent past. By acknowledging, documenting, and judging difficult histories, the story goes, collectives progressively transition towards a brighter, peaceful future. Contributors to transitional justice theory, like Lawrence Douglas, Mark Osiel, and Shoshana Felman, argue that trials are particularly important prisms within which political communities can master their violent pasts.<sup>7</sup> Other scholars, like Judith Shklar, Ruti Teitel, and Diana Orentlicher claim that criminal

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<sup>7</sup> See Mark Osiel, “Ever Again: Legal Remembrance of Administrative Massacre,” *University of Pennsylvania Law Review* 144, no. 2 (1995): 513; Shoshana Felman, *The Juridical Unconscious: Trials and Trauma in the Twentieth Century* (Cambridge: Harvard University Press, 2002); Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven: Yale University Press, 2001).

prosecutions are crucial to the establishment of new democratic orders premised on the political ideals of tolerance and equality.<sup>8</sup> Further, interlocutors like Laurel Fletcher, Harvey Weinstein, Colleen Murphy, and Kathryn Sikkink suggest that resorting to criminal law after periods of large scale violence re-sets a political community's moral compass, ostensibly cultivating respect for human rights, peace, and political reconciliation.<sup>9</sup> Indeed, the chronological organization of a political community's past and future emerges as a critical linchpin that gives coherence to these polemics.<sup>10</sup>

This parlance surfaces in state-based and international policy instruments established to "manage" "post"-conflict "situations" as well. Take Sierra Leone for instance. In a letter addressed to the President of the United Nations Security Council, President of the Republic, Alhaji Ahmad Tejan Kabbah, requested assistance to establish "a strong court in order to bring and maintain peace and security in Sierra Leone."<sup>11</sup> Further, the former President of the Special Court, Justice Shireen Avis Fisher, declared that "preserving the archives ensures that the work of the Special Court remains an

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<sup>8</sup> Judith N. Shklar, *Legalism: Law, Morals, and Political Trials* (Cambridge: Harvard University Press, 1964), 145; Ruti Teitel, *Transitional Justice* (New York: Oxford University Press, 2000); Diane Orentlicher, "Settling Accounts Revisited: Reconciling Global Norms with Local Agency," *The International Journal of Transitional Justice* 1, no. 1 (2007): 10-22.

<sup>9</sup> Laurel E. Fletcher, Harvey M. Weinstein, "Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation," *Human Rights Quarterly* 24, no. 3 (2002): 626; Colleen Murphy, *A Moral Theory of Political Reconciliation* (New York: Cambridge University Press, 2010), 178; Kathryn Sikkink, *Justice Cascade: How Human Rights Prosecutions are Changing World Politics* (New York: W. W. Norton & Company, 2001), 195.

<sup>10</sup> When I refer to dominate narratives or mainstream discourses in transitional justice theory, I am referring to postulations advanced in the field that are premised on notions of progressive time that pervade the literature. Steven Mailloux defines this approach as "rhetorical hermeneutics, a tracing of rhetorical paths of thought in various cultural spaces" that work towards the performance of various disciplinary identities. . Steven Mailloux, *Disciplinary Identities: Rhetorical Paths of English, Speech, and Composition* (New York: The Modern Language Association of America, 2006), 2-5, 124-136. I do not conceive of transitional justice narratives as actants.

<sup>11</sup> President of the Republic of Sierra Leone, Annex to the Letter dates August 9, 2000 from the Permanent Representative of Sierra Leone to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2000/786.

accessible and unequivocal record of the war. Failing to preserve them invites revisionist history and denies the suffering endured by Sierra Leone's people."<sup>12</sup> Both statements slice up time in order to define Sierra Leone's past and correlative future by way of criminal prosecutions. By representing violence as a bounded moment defined by the court, the past is presented as that which can be mastered, dealt with, and overcome, ostensibly freeing the present and imagined future from intractable conflicts.

Transitional justice theorists and like-minded governments rhetorically intervene during periods of violent political change by placing transitional mechanisms, like criminal trials, between these two constructed, totalizing moments of violence and democracy. Here, the period of "political and social transformation" is similarly encapsulated: "transition" is constituted as a moment with a clear beginning and end. For instance, international legal scholar, William Schabas, describes the Sierra Leone Truth Commission and Special Court as central mechanisms that realize and exhaust the process of political transformation:

[p]erhaps the appropriate metaphor is that of building a house. The Truth and Reconciliation Commission is the plumber, and the Special Court is the electrician. The two trades work in different parts of the house, on different days, at different stages of the construction, and using different tools and materials. *Nobody would want to live in a finished house that lacked either electricity or plumbing.* The best way to ensure that both succeed and that the house gets *completed on schedule* is that they be left alone and undisturbed, so that they can get on with their valuable work [emphasis mine].<sup>13</sup>

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<sup>12</sup> United Nations Security Council, 6844, October 9, 2012.

<sup>13</sup> William Schabas, "The Relationship Between Truth Commissions and the International Courts: The Case of Sierra Leone," *Human Rights Quarterly* 25, no. 4 (2003): 1065.

Here, trials (and truth commissions) are perceived as the literal tools that complete the project of transition. This temporal depiction of social change generates the basis upon which the establishment of transitional justice mechanisms are legitimized: if a political community wants to achieve democracy, peace, and reconciliation, and move beyond a period wrought with violence, it must grapple with its difficult past through post-war trials. After criminal prosecutions, justice is conceived as finalized, done, attended to, and complete. As such, they, again, move beyond the need for justice to be dispensed in the name of that past, ostensibly freeing political communities from the responsibility of continually engaging with legacies of violence *or seeing violence as ongoing*. In short, narratives in transitional justice theory and practice imagine the trial as a site that establishes what was, and what will be.

These narratives concern me. I worry that the organization of pasts, of transitions, and of the future by some interlocutors in the field of transitional justice permits colonial powers, corporate enterprises, groups, and states to shirk responsibility for ongoing atrocity. Indeed, Walter Benjamin tells us in the quote that opens this Introduction that mass violence, as well as related local and global inequalities, cannot be settled cheaply. Taking inspiration from Benjamin's claim, legal theorist Scott Veitch illuminates how law participates in the cheap settlement of past atrocity. He argues that law's logic, practices, and concepts permit it to deny its own complicity in, and responsibility for, the production and maintenance of human suffering.<sup>14</sup> By "organizing irresponsibility," Veitch claims, law

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<sup>14</sup> See Scott Veitch, *Law and Irresponsibility: On the Legitimation of Human Suffering* (New York: Routledge, 2007).

legitimizes forms of violence, environmental catastrophe, and imperial domination.<sup>15</sup> Transitional justice theory's relegation of violence, transition, and democracy into finite moments *vis-à-vis* criminal trials is similarly implicated in law's organization of irresponsibility. By envisioning the past as a totality, some transitional justice theorists suggest that it can be mastered, and by extension, that a "complete" transition is possible. This discourse supplies a discursive framework within which states can narrate themselves away from legacies of violence and responsibility because, within this logic, they have ostensibly fulfilled the task of documenting history and naming those responsible for atrocities. As such, the theoretical discourses that I track in this dissertation legitimize human suffering by permitting states and groups to release themselves from responsibility after periods of transition.

Furthermore, I am concerned with how transitional justice theory denies that political communities are in a perpetual state of political and social transformation.<sup>16</sup> Political change has no beginning or end. It is open-ended and on-going. It cannot be ruled, ordered, and forced to completion, even though the discourse suggests otherwise. My claim that political transition as indeterminable takes inspiration from Jacques Derrida's notions of "democracy to come." As sketched in *Rogues: Two Essays on Reason*, Derrida does not conceive "to come" as a holding out for the possibility of complete and total democracy, of an imminent democracy that will take place in the future.<sup>17</sup> Rather, he

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<sup>15</sup> Veitch, *Law and Irresponsibility*, 1.

<sup>16</sup> By this, I do not mean that political communities are continually "developing" in the evolutionary sense, as this conception is premised on a progressive teleology.

<sup>17</sup> Jacques Derrida, *Rogues: Two Essays on Reason*, trans. Pascale-Anne Brault and Michael Nass (Stanford: Stanford University Press, 2005), 90. Derrida does not refer to "democracy to come" to democracy in the

gestures towards the impossibility of the concept of democracy itself due to its compromised core, its internal contradiction, the way in which the positing of democracy leads simultaneously to its own destruction and demise.<sup>18</sup> He argues that sovereign power—which does not defer to democratic principles of freedom and equality in the act of its decision—founds that which we refer to as democracy.<sup>19</sup> To establish and maintain such an order, so-called democracies resort to un-democratic means, like the curtailment of civil liberties during moments of state insurrection.<sup>20</sup> As such, democracy is deferred (a *renvoi*) because it “protects itself and maintains itself precisely by limiting and threatening itself.”<sup>21</sup> By figuring criminal trials as the launch-pad for a new democratic order, the polemics I chart in this study attempt to control and manage how we imagine political transformation. As such, they tame—or render illegitimate—radical, local, and on-going calls for social, political, and economic change evoked after transitional justice mechanisms have been exhausted.

Moreover, I am concerned with how museums might participate in the alienation of individuals by over-determining the trial’s ability to hear testimony. Drawing on Emmanuel Levinas, theorist Jill Stauffer argues that individuals who experience atrocity

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regulative Idea in the Kantian sense whereby democracy remains in the sphere of the possible. See Derrida, *Rouges*, 73-75, 90.

<sup>18</sup> Derrida, *Rouges*, 35.

<sup>19</sup> Jacques Derrida, “Force of Law: Mythical Foundations of Authority,” in *Deconstruction and the Possibility of Justice*, eds. Drucilla Cornell, Michel Rosenfeld, and David G. Carlson (London: Routledge, 1992), 46.

<sup>20</sup> Derrida uses the example of the United States after 9/11. During the years after the destruction of the World Trade Towers, the US Administration launched a war against “the enemies of freedom and the assassins of democracy,” which required the state to “restrict within its own country certain so-called democratic freedoms and the exercise of certain rights by [...] increasing the powers of police investigations and interrogations, without anyone, any democrat, being really able to oppose such measures.” Derrida, *Rouges*, 40.

<sup>21</sup> Derrida, *Rouges*, 36.

often encounter violence on two registers: the experience of a harm, and the failure of institutions established to vindicate victims to hear stories about said harms well. This experience of double violence produces a condition she describes as “ethical loneliness”:

[e]thical loneliness is the isolation one feels when one, as a violated person or as one member of a persecuted group, has been abandoned by humanity, or by those who have power over one’s life’s possibilities. It is a condition undergone by persons who have been unjustly treated and dehumanized by human beings and political structures, who emerge from that injustice only to find that the surrounding world will not listen to or cannot properly hear their testimony—their claims about what they suffered and about what is now owed to them—*on their own terms* [emphasis mine].<sup>22</sup>

I am concerned with how universalizing museum narratives do not consider how post-war criminal trials contribute to an individual’s experience of abandonment. Museum curators may over-determine what is articulated in legal records and fail to meditate on what is not. By curating exhibitions that ignore the grave institutional shortcomings of criminal tribunals to effectively listen to personal stories, *while also* failing to represent silence as a product of institutional abandonment, museums may amplify experiences of ethical loneliness.

This dissertation is centered on museum exhibitions that re-iterate a discourse that, I argue, too neatly confines violence to the past, and democracy to the future,

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<sup>22</sup> Jill Stauffer, *Ethical Loneliness: The Injustices of not Being Heard* (New York: Columbia University Press, 2015), 1. Jean François Lyotard advances a similar claim in *The Differend: Phases in Dispute*: “[a]s distinguished from a litigation, a differend [*différend*] would be a case of conflict, between (at least) two parties, that cannot be equitably resolved for lack of a rule of judgement applicable to both arguments. One side’s legitimacy does not imply the other’s lack of legitimacy. However, applying a singular rule of judgement to both in order to settle their differend as though it were merely a litigation would wrong (at least) one of them (and both of them if neither side admits this rule). Damages result from an injury which is inflicted upon the rules of a genre of discourse but which is reparable according to those rules. A wrong results from the fact that the rules of a genre of discourse by which ones judges are not those of the judged genre or genres of discourse. Jean François Lyotard, *The Differend: Phases in Dispute*, trans. Georges Van Den Abbeele (Minneapolis: University of Minnesota Press, 2011), xi.

conceptualizing communities on a clean trajectory of evolution towards peace and reconciliation. Akin to narratives launched by some transitional justice interlocutors, the museum-based representations of transitional trials I examine similarly circumscribe violence, transition, and justice into totalizing, definitive, and sequential moments. They tend to place violence in the past, sequestering it to a fixed period to illuminate the present's "break" with histories wrought with violence. Moreover, they place criminal trials at the center of political transformation. Here, the trial form is tooled as a site that releases political communities from the grip of intractable widespread and systematic harm which similarly confines transition to a distinct temporal moment. Lastly, museums may also configure political communities that have grappled with the past through criminal law as destined for a future defined by democracy, peace, and respect for human rights.

I examine representations of post-WWII criminal prosecutions in three distinct museums. *Memorium Nuremberg Trials [Memorium Nürnberger Prozesse]*, along with municipal programming that orients Nuremberg as the "City of Human Rights," configure the 1945-1946 International Military Tribunal (IMT) trial as that which delivered city-dwellers away from Nuremberg's Nazi past, and into a democratic, human-rights defending society. "The Nuremberg Trials: What is Justice?", curated at the United States Holocaust Memorial Museum in Washington DC, represents IMT evidence as authentic materials imbued with historical truth, exalting law's representation of past violence. I also analyze the Majdanek Trial Portraits displayed in the "On Trial: Auschwitz/ Manjdanek [*Vor Gericht: Auschwitz/Majdanek Prozess*]" installation at the Jewish Museum Berlin [*Jüdisches Museum Berlin*] in Germany. According to the museum, this collection is displayed to

illuminate how the Düsseldorf Majdanek Trial (1975-1981) assisted West Germany's political and social transition. Here, the time of political transformation is also conceived as finite.

However, museological projections of the past, of transition, and of the future should not be seen as totalizing. As such, I further argue that while these three exhibitions reiterate the problematic narratives produced by some transitional justice theorists, the museum is also a site where such narratives break-down.<sup>23</sup> Indeed, exhibit-based stories are inadvertently subverted through the very aesthetic materials used by curators in the crafting of their displays. Here, spatial arrangements, photographs, art, and ambient sound emerge as materials that interrupt universalizing narratives about law's relationship to historical truth, political transformation, and the creation of better futures. They invite visitors to critically engage *with* the past, and leave open space for an on-going, open-ended engagement with transitional trials as presented in exhibition form, deposing of transitional justice theory's discursive periodization. By tracking how museums both posit and depose transitional justice discourse, I signal how Memorium Nuremberg Trials, the United States Holocaust Memorial Museum, and the Jewish Museum Berlin, might

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<sup>23</sup> Of course, critical exhibitions, curated purposefully and with intention, exist. See Erica T. Lehrer and Shelley Butler eds., *Curatorial Dreams: Critics Imagine Exhibitions* (Montreal: McGill-Queen's University Press, 2016); Monica Patterson, Cynthia E. Milton and Erica T. Lehrer eds., *Curating Difficult Knowledge: Violent Pasts in Public Places* (New York: Palgrave Macmillan, 2001). Critical exhibitions may also fail to depart their intended narrative. See Shelley Butler, *Contested Representations: Revising into the Heart of Africa* (Peterborough: Broadview Press, 2008); Katrin Sieg, "Towards a Civic Contract of Performance: Pitfalls of Decolonizing the Exhibitionary Complex at Brett Bailey's *Exhibit B*," *Theater Research International* 40, no. 3 (2015): 250-271; Caoimhe Mader McGuinness, "Protesting *Exhibit B* in London: Reconfiguring Antagonism as the Claiming of Theatrical Space," *Contemporary Theater Review* 26, no. 2 (2016): 211-226. However, this dissertation is centered on interruptions that operate outside a politics of means/ends relations. These disruptions are particularly acerbic as they subvert modernity's representations of the world on a contingent, local, and temporary register.

insinuate but also unwittingly upset dominant stories that affirm the route of political transformation through the doorway of criminal law.

The insights sketched throughout this dissertation contribute to literature that evaluates how transitional justice as a project is implicated in the foreclosure of political and social possibilities. This project is important because it challenges transitional justice theory to keep open spaces for on-going political transformations, without end, that are not governed by the depoliticizing effects of constructed and finite periods. By evaluating how the organization of the past, transition, and future occupies a central position in the discourse, new questions and possibilities for the concept of transitional justice emerge.

### **Exhibitions, and the making of the modern political transition**

The exhibitions included in this study are emblems of modernity's construction of reality. As such, this project illuminates how modernity's order of knowledge arranges how we imagine life after experiencing massive violence. In *The Order of Things: An Archeology of the Human Sciences*, Michel Foucault describes how the frameworks— or *episteme*— that structures knowledge about life, labor, and language were reformulated in the Renaissance, Classical, and Modern period, along with the systems and institutions that re-inscribe each period's epistemological system.<sup>24</sup> In the Classical period (mid-seventeenth to the nineteenth century), objects were organized into tables based on the external structure and resemblance of phenomena.<sup>25</sup> Here, to describe the anterior form of an

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<sup>24</sup> Eileen Hooper-Greenhill, *Museums and the Shaping of Knowledge* (New York: Routledge, 1992), 9.

<sup>25</sup> Michel Foucault, *The Order of Things: An Archeology of the Human Sciences* (New York: Routledge, 2002), xxiv, 140.

object with language, and to comprehend the space of their being, is to know the object of analysis.<sup>26</sup> Under the Classical epistemic regime, language served as a system for universal representation, foreclosing the distance between language and objects—to name phenomena was to know phenomena. In the Modern age (beginning the early nineteenth century until today), knowledge was not organized *vis-à-vis* external structures within a taxonomic system. Rather, it was organized to reveal the internal function of things. So too was language transformed into an object in and of itself. This shift devalued it as system from which universal knowledge could be derived, creating a distance between language and the phenomena it sets-out to constitute.<sup>27</sup> The modern *episteme* means that objects are no longer readily subjugated to language, debasing language's once privileged place in the contemporary age's epistemological structure.<sup>28</sup>

Modernity's order of knowledge, which is premised on the ability to understand causality, function, and interior forms, also launched the birth of the modern museum, defined by its concerted focus on displaying new rationalities—the new order of things.<sup>29</sup> Here, museums no longer organized and displayed objects according to their position in the taxonomic chart. Instead, objects, events, and stories were figured into the course of

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<sup>26</sup> Foucault, *Order of Things*, 148-150, 236, 322-323. Foucault writes, "Above all, the internal analysis of language is opposed by the primacy accorded in Classical thought to the verb *to be*: the latter held sway on the frontiers of language, both because it was the primary link between words and because it possessed the fundamental power of affirmation; it marked the threshold of language, indicated its specificity, and connect it, in an ineffaceable way, to forms of thought [...] language was a form of knowing and knowing was automatically discourse. Thus, language occupied a fundamental situation in relation to all knowledge: it was only by the medium of language that things would come to be known. Not because it was part of the world; because it was the initial, inevitable way of representing representations." Foucault, *Order of Things*, 322.

<sup>27</sup> According to Foucault, "[n]ow, language is not so much a table as a picture, in the sense that freed from the intricacy that gives it its immediately classifying role, it stands a certain distance apart from nature in order to draw some of it into itself by means of its own passivity." Foucault, *Order of Things*, 323.

<sup>28</sup> Foucault, *Order of Things*, 10.

<sup>29</sup> Tony Bennett, *The Birth of the Museum: History, Theory, Politics* (Routledge: New York, 1995), 33.

time whereby the distinction between things is produced through their position in evolutionary processes.<sup>30</sup> Cultural theorist Tony Bennett's puts it nicely:

[t]he birth of the museum is coincident with, and supplies the primary institutional conditions for, the emergence of a new set of knowledges—geology, biology, archaeology, anthropology, history, and art history—each of which, in its museological deployments, arranged objects as part of evolutionary sequences (the history of the earth, of life, of man, and of civilization) which, in their interrelations, formed a totalizing order of things and peoples that was historicized through and through.<sup>31</sup>

The modern museum became a place where modernity's order of knowledge was affirmed and discursively legitimated. It served as a frontier whereby the new way of knowing could assert its image of the world by inviting visitors to see themselves in it.

I could not help but notice as I entered into the fray of museum studies literature how frequently the notion of "transition" was evoked.<sup>32</sup> Stories about the development of peoples, the transformation of land, and the evolution of animals dominate exhibition content in museums of natural history. Critical cultural theorists illuminate how museums' enlistment of evolutionary time subjugates individuals and groups. The museum's adaptation of evolutionary-based approaches to material classification was used to track and make legible social, economic, political, and cultural transformations. Here, representations of economic transformations from hunter-gather societies to agricultural societies, or from "uncivilized" to "civilized" societies, reigned.<sup>33</sup> The advent of social

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<sup>30</sup> Bennett, *Birth of the Museum*, 96.

<sup>31</sup> Bennett, *Birth of the Museum*, 96.

<sup>32</sup> I suggest that "transition" here is akin to Benjamin's concept of progress in so far as museums represent social and political transition on a developmental continuum.

<sup>33</sup> Tony Bennett, *Pasts Beyond Memory: Evolution, Museums, Colonialism* (New York: Routledge, 1994), 3; Mary Poovey, *A History of the Modern Fact: Problems of Knowledge in the Sciences of Wealth and Society* (Chicago: University of Chicago Press, 1998), 215. See also Annie E. Coombes, *Reinventing Africa: Museums, Material Culture and Popular Imagination in Late Victorian and Edwardian England* (New Haven: Yale University Press, 1994); Tim Barringer and Tom Flynn (eds), *Colonialism and the Object: Empire, Material*

Darwinism further emboldened museum-based narratives to chart the “development” of social, and cultural groups.<sup>34</sup> As many post-colonial and feminist scholars argue, these narratives alienate groups by figuring Others as un-civilized, stagnant, and outside the evolutionary process.<sup>35</sup> This tradition in museum practice informed exhibition-based representations of political, cultural, and social “development” prevalent in natural history displays. While museums may no longer depend on the “uncivilized” to “civilized” vernacular, the delineation between “non-transitioned” and “transitioned” political communities and individuals may indeed carry forward a practice of Othering.

Modernity’s epistemic configuration and display at the museum is one frontier in the making of modern woman, man, and community. At the museum, the figure of the modern is situated as both an object as well as the subject of knowledge, or in Foucault’s words, “in his ambiguous position as an object of knowledge and as a subject that knows;

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*Culture and the Museum* (New York: Routledge, 1998); Timothy Mitchell, *Colonizing Egypt* (Cambridge: Cambridge University Press, 1988); Johannes Fabian, *Time and the Other: How Anthropology Makes Its Object* (New York: Columbia University Press, 1983).

<sup>34</sup> Russell McGregor, *Imagined Destinies: Aboriginal Australians and the Doomed Race Theory 1880-1939* (Melbourne: Melbourne University Press, 1997); George Stocking, *Objects and Others: Essays on Museums and Material Culture* (Madison: University of Wisconsin Press, 1985); Dean MacCannell, *The Tourist: A New Theory of the Leisure Class* (New York: Schocken Books, 1976); Marianna Torgovnick, *Gone Primitive: Save Intellectuals, Modern Lives* (Chicago: University of Chicago Press, 1990); Michael M. Ames, *Cannibal Tours and Glass Boxes: The Anthropology of Museums* (Vancouver: University of British Columbia Press, 1992).

<sup>35</sup> James Clifford, “Histories of the Tribal and the Modern,” in *The Predicament of Culture: Twentieth-Century Ethnography, Literature and Art* (Cambridge: Harvard University Press, 1988), 189-214; Ivan Karp and Steven D. Lavine eds., *Exhibiting Cultures: The Poetics and Politics of Museum Display* (Washington DC: Smithsonian Institution Press, 1991); Annie E. Coombes, “Museums and the Formation of National and Cultural Identities,” *Oxford Art Journal* 11, no. 2 (1988): 57-68; Elizabeth Edwards, Chris Gosden and Ruth B. Phillips eds., *Sensible Objects: Colonialism, Museums, and Material Culture* (New York: Berg, 2006); Donna Haraway, *Primate Visions: Gender, Race, and Nature in the World of Modern Science* (New York: Routledge, 1989); Mieke Bal, “Telling, Showing, Showing Off,” *Critical Inquiry* 18, no. 3 (1992): 556-594; Sharon Macdonald and Gordon Fyfe eds., *Theorizing Museums: Representing Identity and Diversity in a Changing World* (Cambridge: Blackwell Press, 1996); Nélia Dias, “The Visibility of Difference: Nineteenth-Century French Anthropological Collections,” in *The Politics of Display: Museums, Science, Culture*, eds. Sharon Macdonald (New York: Routledge, 1998), 36-52; Tracy Teslow, “Reifying Race: Science and Art in Races of Mankind at the Field Museum of Natural History,” in *The Politics of Display: Museums, Science, Culture*, eds. Sharon Macdonald (New York: Routledge, 1998), 25-35; Bennett, *Pasts Beyond Memory*.

enslaved sovereign, observed spectator.”<sup>36</sup> In the service of the institution, museum workers participate in the forming of modern subjects by separating the stories represented in their exhibitions from singular, ambiguous, and local experience. Transforming objects and stories into historical documents for display decontextualizes and alienates material from their contingent and open-ended circumstance—it severs an artefact’s connection to being, promotes an aesthetically alienated register of observation, and instigates a passive approach to the past.<sup>37</sup> Modernity operates through the museum by inviting visitors to categorically identify and affirm themselves in relation to museological representations. By papering over the radical contingency of daily life, museums participate in the constitution of subjects and the production of a modern understanding of the world.<sup>38</sup> As critical art historian, Donald Preziosi puts it, at the museum “objects pursue us in our pursuit of objects to sustain and focus our pursuit of ourselves.”<sup>39</sup> The museums want to be a place where people can go to know themselves, their past, and their future.

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<sup>36</sup> Foucault, *Order of Things*, 340. The full quote reads, “[w]hen natural history becomes biology, when the analysis of wealth becomes economics, when, above all, reflection upon language becomes philology, and Classical *discourse*, in which being and representation found their common locus, is eclipsed, then, in the profound upheaval of such an archaeological mutation, man appears in his ambiguous position as an object of knowledge and as a subject that knows: enslaved sovereign, observed spectator, he appears in the place belonging to the king, which was assigned to him in advance by *Las Meninas*, but from which his real presence has for so long been excluded.” See, also, Bennett, *Birth of the Museum*, 7.

<sup>37</sup> Didier Maleuvre, *Museum Memories: History, Technology, Art* (Stanford: Stanford University Press, 1999), 1-2. Donald Preziosi argues that the relationship constructed between subjects and objects by the museum is built on a denial of the ambiguities and contradictions that are produced in modern practice of the self. Donald Preziosi, “Practicing the Self,” in *The Brain of the Earth’s Body: Art, Museums, and the Phantasms of Modernity* (Minneapolis: University of Minnesota Press, 2003), 20.

<sup>38</sup> Stacy Douglas advances this argument brilliantly in relation to the museum’s production of community in *Curating Community: Museums, Constitutions, and the Taming of the Political* (Ann Arbor: Michigan University Press, 2017).

<sup>39</sup> Donald Preziosi, “Haunted by Things,” in *The Brain of the Earth’s Body: Art, Museums, and the Phantasms of Modernity* (Minneapolis: University of Minnesota Press, 2003), 1.

For Walter Benjamin, “the world dominated by phantasmagorias...is “modernity.””<sup>40</sup> Yet this world, constituted by the current *episteme*, perpetually fails to order phenomenon. As such, the unequal power relations produced by its order work to paper-over and conceal its failure at the museum and other sites that lionize modernity’s way of knowing.<sup>41</sup> Benjamin’s political project—a Sisyphean task—is to illuminate this failure and, in a local, singular, and temporary way, subvert the violence of modernity’s crass orderings. Benjamin refers to modernity’s process of concealment as a “phantasmagoria”—the mass acceptance of modernity’s order of knowledge as truth.<sup>42</sup> Benjamin’s primary definition of phantasmagoria is presented in the 1939 rendition of his essay “Paris, Capital of the Nineteenth Century,” which serves as an introduction of sorts to his incomplete manuscript, *The Arcades Project*:

[o]ur investigation proposes to show how, as a consequence of this reifying representation of civilization, the new forms of behavior and the new economically and technologically based creations that we owe to the nineteenth century enter into the universe of a phantasmagoria. These creations undergo this “illumination” not only in a theoretical manner, by an ideological transposition, but also in the immediacy of their perceptible presence. They are manifest as phantasmagorias.<sup>43</sup>

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<sup>40</sup> Walter Benjamin, “Paris, Capital of the Nineteenth Century: Exposé of 1939,” in *The Arcades Project*, trans. Howard Eiland and Kevin McLaughlin (Cambridge: The Belknap Press of Harvard University Press, 2002), 26.

<sup>41</sup> Andrew Benjamin, *Working with Walter Benjamin: Recovering a Political Philosophy* (Edinburgh: Edinburgh University Press, 2013), 52.

<sup>42</sup> As astutely stated by James Martel, the phantasmagorias “overwrites our lives, our very reality with its meanings and truth, its great, organizing narratives of promise and salvation. The phantasmagoria amounts to a mass practice of idolatry, a practice of misreading and misattributing meaning to the signs that compose the world with profound theological, political, and linguistic consequences. James R. Martel, *Textual Conspiracies: Walter Benjamin, Idolatry, & Political Theory* (Ann Arbor: University of Michigan Press, 2011), 13.

<sup>43</sup> Walter Benjamin, “Paris, The Capital of the Ninetieth Century (1939),” in *The Arcades Project*, trans. Howard Eiland and Kevin McLaughlin (Cambridge: The Belknap Press of Harvard University Press, 2002), 14.

What Benjamin sets out to show us is how modernity's turn to historicism and subsequent deployment of chronological notions of time is wielded to smooth over the inconsistencies of its order, and conceal the social and cultural stratification that its rationality enacts. *The Arcades Project* aims to show how cultural commodities, urban redevelopment projects, fashion, and technology conjoin to produce a phantasmagoria that projects Paris as the "City of Progress" while unequal social relations remain firmly intact.<sup>44</sup>

This dissertation shows how museums participate in the production of a "phantasmagoria of transitional justice." This phantasmagoria papers-over singular engagements with the harms one has experienced, along with the infinitely open-ended and boundless process of political and social transformation.<sup>45</sup> By "infinite," I am not referring to the continually and on-going revealing of historical truth, or the plentiful array of social problems and concerns.<sup>46</sup> Rather, I am referring to the necessary and continuous deferral of the arrival of a fixed political state of being because political and social difference is irresolvable.<sup>47</sup> Phantasmagorias of transitional justice protect and maintain themselves by limiting and threatening the political difference that is at the center of political transformation. They repress multiplicity, mute dissenting voices that object to its projections, and exclude alternative ways of knowing, articulating, and dealing with

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<sup>44</sup> Benjamin organized *The Arcades Project* into thematic chapters, or "convolutes," that were signified by letters of the alphabet (A-W).

<sup>45</sup> Catherine Turner, *Violence, Law, and the Impossibility of Transitional Justice* (New York: Routledge, 2017), 14. Referring to the infinitely open-end project of democracy to come, see Derrida, "Force of Law," 46.

<sup>46</sup> Derrida, "Force of Law," 16. Jacques Derrida, *Specters of Marx: The State of the Debt, the Work of Mourning and the New International* (New York: Routledge, 2006), 73-83.

<sup>47</sup> What I am pointing to here is that there is a distinction between an attempt to overcome or conceal political difference through the establishment of transitional justice mechanism, and *affirming* the particularity which informs irresolvable political difference while also attempting to find grounds for justice that is fluid and attentive to singular experiences.

violence and political conflict.<sup>48</sup> As opposed to denying the continual presence of singular, local, and fluid cleavages, transitional justice theory may be better off exposing difference and holding out for new possibilities that arise out of conditions of difference.<sup>49</sup>

## Transitional Justice and Aesthetics

The role of aesthetics in the process of political transformation enjoys considerable attention in the transitional justice literature. Indeed, photographs, and art are important materials to engage the past with.<sup>50</sup> Memorials have attracted some transitional justice scholars for their presumed ability to acknowledge victim and perpetrator groups, dispense symbolic reparations, and propel political communities towards reconciliation.<sup>51</sup> Scholars of memory culture note how materiality, form, design, and space are inextricably linked to and inform how aesthetics foreclose, distill, reflect or refract narratives about the

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<sup>48</sup> Catherine Turner, "Deconstructing Transitional Justice," *Law and Critique* 24, no. 2 (2013): 206. In *Specters of Marx* Derrida proposed "aligning justice with disjointure, with being *out of joint*, with the interruption of relations, with unbinding, with the infinite secret of the other." The relentless haunting—or specter—of political difference that will not cease despite ends-oriented narratives indicates the impossibility of total transition. As such, Derrida calls for us to align with "disjointure, with being *out of joint*, with the interruption of relations, with unbinding, with the infinite secret of the other." Derrida, *Specters of Marx*, 77, 88.

<sup>49</sup> See Turner, *Impossibility*, 56-79.

<sup>50</sup> Scholars writing from a variety of academic disciplines note how aesthetic devices, like photographs, sonic sound, and space, allow for a more open-ended approach to history. See Jennifer V. Evans, "Historicizing the Visual," *German Studies Review* 35, no. 3 (2012): 487; Elizabeth Edwards, *Raw Histories: Photographs, Anthropology, and Museums* (New York: Berg, 2001), 4.

<sup>51</sup> See Ron Dudai, "Closing the Gap: Symbolic Reparations and Armed Groups," *International Review of the Red Cross* 93, no. 883 (2011): 783-808; Roland Bleiker, *Aesthetics and World Politics* (Houndmills: Palgrave MacMillan, 2009); Christine Sylvester, *Art/Museums: International Relations Where We Least Expect It* (Boulder: Paradigm Publishers, 2009); Alex Danchev and Debbie Lisle, "Introduction: Art, Politics, Purpose," *Review of International Studies* 35, no. 4 (2009): 775-779; Elizabeth Jelin, *State Repression and the Labors of Memory*, trans. Marcial Godoy-Anativia and Judy Rein (Minneapolis: University of Minnesota Press, 2003); Brandon Hamber and Richard A. Wilson, "Symbolic Closure through Memory, Reparation, and Revenge in Post-Conflict Societies," *Journal of Human Rights*, 1, no. 1 (2002): 35-53; Lene Hansen, "Theorizing the Image for Security Studies: Visual Securitization and the Muhammad Cartoon Crisis," *European Journal of International Relations* 17, no. 1 (2001): 51-74; Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998), 91-117.

past, and thus, how they are implicated in political renderings of imagined futures.<sup>52</sup>

Scholarship on counter-memorials, which are broadly conceived as aesthetic oppositions to, or the defacement, appropriation and re-deployment of monumental architectural designs or artefacts, further considers how aesthetics can resist the imposition of de-politicizing, closed, and fixed narratives about past violence by governments or political, social or identity-based groups.<sup>53</sup>

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<sup>52</sup> By analyzing visitor engagement with the Memorial to the Murdered Jews of Europe in Berlin, Irit Dekel argues that the memorial's aesthetic lends itself to multi-use and chance encounters that open up ways of performing memories of the past in the present. Irit Dekel, *Mediation at the Holocaust Memorial in Berlin* (New York: Palgrave, 2013), 25-55. Turning to the Vietnam Veterans Memorial in Washington DC, Marita Sturken similarly argues that the site functions as a screen for varying political, cultural, and social projections about the US participation in the Vietnam War. In particular, she postulates that the monument thwarts typical phallic war memorial architecture by fusing modernist design with the traditional cenotaph motif of naming Americans who died in battle. In doing so, the Vietnam Veterans Memorial simultaneously condemns and reaffirms the monumentalization of war in public spaces. Marita Sturken, "The Wall, The Screen, and the Image: The Vietnam Veterans Memorial," *Representations* 35, no. 1 (1991): 118-122. Karen Till, who tracks the development of "places of memory" in Berlin, argues that de-centralized memorials call attention to the de-localized nature of administrative violence—a violence that occurred through daily actions in all places. Through her analysis of "Bus Stop!" which jettisons a temporal and spatial manifestation of memory, Till suggests that the movement through space becomes the memorial, which opens up the possibility to understand violence as something that has been experienced everywhere. Karen Till, "Aestheticizing the Rupture: Berlin's Holocaust Memorial," in *The New Berlin: Memory, Politics, Place* (Minneapolis: University of Minnesota Press, 2005), 161-188.

<sup>53</sup> James E. Young is generally attributed for having first defined the concept of the "counter-monument." For Young, counter-monuments resist didactic and textual memorial designs that aim to stabilize and secure a singular memory of the past. As such, modernist memorial designs subvert typical monumental architecture and thus open up space for myriad of memories about the past to emerge. Young, *Texture of Memory*, 27-48. Turning away from material sites that subvert dominant narratives about the past and traditional notions of monumentality, Anna Sheftl argues that humor, deployed for political ends, operates as "counter-memory." Charting the deployment of dark humor in Bosnia-Herzegovina with respect to the Balkan war, she suggests that humor "offers an alternative mnemonic paradigm that resists the ethnically divisive historical narratives that plague the region." Anna Sheftl, "Monument to the International Community, from the Grateful Citizens of Sarajevo: Dark Humor as Counter-Memory in Post-Conflict Bosnia-Herzegovina," *Memory Studies* 5, no. 2 (2011): 147. Paul Williams suggests that the re-presentation and re-placement of communist-era monuments in Lithuania and Hungary to memory theme-parks transforms the monuments into "emblems of the uncertain future of the current post-communist transition period as they are memorials to the communist past." Paul Williams, "The Afterlife of Communist Statuary: Hungary's Szoborpark and Lithuania's Grutas Park," *Forum for Modern Language Studies* 44, no. 2 (2008): 186. See also Cynthia E. Milton, "Defacing Memory: (Un)tying Peru's Memory Knots," *Memory Studies* 4, no. 2 (2011), 190-205.

In addition to examinations of memorials as political aesthetic devices, transitional justice theory has turned to other artistic forms, like literature, fine art, drama, and music as critical sites for social and political transformation.<sup>54</sup> These interlocutors argue for a “broadening” of transitional justice mechanisms to include art alongside truth and reconciliation commissions, trials, reparations, and memorials.<sup>55</sup> Dovetailing with literature on the relationship between memorial and political transformation, art and transitional justice interlocutors consider how artistic depictions of violence augment representations of atrocity wielded by post-war trials and truth commissions. In *The Art of Post-Dictatorship: Ethics and Aesthetics in Transitional Argentina*, for instance, Vikki Bell goes beyond the tradition of art history and sheds light on how cultural mediations, like photography, art and film, are ripe sites to explore the influence of the past in the present in transitional Argentina. She argues that

[c]ontinuing into the post-dictatorship period in Argentina, numerous interventions seek to reflect on the “long present” not as mere *illustrations* of the history of the country, but in ways that make such interventions fully

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<sup>54</sup> Siphwe Ignatius Dube, “Transitional Justice Beyond the Normative: Towards a Literary Theory of Political Transitions,” *The International Journal of Transitional Justice* 5, no. 2 (2011): 177-197; Olivera Simic, “But I Want to Speak Out: Making Art from Women’s Testimonies,” *Australian Feminist Law Journal* 40, no. 1 (2014): 51-67; Rosemarie Buikema, “Performing Dialogical Truth and Transitional Justice: The Role of Art in the Becoming Post-Apartheid of South Africa,” *Memory Studies* 5, no. 3 (2012): 282-292; Yasco Horsman, *Theaters of Justice: Judging, Staging, and Working through in Arendt, Brecht, and Delbo* (Stanford: Stanford University Press, 2001); Lizelle Bisschoff and Sefanie van de Peer, *Art and Trauma in Africa: Representations of Reconciliation in Music, Visual Arts, Literature and Film* (London: IB Tauris, 2013).

<sup>55</sup> For instance, see Peter D. Rush, “Preface: After Atrocity: Forward to Transition,” in *The Arts of Transitional Justice: Culture, Activism, and Memory after Atrocity*, eds. Peter D. Rush and Olivera Simić (New York: Springer, 2014), vii; Rama Mani, “Women, Art and Post-Conflict Justice,” *International Criminal Law Review* 11, no. 3 (2011): 544; Lizelle Bisschoff and Stefanie Van de Peer eds., “Introduction,” in *Art and Trauma in Africa: Representations of Reconciliation in Music, Visual Arts, Literature and Film* (London: Taurus, 2013), 4; Eliza Garnsey, “Rewinding and Unwinding: Art and Justice in Times of Political Transition,” *International Journal of Transitional Justice* 10, no. 3 (2016): 475; Keith Martin and Dylan Robinson eds., *Arts of Engagement: Taking Aesthetic Action in and Beyond the Truth and Reconciliation Commission of Canada* (Waterloo: Wilfrid Laurier University Press, 2016).

part of that history, constituting a key mode by which people have marked and remarked on the task of belonging in the period [emphasis hers].<sup>56</sup>

Bell identifies “ethico-aesthetic enactments” wielded by artist-activists as sites that critically engage with the past, and provoke ruminations over notions of responsibility and freedom outside of traditional transitional justice mechanisms like trials and truth commissions.<sup>57</sup> Here, art is fashioned as a mechanism free from the disciplining logic that governs state-driven mechanisms, and therefore, as a site that is better positioned to deploy marginalized and nuanced representations of past harms. As such, Bell observes artwork in order to expand empirical knowledge about Argentina’s political transition.

However, scholars, like Bell, that theorize the relationship between transitional justice and aesthetic judgement often re-produce the common transitional justice discourses of which I am critical.<sup>58</sup> Take scholarship on the aesthetic interrogations of transitional moments that deploy Jacques Rancière’s “distribution of the sensible” for instance. In *Dis-agreement: Politics and Philosophy*, Rancière constructs a theory of politics vis-à-vis a “neutral” framework that distributes and legitimizes ways of being in the world.<sup>59</sup>

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<sup>56</sup> Vikki Bell, *The Art of Post-Dictatorship: Ethics and Aesthetics in Transitional Argentina* (New York: Routledge, 2014), 4.

<sup>57</sup> Bell, *Art of Post-Dictatorship*, 5. Bell draws on Mike Shapiro’s concept of “ethico-aesthetic enactments,” as that which seeks “to provide a frame for reflecting on the meaning and value of events and arrangements in the face of either competing and incommensurate value commitments and/or alternative perspectives.” Mike Shapiro, *Studies in Trans-disciplinary Method: After the Aesthetic Turn* (Abingdon: Routledge, 2013), 54.

<sup>58</sup> Rancière’s political theory operates with a mean/ends logic. Here, the principle of equality operates as the means that attains the end of a political (speech) act as it disrupts the order of the police, and thus, re-distributes the sensible. Jacques Rancière, *Dis-agreement: Politics and Philosophy* (Minneapolis: University of Minnesota Press, 1999), 33. However, Rancière does hold that the event of the political act is a singular, temporal event in and of itself. Rancière, *Dis-agreement*, 31.

<sup>59</sup> Rancière, *Dis-agreement*, 28. Rancière refers to this framework as “the police.” The framework, then, “is thus first an order of bodies that defines the allocation of ways of doing, ways of being, and ways of saying, and sees that those bodies are assigned by name to a particular place and task; it is an order of the visible and the sayable that sees that a particular activity is visible and another is not, that this speech is understood as discourse and another as noise.” Rancière, *Dis-agreement*, 29.

Politics (*la politique*), enacted on the presupposition of equality, is that which breaks the framework's configurations of being by making heard and visible that which was formerly illegible and unknowable, or in other words, that which makes legible the existence of something formerly rendered non-existent by the framework.<sup>60</sup> Politics (*la politique*) can also take aesthetic and visual form. Here, the politics of aesthetics participates in the distribution of the sensible because "artistic practices are ways of doing and making that intervene in the general distribution of ways of doing and making as well as in the relationships they maintain to modes of being and forms of visibility" that are common to the community.<sup>61</sup> Scholarship in the field of transitional justice that draws on Rancière's political theory often suggests that art can contribute to a more fair-minded transition as aesthetic devices are portals within which alternate worlds can become knowable. Here, art is rendered as a site that might chart feelings of belonging, exclusion, and responsibility.

Scholarly valorization of artwork that was produced with the intention of revealing "where" the community is on a progressive trajectory towards democracy wields a politics of means/ends relations that I find troubling. These interventions emulate dominant narratives in transitional justice theory that manage, organize, and foreclose political and social possibilities to transform otherwise. They envision transitional justice on a finite and

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<sup>60</sup> "Political activity," Rancière writes, "is whatever shifts a body from the place assigned to it or changes a place's destination. It makes visible what has no business being seen, and makes heard a discourse where once there was only place for noise; it makes understood as discourse what was once only heard as noise... political activity is always a mode of expression that undoes the perceptible divisions of the police order by implementing a basically heterogeneous assumption, that of a part of those who have no part... the quality of any speaking being with any other speaking being." Further, he adds, "[f]or a thing to be political, it must give rise to a meeting of police logic and egalitarian logic that is never set up in advance." Rancière, *Dis-agreement*, 30-32.

<sup>61</sup> Jacques Rancière, "The Distribution of the Sensible: Politics and Aesthetics," in *The Politics of Aesthetics*, trans. Gabriel Rockhill (New York: Bloomsbury, 2014), 8.

closed temporal register, figuring “transition” as a process that will one-day be complete once the past has been sufficiently acknowledged, adjudicated, and explored through cultural forms. Second, the rhetoric suggests that artworks do not participate in the practice of foreclosing other possible futures. Indeed, aesthetics can create openings for new worlds to be imagined, however, they may also project and reaffirm the worlds painted by trials, truth and reconciliation commissions, and memorials.

I turn to spatial, museological, and aesthetic sites to identify where the worlds crafted by mainstream transitional justice rhetoric are imagined, launched, maintained, *and* break-down. I am not so much interested in how museological depictions of criminal trials contribute to empirical understandings of Germany’s on-going political transition. In other words, I do not turn to these sites in order to chart the political community’s transition as Bell does in Argentina.<sup>62</sup> Nor do I suggest that aesthetic sites, like memorials, are more appropriate sites for the acknowledgement of past harms. While I, too, seek to bring transitional justice and aesthetics together, I do so differently. As opposed to deploying aesthetic materials as a tool in the service of transitional justice’s end-goals, I instead use aesthetic devices *against* transitional justice’s discursive positings launched at the site of the museum. I turn to space, fine art, and artefacts as the materials that interrupt dominant narratives launched by transitional justice theorists. As such, I contribute to literature on transitional justice and aesthetics by arguing that artforms may

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<sup>62</sup> From another vantage, but also drawing on Rancière, Carrol Clarkson argues that literature and artworks produced during transitional times generate critical discourses that can distribute what is sensible, so to speak, in continental philosophy. See Carrol Clarkson, *Drawing the Line: Towards an Aesthetics of Transitional Justice* (New York: Fordham University Press, 2014), 2, 19, 21.

serve as more reflexive sites than criminal trials, but they do not necessarily depart from trials as radically as some interlocutors assume. Importantly, I do not turn away from critical aesthetic judgment and towards legal judgement. Rather, I am calling for a critical engagement with the momentum of modernity that underpins both trials *and* aesthetic works.

I also contribute particularly to literatures on transitional justice and aesthetics by illuminating the critical potential of space. The aesthetic sensibility produced by a museum's spatiality affirms and deposes modernity's vision of the world, and by extension, the dominant narratives in transitional justice theory projected within exhibition space. Indeed, museum architecture can have both disciplinary and subversive effects. Many contemporary museum studies scholars observe how architecture shapes the sequence and continuity of time in exhibitions by determining visitor movement through space.<sup>63</sup> Drawing on the work of Michel Foucault, they conceive museum spatial configurations as technologies of power that govern and manage populations.<sup>64</sup> Exhibition topologies can

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<sup>63</sup> See Sophia Psarra, *Architecture and Narrative: The Formation of Space and Cultural Meaning* (New York: Routledge, 2009); Michaela Giebelhausen, "The Architecture *Is* The Museum," in *New Museum Theory and Practice: An Introduction*, ed. Janet Marstine (Malden: Blackwell Publishing, 2006), 41-59; Karen Franck eds., *Architecture Times: Designing with Time in Mind* (London: John Wiley & Sons, 2016); Suzanne Macleod, Laura H. Hanks and Jonathan Hale eds. *Museum Making: Narratives, Architectures, Exhibitions* (New York: Routledge, 2012); Andreas Huyssen, "Escape from Amnesia: The Museum as Mass Medium," in *Twilight Memories: Marking Time in a Culture of Amnesia* (New York: Routledge, 1995), 13-35.

<sup>64</sup> Michel Foucault, "Governmentality," in *The Foucault Effect: Studies in Governmentality*, eds. Peter Burchell, Gordon Graham and Colin Miller (Chicago: University of Chicago Press, 1991), 87-104. See Beth Lord, "Foucault's Museum: Difference, Representation, and Genealogy," *Museum and Society* 4, no. 1(2006): 1-14; Kevin Hetherington, "Foucault, the Museum and the Diagram," *The Sociological Review* 59, no. 3 (2011): 457-475; Kevin Hetherington, *The Badlands of Modernity: Heterotopia and Social Ordering* (New York: Routledge, 2003); Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences* (London: Routledge, 2002); Michel Foucault, "Different Spaces," in *Aesthetics, Method, and Epistemology*, ed. James D. Faubion, trans. Robert Hurley et al (New York: The New Press, 1998), 175-185.

enact the discursive logic of time by governing movement into a continuous, sequential pattern. In other words, space puts time in motion.

Exhibition organization also contributes to the way in which museums orient their visitors so that they may see history, or time, unfold, on its own, before their eyes.<sup>65</sup> Donald Preziosi describes the way in which museums situate visitors as “anamorphic positionings”:

[t]he institution places its users in anamorphic positions from which it may be seen that a certain historical dramaturgy unfolds with a seamless naturalism; where a specific teleology may be divined or read in geomantic fashion as the hidden figure of the truth of a collection of forms; and where all kinds of genealogical filiations may come to seem reasonable, inevitable, and demonstrable.<sup>66</sup>

The museum representations that I chart in this dissertation also situate visitors anamorphically. By sequestering violence to the past, and transition into a bounded moment, projections of a future marked by democracy are represented as inevitable by way of spatial arrangements.<sup>67</sup> However, space can also invite visitors to charge the past with the present by de-naturalizing movement through exhibitions. Fragmented walls, dead-ends, and open rooms with multiple entry and exit points disturb narratives fashioned by curators that depend on chronological notions of time and sequence.<sup>68</sup> This

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<sup>65</sup> Donald Preziosi, “Practicing the Self,” in *Brain of the Earth’s Body: Art, Museums, and the Phantasms of Modernity* (Minneapolis: University of Minnesota Press, 2003), 27.

<sup>66</sup> Donald Preziosi ed., “Epilogue: The Art of Art History” in *The Art of Art History: A Critical Anthology* (Oxford: Oxford University Press, 2009), 494. Preziosi also applies the concept of anamorphic positioning to discourses in order to explain how discourses also position and orient individuals. See Donald Preziosi, “The Panoptic Gaze and the Anamorphic Archive,” in *Rethinking Art History: Meditations on a Coy Science* (New Haven: Yale University Press, 1981) 54-79.

<sup>67</sup> Stacy Douglas tells us that both constitutions and museums anamorphically orient us in community. Douglas, *Curating Community*, 4. Further, Douglas also draws on time as an anamorphic device that legitimizes the notion of a community evolving overtime. See Douglas, *Curating Community*, 65-84.

<sup>68</sup> While my project utilizes Benjamin’s methodology to explain the disruptive potential of a museum’s spatiality, Foucault’s concept of “heterotopia” also conceives of the museum as a space of representation, where the distance between concept and object is revealed and left vulnerable to subversion, or rupture.

dissertation takes notice of the ways in which museum space is enlisted by curators to affirm their projections and the manner in which an exhibition's spatial aesthetic deposes of said narratives.

## Methodology

This dissertation draws on political and cultural theory, and primary data collected between 2014 and 2015. Fueled by my interest in the Special Court for Sierra Leone's transformation into the Peace Museum, I identified fifteen other museum exhibitions on post-war trials that draw international audiences.<sup>69</sup> These exhibitions, all of which were curated within the last decade, signal public history's growing interest in representations of criminal law. Yet many of these exhibitions were temporary, on-line, or in languages other than English.<sup>70</sup> These factors pared potential sites for investigation to the following three museums: Memorium Nuremberg Trials (Nuremberg, Germany), the United States Holocaust Memorial Museum (Washington DC, USA), and the Jewish Museum Berlin (Germany).

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<sup>69</sup> "Eichmann Trial" and "The Trial of Major War Criminals in Nuremberg," at the Topography of Terror (Berlin); "20 Years of International Justice," Historical Museum of Bosnia and Herzegovina (Sarajevo); "Testimony and Silence – Former Soldiers Facing Up to their Crimes," Women's Active Museum on War and Peace (Tokyo); "Pursuing Justice: Nuremberg's Legacy," Florida Holocaust Museum (St. Petersburg); "Japanese War Crimes Trials," Australian War Museum (Campbell); "Eichmann Trial," and "Marking the Nuremberg Trial," Yad Vashem (Jerusalem); "The Klaus Barbie Trial," Center for the History of Resistance and Deportation in France (Lyon); "Eichmann on Trial: Jerusalem 1961," Shoah Museum (Paris); "The Doctor's Trial," "The Nuremberg Trials: What is Justice?" United States Holocaust Memorial Museum (Washington DC); "Nuremberg Courtroom," Virginia Holocaust Museum (Richmond); "On Trial: Auschwitz/ Majdanek," Jewish Museum (Berlin); "Memorium Nuremberg Trials," Memorium Nuremberg Trials (Nuremberg). The Peace Museum in Sierra Leone is still in development.

<sup>70</sup> The Memorium Nuremberg Trials exhibition is crafted in German, however, English audio-guides are available upon request.

My first research site, the Memorium Nuremberg Trials, opened in November 2010.<sup>71</sup> It is in the east-wing of the Palace of Justice in Nuremberg, Germany, and imposes a six Euro admission fee. According to its website, the museum “provides an objective description of the events that transpired, so that visitors can form their own ‘judgement’ of the prosecution of Nazi crimes.”<sup>72</sup> Its self-titled permanent exhibition, which is didactic, text-heavy, and shy on artefacts, charts the development of international criminal law from the IMT to today, ending with a review of the International Criminal Court’s mandate and objectives. The museum has intermittent access to Courtroom 600—the site of the 1945-1946 International Military Tribunal (IMT) prosecution of high-ranking Nazi officials. This space, when not in use by municipal and regional courts, is memorialized with a variety of mobile exhibit panels that reflect the 1945-1946 courtroom schema. While the Memorium Nuremberg Trials does not offer tours, guests can hire third-party guides to support their visit. The exhibition is presented in German, yet audio-guides are available in English, French, Spanish, Italian, Chinese, Russian, and Polish. The Free State of Bavaria, the Federal Government Commissioner for Culture and Media supplied the capital required to renovate the east-wing of the Palace of Justice, while the City of Nuremberg financed the development of the permanent exhibition.<sup>73</sup> The City is responsible for the museum’s annual operating costs.<sup>74</sup>

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<sup>71</sup> I supply a more comprehensive history of Memorium Nuremberg Trials in Chapter Two.

<sup>72</sup> “Exhibition Concept,” Memorium Nuremberg Trials, accessed March 20, 2017, <https://museums.nuernberg.de/memorium-nuremberg-trials/exhibition-concept/>

<sup>73</sup> “Origins of the Museum,” Memorium Nuremberg Trials, accessed May 10, 2017, <https://museums.nuernberg.de/memorium-nuremberg-trials/origins-of-the-memorium/>

<sup>74</sup> “Origins,” Memorium Nuremberg Trials.

My second site, the United States Holocaust Memorial Museum, opened in Washington DC in 1993.<sup>75</sup> As a “living” memorial devoted to the victims of Nazi ideology, the primary mission of the museum

[i]s to advance and disseminate knowledge about this unprecedented tragedy; to preserve the memory of those who suffered; and to encourage its visitors to reflect upon the moral and spiritual questions raised by the events of the Holocaust as well as their own responsibilities as citizens of a democracy.<sup>76</sup>

Its permanent exhibition, which describes the events leading up to, during, and after the Holocaust, is crafted in English, yet audio guides are available in sixteen other languages. Admission is free. The museum is also home to the Jack and Morton Mandel Center for Advanced Holocaust Studies, the Simon-Skjoldt Center for the Prevention of Genocide, and a comprehensive archive on the Holocaust for public use. 1.9 acres of land adjacent to the National Mall was donated by the Federal Government to the museum, however, the cost of the building’s construction and exhibition development was financed through private donations.<sup>77</sup>

My final site, the Jewish Museum Berlin, opened to the public in 2001.<sup>78</sup> In 2012, the museum expanded its mission by establishing the Academy of the Jewish Museum Berlin (which was renamed the W. Michael Blumenthal Academy), which like the museum, is mandated to “explore the relationships between minority groups and the majority

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<sup>75</sup> I supply a more comprehensive history of the United States Holocaust Memorial Museum in Chapter Three.

<sup>76</sup> “Mission Statement,” United States Holocaust Memorial Museum, accessed March 20, 2017, <https://www.ushmm.org/information/about-the-museum/mission-and-history>

<sup>77</sup> “History of the United States Holocaust Memorial Museum,” United States Holocaust Memorial Museum, accessed May 10, 2017, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10005782>

<sup>78</sup> I supply a more comprehensive history of the Jewish Museum Berlin in Chapter Four.

population, and promote exchange and network building among minorities.”<sup>79</sup> Its permanent exhibition, articulated in both English and German, charts the two-thousand year development of Jewish culture and life in Germany. Audio guides are available in English, French, Italian, Spanish, Hebrew, Russian, and Japanese. General admission is eight Euros.

Although each museum devotes exhibition space to the story of post-WWII prosecutions of Nazi perpetrators, these representations are launched from different geographic and political contexts. First, Memorium Nuremberg Trials is located in Nuremberg, the former city of the Nazi party rallies *and* at the site of the 1945-1946 IMT prosecution of high-ranking Nazi officers. As such, its narrative is symbolically situated in one of the epicenters of Nazi ideology. Conversely, the United States Holocaust Memorial Museum is located in Washington DC—the symbolic seat of US power. American prosecutors led an aggressive campaign to establish the Tribunal, and as such, the museum’s representation offers a view of the proceedings from the perspective of a prosecuting power. The Jewish Museum Berlin turns away from international criminal prosecutions, and towards domestic ones that occurred in Germany decades after the war. By bringing these exhibitions together, I illuminate how narratives launched from Germany, *and* the US, centered on both international *and* domestic trials, reiterate the temporal logic so prevalent in transitional justice theory.

### *Data Collection*

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<sup>79</sup> “Academy Programs,” Jewish Museum Berlin, March 20, 2017, <https://www.jmberlin.de/en/academy>

This investigation employs mixed qualitative research methods, including semi-structured interviews with individuals and groups, participant observation, archival research, and my own analysis of each exhibition. Further, I draw on program material, webpages, and blogs produced by each museum. I appeal to these sources to tease out themes, rhetoric, and concepts used by each institution to cohere their general stories. These methods provide a broad context beyond the exhibitions themselves, and supply me with a larger archive from which I make my deductions.

Access to non-public data at each museum varied. The United States Holocaust Memorial Museum's Records Management Officer & Institutional Archivist granted me permission to explore the internal archive, including staff communications, exhibition concept briefs, design proposals, budgets, and museum collection data. This archive was constructed by the optional depositing of records formally in the custody of museum directors, curators, researchers, designers, and other museum staff. My request to interview museum visitors was denied by the institution due to the politically sensitive nature and affective content of the exhibition, which, according to one staff member, left visitors in a vulnerable state.<sup>80</sup> As a general policy, they prohibit non-museum led research on its guests to protect them from questions that may trigger emotional reactions. Notwithstanding, I was allowed to interview six staff members, including curators, designers, collectors, and researchers. I secured their participation over e-mail.<sup>81</sup>

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<sup>80</sup> This information was revealed to me over e-mail by a museum staff member after several failed attempts to gain a response through regular institutional contact portals.

<sup>81</sup> See Appendix B for a copy of my e-mail invitation for interview, and see Appendix F for a sample of interview questions asked.

Memorium Nuremberg Trials currently does not have an internal archive, however, I received internal documents from curators pertaining to the development of the exhibition, along with tour guide scripts approved by the institution but produced through third-party private companies specializing in historic tours of Nuremberg. I conducted five interviews with Memorium Nuremberg Trials curators, and their participation was solicited over e-mail. I organized four group interviews, and twelve individual interviews with museum guests.<sup>82</sup> I also interviewed three third-party tour guides.<sup>83</sup> Visitor and guide participation was secured in the museum at different junctures, including the front foyer, a transitional space devoid of exhibit content established part way through the museum, and outside Courtroom 600. I conducted interviews at random hours throughout the day at these sites. As my German proficiency is limited to reading comprehension, all interviews were conducted in English.<sup>84</sup> Further, I participated in five guided tours in order to gain insight into the narratives produced by the guides and questions posed by visitors.

The Jewish Museum Berlin rejected my request to access their internal archives. However, I was granted permission to observe visitors in the gallery space, and interview museum staff. I interviewed four museum curators, and one director employed by the Jewish Museum Berlin. Each participant expressed their consent to be a part of this study over e-mail.

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<sup>82</sup> See Appendix D for a copy of my oral invitation for interview script.

<sup>83</sup> Memorium Nuremberg Trials does not have tour guides on staff. As such, they contract museum tours out to one of the several Nuremberg tour guide agencies in the city.

<sup>84</sup> While stationed at these point in the museum, I approached, Canadian, German, American, Turkish, Belgian, and French visitors and requested oral consent (see Appendix D for script) to speak with them about their understanding of the exhibition. While not all the individuals I approached accepted my invitation, those who did were able to communicate with me in English.

While my inability to wade through the internal archives at two museums stifled my chance to identify alternate points of inspiration for research, I turned to interviews in order to expand the set of data available to me, and to gain a better understanding each museum's narrative projections. The data sourced through interviews is not used in my analysis as verifiable knowledge. Indeed, modernity's epistemology defers to scientific tenets of reason achieved through experiment, replication, and calculation. As such, it imagines interview subjects as neutral, rational, unbiased, and objective—as subjects that have access to truth.<sup>85</sup> Instead, I treat transcripts as a jumping-off point for inquiry, as sites within which I can tease-out general themes, concepts, and attitudes about the exhibition and its crafted projections. Theoretically informed approaches to the analytical practice of oral history, as deployed by oral historians like Ruth Finnegan and Luisa Passerini, conceive of interviews as “communicative events,” and as opportunities to understand social, political, and cultural conditions within which the interviewee is situated.<sup>86</sup> Passerini argues that

[w]e should not ignore that the raw material of oral history consists not just of factual statements, but is preeminently an expression and

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<sup>85</sup> Susan Strega, “The View from the Poststructural Margins: Epistemology and Methodology Reconsidered,” in *Research as Resistance: Critical, Indigenous and Anti-Oppressive Approaches*, eds. Leslie Brown and Susan Strega (Toronto: Canadian Scholars' Press, 2005), 202.

<sup>86</sup> Charles W. Joyner defines “communicative events” as the “cultural rules of communication—what is communicated to whom at what times and at what places,” where emphasis is place on “the communicative event, not the text, as the analytical focus.” See “Oral History as Communicative Event: A Folkloristic Perspective,” *The Oral History Review* 7, no. 1 (1979): 51. For an example of how theoretically informed oral history is used to chart broader cultural discourses, see Ruth Finnegan, *Tales of the City: A Study of Narrative and Urban Life* (New York: Cambridge University Press, 1998). Indeed, there are other approaches to oral history that use individual testimony to re-claim the voices of those who are not accounted for in documents used to as the basis for dominant historical interpretations. See Ian MacDougall, *Voices of Leith Dockers: Personal Recollections of Working Lives* (Edinburgh: Mercat Press, 2001); Eric Marcus, *Making History: The Struggle for Gay and Lesbian Equal Rights, 1945-1990: An Oral History* (New York: HarperCollins Publishers, 1992). For a historical overview of the theory of oral history, see Lynn Abrams, *Oral History Theory* (New York: Routledge, 2016), 12-43.

representation of culture, and therefore includes not only literal narrations but also the dimensions of memory, ideology, and subconscious desires.<sup>87</sup>

While my interview questions ask curators to reflect on the conceptual engineering of their exhibition designs, I do not set-out to document the history of the exhibition. Rather, I approach oral interviews as fluid and contingent sites that shed light on broader cultural discourses about the past in the present.

### *Theoretical Framework*

My theoretical framework is largely informed by the work of Walter Benjamin. Like him, I am concerned with how phantasmagorias are crafted in order to establish modernity's organization of the world, and preserve unequal power relations. Throughout this dissertation, I turn to three different, but related, methodological approaches fashioned by Benjamin that expose the failure of phantasmagorical projections.

The first, which I describe at length in Chapter One, pertains to Benjamin's articulation of how a politics of mean/ends relations produces a phantasmagoric concealment of unequal power relations, and how "pure means" can be used to expose its ideological transpositions. The organization of pasts, transitions, and futures into ascribed periods by some transitional justice theorists advances a politics of means and ends. Benjamin describes ends-oriented projections as a historical positing whose mediacy is masked by rhetorical political language—a discursive framing that imagines ends as a

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<sup>87</sup> Luisa Passerini, "Work, Ideology, and Consensus Under Italian Fascism," *History Workshop Journal* 8, (1979): 108. See also Luisa Passerini, *Fascism in Popular Memory: The Cultural Experience of the Turin Working Class* (New York: Cambridge University Press, 1987).

future destination removed from and superior to the sphere of means.<sup>88</sup> The dangers of a politics premised on means/ends relations are fleshed out in his 1921 essay “Critique of Violence [*Zur Kritik der Gewalt*].”<sup>89</sup> There, Benjamin discriminates between two categories of violence [*Gewalt*], or force.<sup>90</sup> Simply put, the first category, which he calls mythic violence, imposes, and preserves law. The second category, which he names divine violence, destroys law. Benjamin tells us that we can distinguish between the two forms of violence by tracking how the violence relates to ends — violence (or force) that operates within a means/ends paradigm, according to Benjamin, is “mythic.” This violence justifies itself in reference to the ends it sets out to achieve.<sup>91</sup> Benjamin is keenly aware of and concerned with how the operation of mythic violence premised on means/ends relations represents law as neutral while dominant systems of authority are maintained as “power is transferred from the privileged to the privileged.”<sup>92</sup> For him, mythic violence establish frontiers that limit the possibilities for political transformation. By positioning law as a natural destiny for political community, the mythical foundations of law are concealed.

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<sup>88</sup> Werner Hamacher, “Afformative Strike,” *Cardozo Law Review* 13 (1992): 1133.

<sup>89</sup> Walter Benjamin, “Critique of Violence,” in *Walter Benjamin: Selected Writings Volume 1, 1913-1926*, eds. Marcus Bullock and Michael W. Jennings (Cambridge: The Belknap Press of Harvard University Press, 2004); Alison Ross, “The Distinction between Mythic and Divine Violence: Walter Benjamin’s “Critique of Violence” form the Perspective of “Goethe’s Elective Affinities,” *New German Critique* 41, no. 1 (2014): 94-95.

<sup>90</sup> “Critique of Violence” is translated from the German title *Zur Kritik der Gewalt*. In German, *Gewalt* can mean “legitimate power, authority, public force.” *Gesetzgebende Gewalt* is legislative power, *geistliche Gewalt* is the spiritual power of the church, and *Staatsgewalt* the authority of power of the state. *Gewalt*, then, is both violence and legitimate power, justified authority.” Jacques Derrida, “The Force of Law: The “Mystical Foundation of Authority,” in *Deconstruction and the Possibility of Justice*, eds. Drucilla Cornell, Michel Rosenfeld and David Gray Carlson, trans. Mary Quaintance (New York: Routledge, 1992), 6.

<sup>91</sup> Benjamin, “Critique of Violence,” 237; James R. Martel, “A More Exact Criterion”: Law’s Violence and the Possibility of Nonviolence in the Work of Walter Benjamin,” *Wake Forest Law Review* 49, no. 3 (2014): 759-760; Catherine Kellogg, “Walter Benjamin and the Ethics of Violence,” *Law, Culture and the Humanities* 9, no. 1 (2011): 76; Ross, “Distinction,” 94.

<sup>92</sup> Benjamin, “Critique of Violence,” 246.

I also turn to Benjamin's methodology of critical constellations and allegory in order to identify moments that disrupt each exhibition's narrative. Appropriating principles of juxtaposition and montage from the Surrealist movement, Benjamin's theory of time short-circuits past moments to the present in order to form a constellation that subverts dominant myths that organize our world (like progressive notions of time).<sup>93</sup> Constellations interrupt historicism's view of linear time. Rather than stabilizing modes of historical inquiry that function on depoliticized notions of time and progress, Benjamin's materialist historiography short-circuits a fragment of the past to an isolated, unique present moment.<sup>94</sup> His methodology calls for the lifting, or blasting, of fragments out of the linear continuum of time, and the tethering of them to the present to form a constellation unique to the moment.<sup>95</sup> Benjamin refers to the recognition of such constellations as they "flash up" in a given moment as the fulfillment of "now-time [*Jetztzeit*]" or "messianic time."<sup>96</sup> His conception of allegory — as that which *opposes* signification, rather than *as* a symbol of meaning—operates outside the means/ends schema as its disruption occurs outside the

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<sup>93</sup> Benjamin, "Concept of History," 390 [V thesis], 395 [XIV thesis], 397 [A28 thesis]; Walter Benjamin, "Central Park," in *Walter Benjamin, Selected Writings Volume 4 1938-1940*, eds. Howard Eiland and Michael W. Jennings, trans. Edmund Jephcott and others (Cambridge: The Belknap Press of Harvard University Press, 2006), 183.

<sup>94</sup> Benjamin, "Concept of History," 397 [A28]; Walter Benjamin, *Arcades Project*, trans. Howard Eiland (Cambridge: The Belknap Press of Harvard University Press, 2002), 588. In *Arcades*, Benjamin refers to this as the "telescoping of the past into the present."

<sup>95</sup> In his XVII thesis, Benjamin writes, "Thinking involves not only the movement of thoughts, but their *arrest* as well. Where thinking suddenly comes to a stop in a constellation saturated with tensions, it gives that constellation a shock, by which thinking is crystalized as a monad. The historical materialist approaches a historical object only where it confronts him as a monad. In this structure, he recognizes the sign of a messianic arrest of happening, or (to put it differently), a revolutionary chance in the fight for the oppressed past." Benjamin, "Concept of History," 396 [XVII thesis], emphasis mine.

<sup>96</sup> Benjamin, "Concept of History," 390 [V thesis], 395 [XIV thesis], 397 [A28 thesis], Benjamin, "Central Park," 183.

sphere of human intention.<sup>97</sup> Constellations and allegory are both critical devices that can expose the hollow projections produced by transitional justice theorists. I draw on both concepts to show how representations of post-war trials launched at the Nuremberg and Berlin-based museums are interrupted by their very own museological stagecraft. In doing so, I bring Benjamin's political *and* cultural theory together in order to examine and critique representations of mass atrocity trials.

Benjamin has been claimed by several different intellectual schools of thought that seek to establish him as a Marxist, a member of the Frankfurt School, a political theologian, or as an interdisciplinary writer attracted to psychoanalysis.<sup>98</sup> However, the supposed boundaries of these scholastic traditions are themselves a product of modernity's subordination of intellectual thought to neatly delineated categories. They also problematically signal an affective attachment to the origins of philosophical ontologies as if those systems do not themselves also depend upon their own phantasmagorical projections. Subsuming Benjamin's writings to one of these schools conceals the fissures, inconsistencies, and irreconcilabilities of his work, and depoliticizes efforts to appropriate particular constellations of his writings on their own terms. They paper-over his failure to render himself as adherent to the so-called tenets of a theoretical tradition. On the other

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<sup>97</sup> Benjamin writes, "allegory is so opposed to that which is concerned with the discovery of truth that it reveals more clearly than anything else the identity of the pure curiosity which is aimed at mere knowledge with the profound isolation of man." Walter Benjamin, *The Origin of German Tragic Drama*, trans. John Osborne (New York: Verso, 2009), 229.

<sup>98</sup> Sigrid Weigel privileges the psychoanalytic dimensions of his work in *Body-and Image-Space: Re-reading Walter Benjamin* (New York: Routledge: 2005). For more traditionally Marxist-psychoanalytic interpretations of his work, see Margaret Cohen, *Profane Illuminations: Walter Benjamin and the Paris of Surrealist Revolution* (Berkeley: University of California Press, 1993). Graham Gilloch situates Benjamin the Frankfurt School in *Walter Benjamin: Critical Constellations* (Malden: Polity Press, 2002).

end of the spectrum, I am not a disciple in the “cult” of Benjamin which exalts him as a coherent figure standing intellectually homeless on his own terms. Indeed, his anarchic political objective is to expose phantasmagorias as representations *as such*, and enact maximum damage on their governing projections while *leaving nothing in its wake*. Questions that seek to organize Benjamin—to fix him despite his valiant efforts to de-center his own authority through-out his writings—miss the deeply political tactics he deploys in his work, and his serious commitment to exposing the failures of phantasmagorical positings. I seek to honor this through refusing to place him within a tradition and affirming his work as politically generative *without* classification. In other words, I see myself as tracking just one of the many un-organized “Benjamins” represented in his writings. I do not see this as a problem, but as an intellectual opening of sorts.

### **Chapters to come**

Drawing inspiration from Benjamin’s analysis of the politics of means/ends relations, in Chapter One I describe how some transitional justice theorists deploy a “rhetoric of ends” that depends on the clear delineation between the time of violence, the time of transition, and the time of the future. By rhetoric, I refer to popular discursive formations in transitional justice theory that are accepted as a truthful reflection of reality by the field’s mainstream participants, and arguments that seek to persuade communities to engage transitional justice mechanisms because of the futures they ostensibly inaugurate. I use “ends” to refer to an outcome worked toward or the end result of a course of action. As such, rhetoric of ends are epistemological constructs that engineer the

contours of post-war political realities, and therefore the possibilities available to political communities after periods of massive violence.<sup>99</sup>

First, I examine how thinkers like Lawrence Douglas, Mark Osiel, and Shoshana Felman position trials as a prism within which political communities can return to and grapple with difficult pasts. Second, I explore how transitional justice scholars, like Judith Shklar, Ruti Teitel, and Diana Orentlicher position criminal trials as the means to establish a democratic order premised on the political ideals of tolerance and equality. Third, I turn to the scholarship by Laurel Fletcher, Harvey Weinstein, Colleen Murphy, and Kathryn Sikkink in order to show how the trial is represented as a medium that re-sets a political community's moral compass, and thus, as a means that achieves peace and reconciliation.

In Chapter Two I begin my examination of museum-based representations of ends oriented discourses. I explore how Memorium Nuremberg Trials' permanent exhibition projects an image of Nuremberg as a community that has "transitioned." I illuminate how the exhibition fashions the history of the IMT and contemporary international criminal tribunals as critical devices that deliver political communities into a society marked by peace and respect for human rights. This ends-oriented narrative, which converges with the municipality's self-fashioning as the "City of Human Rights," forestalls contemporary conversations about the persistence of neo-Nazi ideology in Nuremberg's police force and greater community.<sup>100</sup> Yet the museum is also the site that subverts such narratives.

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<sup>99</sup> See Steven Mailloux, *Disciplinary Identities: Rhetorical Paths of English, Speech, and Composition* (New York: The Modern Language Association of America, 2006), 2-5, 124-136. See also, Michel Foucault, "Politics and the Study of Discourse," in *The Foucault Effect: Studies in Governmentality*, ed. Graham Burchell, Peter Miller, and Colin Gordon (Chicago: University of Chicago Press, 1991), 53-72.

<sup>100</sup> See "Nuremberg: City of Peace and Human Rights," Human Rights Office, City of Nuremberg, accessed May 10, 2017, [https://www.nuernberg.de/internet/menschenrechte\\_e/](https://www.nuernberg.de/internet/menschenrechte_e/)

Courtroom 600, which is a place of jurisdiction *and* the museum's central artefact, inadvertently exposes the presence of Nazi activity that the museum and city claims to have "broken" from and "overcome." As such, I explore how space offers a critical site for the chance rupturing of the exhibition's rhetoric of ends.

I turn to the United States Holocaust Memorial Museum in Chapter Three. In this chapter I show how both the museum and law derive their power, and re-cast history by referencing the archive they alone configure. I draw on the work of Jacques Derrida and Cornelia Vissmann to critically interrogate the museum's exhibition "The Nuremberg Trials: What is Justice?" and its representation of the criminal artefacts tendered to the IMT. I explore how the museum attempts to re-affirm law as a critical device to return to and grapple with violent pasts. However, the collision of both law's and museum's claim to knowledge produces inadvertent effects that undermine the archival power maintained by both institutions. As such, I argue that the museum can be a site that simultaneously projects *and* interrupts the museum's and law's largely singular and definitive account of the past, exposing the mythical foundations that underpin both institutions.

In Chapter Four I examine the museological stagecraft of the "Majdanek Trial Portraits" at the Jewish Museum Berlin. I show how the Museum frames the Düsseldorf Majdanek trial as an important moment in West Germany's political transition, as a critical moment in the political community's transition away from its Nazi past. However, the curatorial approach to the exhibition's layout, compounded by the force of the Museum's architectural design, interrupts the ends-oriented narrative that aims to configure West Germany's transition into a finite moment. Drawing on Benjamin's methodology of critical

constellations, I show how the decontextualization of the subjects depicted in the portraits, the imposing ambient sound from the adjacent installation, and the non-chronological presentation of the Düsseldorf Majdanek trial (1975-1981) *before* the Frankfurt Auschwitz Trial (1963-1965), inadvertently undercuts the collection's programming. This rupture gains more force when Daniel Libeskind's architectural design "Between the Lines" is taken into consideration. The spatiality of the museum, informed by its structure, de-naturalizes visitor movement, and provokes visitors to assemble their own critical constellations and assemble desperate fragments of the exhibition.

My Conclusion considers how the memorialization of transitional justice mechanisms in museums is indicative of the growing momentum and force of transitional justice theory. However, Benjamin tells us that the more prevalent a phantasmagoria, the greater the opportunity to enact its destruction. As such, the inscription of transitional justice narratives in museums might also afford us a new frontier to battle its projections.

## Chapter One: Rhetoric of Ends

...the less a man is imprisoned in the binds of fate, the less he is determined by what lies nearest at hand, whether it be a people or circumstances.

— Walter Benjamin<sup>101</sup>

The General Agreement for the End of the Conflict and the Construction of a Stable and Long-lasting Peace was signed between representatives of Revolutionary Armed Forces of the People's Republic (FARC-EP), and the Government of the Republic of Columbia in August 2016. To affirm the peace accord, UN Secretary General Ban Ki-moon declared the following:

I welcome the commitments you have made to ensure truth, justice, and reparations for all victims. This is how healing begins [...] The agreements promise not only to stop the armed conflict, but to create the conditions for lasting peace based on equitable development, human rights and inclusion. These agreements envision a peace that values and ensures the participation of women, and a future in which there is room in politics for all, but no room in politics for violence.<sup>102</sup>

Shortly after, Columbian President Juan Manuel Santos was awarded the 2016 Nobel Peace Prize for his “resolute efforts to bring the country’s more than 50-year-long civil war to an end.”<sup>103</sup> The peace agreement called for comprehensive rural land reform, commitments to strengthen political pluralism, a durable ceasefire and disarmament framework, a solution to the cultivation of illicit drugs, verification mechanisms to enforce the agreement, and the establishment of the Special Jurisdiction for Peace [*Jurisdicción*

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<sup>101</sup> Walter Benjamin, “Prostitution, Gambling,” in *The Arcades Project*, trans. Howard Eiland and Kevin McLaughlin (Cambridge: The Belknap Press of Harvard University Press, 2002), 515 [O14,3].

<sup>102</sup> Ban Ki-moon, “Remarks at the Signing of the Columbia Peace Agreements,” media release, September 26, 2016; emphasis mine.

<sup>103</sup> Nobel Media, “Nobel Peace Prize 2016,” media release, October 16, 2016, [https://www.nobelprize.org/nobel\\_prizes/peace/laureates/2016/](https://www.nobelprize.org/nobel_prizes/peace/laureates/2016/).

*Especial para la Paz*] criminal tribunal.<sup>104</sup> According to the agreement, this body would “ensure accountability” and “facilitate social coexistence and reconciliation” by prosecuting FARC-EP and former government officials who have committed crimes against humanity, war crimes, and torture during the 52 year conflict.<sup>105</sup> Although Colombians ultimately rejected the peace framework through a binding plebiscite, President Santos and FARC-EP Commander Timoleón Jiménez have publically declared their commitment to construct a deal acceptable to Colombians that would “deliver peace.”<sup>106</sup>

While the political, social, and economic context that defined the conflict between government officials, FARC-EP members, and others are unique to Columbia, the rhetoric advanced by those interested in fashioning a response to the violence in the country is ordinary parlance in transitional justice theory and policy. Champions of transitional justice have intervened in Argentina, Rwanda, Serbia, Sierra Leone, and elsewhere, to advocate for the establishment of similar post-conflict mechanisms.<sup>107</sup> What unites these cases is a common discourse that links the establishment of transitional justice tools to the

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<sup>104</sup> See Office of High Commissioner for Peace, “Summary of Colombia’s Agreement to End Conflict and Build Peace,” accessed November 1, 2016, <http://www.altocomisionadoparalapaz.gov.co/herramientas/Documents/summary-of-colombias-peace-agreement.pdf>

<sup>105</sup> Commissioner for Peace, “Columbia’s Agreement,” 31.

<sup>106</sup> “Despite Colombia’s “No” Win, FARC and Santos Committed to Peace,” *teleSUR*, October 2, 2016, <http://www.telesurtv.net/english/news/Despite-Colombias-No-Win-FARC-and-Santos-Committed-to-Peace-20161002-0011.html>

<sup>107</sup> Transitional justice mechanisms are systems that are put in place after massive violence and political repression that aim to hold perpetrators of violence accountable for past actions and vindicate victims through legal or non-legal means. Criminal trials, truth commissions, memorials, reparations and redress are but a few examples of transitional justice mechanisms established to “draw a bright line” between violence pasts and democratic futures. For an introduction of these mechanisms, see Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998); United Nations Secretary General, “Report on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,” August 23, 2004, [https://www.un.org/ruleoflaw/files\\_20/2004\\_20report.pdf](https://www.un.org/ruleoflaw/files_20/2004_20report.pdf); The International Centre for Transitional Justice, “Transitional Justice Issues,” accessed October 22, 2016, <https://www.ictj.org/our-work/transitional-justice-issues>.

cultivation and dispensation of desired objectives of truth, reconciliation, democracy, truth, and peace. Here, a story about what must be done to mend fractured communities emerges in the dominant transitional justice literature. It begins with defining a moment of violence, and points to that—traditionally criminal trials—which will set a community on the path to a sunnier political and social future.

Transitional Justice theorists construe the trial medium as the “means” to an imagined “end,” which engenders a mythic story that illuminates the trial as a moment that re-sets a community’s trajectory to a path destined for a brighter, more peaceful future.<sup>108</sup> I describe future-oriented postulations advanced within the discipline of transitional justice as a “rhetoric of ends.” I define rhetoric as a technique of knowledge production used by interlocutors that works towards the establishment of the discipline’s predominate concerns, theoretical orientations, and ideological attachments. Indeed, transitional justice scholarship is heterogeneous, and my goal in this Chapter is not to conflate the field’s scholastic diversity into one, treatable unit that sets-up my external critique as all encompassing.<sup>109</sup> Instead, I tease out one polemic by charting the tropes, arguments, and turns of phrase that affirm the trial medium as a mechanism that works towards various imagined “ends.”<sup>110</sup>

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<sup>108</sup> For instance, see Ruti Teitel, *Transitional Justice* (New York: Oxford University Press, 2000); Kathryn Sikkink, *Justice Cascade: How Human Rights Prosecutions are Changing World Politics* (New York: W. W. Norton & Company, 2001); Minow, *Vengeance and Forgiveness*.

<sup>109</sup> For a conceptualization of transitional justice as a “field” that obscures the political imperatives that inform the myriad approaches to post-conflict life, see Christine Bell, “Transitional Justice, Interdisciplinarity and the State of the “Field” or Non-Field”, *The International Journal of Transitional Justice* 3, no. 1 (2009):13-17.

<sup>110</sup> Steven Mailloux defines this approach as “rhetorical hermeneutics, a tracing of rhetorical paths of thought in various cultural spaces” that work towards the performance of various disciplinary identities. Steven Mailloux, *Disciplinary Identities: Rhetorical Paths of English, Speech, and Composition* (New York: The Modern Language Association of America, 2006), 2-5, 124-136. Rhetoric and narrative are distinct but can be inter-

I use “ends” to refer to that which is imagined to be fostered, accomplished, fulfilled, or realized through engagements with transitional justice processes. Walter Benjamin conceives of ends-oriented discourse as a positing whose mythic foundation is concealed by rhetorical political language—a discourse that renders “ends” as distinct from and more important than the means deployed.<sup>111</sup> Those who peddle the sunny futures defined by peace, reconciliation, and democratization allegedly produced through criminal prosecutions guide decision-makers, and those caught-up in the most insidious forms of violence, towards embracing a romantic way-out. This ends-oriented rhetoric is a part of modernity’s epistemological construct that engineers the contours of post-war political realities, and therefore the possibilities available to political communities after periods of massive violence.<sup>112</sup> These narratives maintain and justify the current imposition of transitional justice mechanisms and their correlative ends-oriented projections. Further, they travel to and establish themselves in cultural spaces, like the museum, which further engrains their reflection of the world. Dovetailing with Peter Fitzpatrick’s theorization on how myth is used to smooth over law’s irreconcilabilities, such rhetoric of ends projects a

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related forms. Narrative, according to Paul Ricoeur, is structured by a sequence that gives meanings to lists, stories, or events. Ricoeur states, “I take temporality to be that of structure of existence that reaches language in narrativity, and narrativity to be the language structure that has temporality as its ultimate reference.” Paul Ricoeur, “Narrative Time,” in *On Narrative*, ed. W. J. T. Mitchell (Chicago: University of Chicago Press, 2002), 16. I use narrative through-out this chapter to point out when narrative—structured by sequence—is deployed to serve the political objectives of rhetoric.

<sup>111</sup> Walter Benjamin, “Critique of Violence,” in *Walter Benjamin: Selected Writings Volume 1, 1913-1926*, eds. Marcus Bullock and Michael W. Jennings (Cambridge: The Belknap Press of Harvard University Press, 2004), 239; Werner Hamacher, “Affirmative Strike,” *Cardozo Law Review* 13 (1991): 1133.

<sup>112</sup> I draw specifically on Michel Foucault’s notion of discursive power. See Michel Foucault, “Politics and the Study of Discourse,” in *The Foucault Effect: Studies in Governmentality*, ed. Graham Burchell, Peter Miller, and Colin Gordon (Chicago: University of Chicago Press, 1991), 53-72.

coherent story that links trials to sunny political conditions by blocking off explanations of political and social events as they really may be after prosecutions have ended.<sup>113</sup>

In this Chapter I explore how dominant narratives in transitional justice theory centered on criminal prosecutions organize violence, transition, and the future into definitive, bounded periods. I argue that these future-oriented discursive formations manage and constrain political transformation. Politics of means/ends relations, which Benjamin describes in his discussion of “the language of man” and “mythic violence,” justifies impositions by exalting the ends they set out to achieve. Ends-oriented polemics justify the trial medium for its ostensible role in the delivery of democracy, collective memory, respect for human-rights, and peace. As such, it forecloses the possibility of imagining approaches to justice, political transformation, and democracy otherwise.

The means/ends politics latent in the rhetoric of ends I describe produces a dominant representation of the world. Benjamin tells us that the court of the human world has no access to truth or objective reality. Rather, he argues that we live in a world dominated by representation. Benjamin describes this concealment, or representations of the world masquerading as truth, as a “phantasmagoria.” His concept of phantasmagoria, then, tracks the various “ends” representations are thought to achieve, and the means used to produce and sustain such imaginaries. The rhetoric of ends conceal political and social difference, and in doing so, it attempts to foreclose the open-ended, and on-going possibilities of a political community’s transformation.<sup>114</sup> I describe the illusions imbued in

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<sup>113</sup> See Peter Fitzpatrick, *The Mythology of Modern Law* (New York: Routledge, 1992).

<sup>114</sup> However, polemics that establish ends-oriented totalities can be subverted, and as I argue in Chapter Two, Three, and Four, this subversion can occur at the site of the museum.

this rhetoric as a “phantasmagoria of transitional justice”—rhetorical positings that seek to govern and manage the trajectory of a community’s transformation by concealing political and social difference. Yet, as I show in Chapter Two, Three, and Four, these discursive formations and the world they seek to establish in a collective’s imagination are infinitely interruptible at the site of the museum, and other aesthetic sites.

Putting Benjamin to work, I describe the limits of a politics premised on means/ends relations, and the phantoms produced by such pursuits in part one of this Chapter. I draw on “On Language as Such and on the Language of Man” (“On Language” from here on in) and “Critique of Violence” to describe the politics of ends, and by extension, the politics of pure means. Here, the “language of man” and “mythic violence,” justifies their imposition by exalting the ends they set out to achieve. In contrast, the “language of God” and “divine violence” advances a politics of pure means that deposes and interrupts the production of fixed communication or legal order. In this section I also explain how means/ends politics produce a dream world—phantasmagoria—that fetishizes transitional justice mechanisms.

In part two of this Chapter I supply evidence that a rhetoric of ends circulates in transitional justice theory. Placing a premium and narrow focus on justifications for the establishment of criminal trials after periods of mass violence, this section charts how transitional justice rhetoric imagines three ends. The first end I consider figures post-war trials as sites that produce an authoritative account of the past.<sup>115</sup> I show how theorists like

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<sup>115</sup> Mark Osiel, “Ever Again: Legal Remembrance of Administrative Massacre,” *University of Pennsylvania Law Review* 144, no. 2 (1995): 513; Shoshana Felman, *The Juridical Unconscious: Trials and Trauma in the*

Lawrence Douglas, Mark Osiel, and Shoshana Felman relegate violence to the past by encapsulating the moment that must be dealt and dispensed. The second end I identify is that of a definitive democratic order. Here, Judith Shklar, Ruti Teitel, and Diane Orentlicher render post-war prosecutions as the means to attain a community premised on political ideals like tolerance and equality.<sup>116</sup> This rhetoric seeks to place political communities in a bounded temporal period that has broken with the violence of the past, that has dispensed justice, and thus as a community that has *transitioned* to democracy. The third end, ostensibly attained through criminal prosecutions, is that of peace, and by extension, reconciliation. Here, scholars like Laurel Fletcher, Harvey Weinstein, Colleen Murphy, and Kathryn Sikkink conceive trials as devices that shift the moral compass of political communities, achieve social and political stability, and promote a general commitment to human rights. By focusing on this rhetoric of ends, I shift attention away from stories that begin with mass atrocity and conclude with the establishment of transitional justice mechanisms, towards stories that begin with moments of violence and end with the “arrival” of peace, and a general political commitment to human rights. I conclude by affirming how transitional justice theory’s rhetoric of ends and its correlative organization of pasts, transition, and futures, govern political transformations and foreclose alternative understandings of political transformation.

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*Twentieth Century* (Cambridge: Harvard University Press, 2002), 5; Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven: Yale University Press, 2001).

<sup>116</sup> Judith N. Shklar, *Legalism: Law, Morals, and Political Trials* (Cambridge: Harvard University Press, 1964), 145; Teitel, *Transitional Justice*, 25, 30.

## Means/Ends Politics, and the Governance of Political Transformation

The end-focused rhetoric that dominates transitional justice discourse is part of the broader means/ends relations paradigm. This rhetoric aims to illustrate progress by establishing and maintaining imagined links between the encapsulation of a past marked by violence, the bounded period of transition, and a time marked by democracy, peace, and reconciliation.<sup>117</sup> Conceiving political transition on a neat and coherent trajectory away from violence and towards democracy is underpinned by a politics of means/ends relations.

Through-out his adult life, Benjamin observed how ends-focused, chronological notions of time were used to curtail and manage the re-working of political and economic orders. In this section, I turn to two essays by Benjamin, “On Language,” and “Critique of Violence,” to illuminate the stakes of the rhetoric of ends deployed by some transitional justice theorists. I show how a politics of means/ends relations, upon which visual, material, and textual representations of progress are launched, conceals the mythic foundations of dominant structures of authority. The rhetoric of ends conceals political and social difference, and in doing so, it attempts to foreclose the open-ended, and on-going possibilities of a political community’s transformation.<sup>118</sup> Benjamin describes this concealment, or representations of the world masquerading as truth, as a “phantasmagoria.” In part two of this Chapter, I describe how rhetoric of ends wielded by

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<sup>117</sup> By “mastering the past” I am referring to a rhetoric that suggests that the past can be adequately confronted, accounted for, dealt with.

<sup>118</sup> However, polemics that establish ends-oriented totalities can be subverted, and as I argue in Chapter Two, Three, and Four, this subversion can occur at the site of the museum.

some transitional justice theorists enter into a “phantasmagoria of transitional justice.”<sup>119</sup>

### *Benjamin’s politics of means/ends*

Benjamin’s preoccupation with projections of reality began early in his career and prominently figure in one of his early texts “On Language,” which I use as an entry point to explain the politics of means/ends relations. In the essay, Benjamin describes two registers of language in order to demonstrate how a system of representation is appropriated and utilized as a means to an imagined end. The first describes language as a vessel for transmission, or the “language of man” in Benjamin’s terms.<sup>120</sup> Here, language is construed as the means to achieve the ends of communicating the mental being of the individual, which is an end that exists outside the apparatus of language itself.<sup>121</sup> This register of language is a system of positing, which demands an addressee, and thus intent. It operates within modernity’s *episteme* whereby language is a system of representation broadly divorced from the messy phenomena of the world. The second register conceives of language as that which knows no ends and is without addressee — a conception Benjamin refers to as “the language of God.”<sup>122</sup> Here, language is figured as pure means untethered

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<sup>119</sup> In the following Chapters I describe how this rhetoric is emboldened by museological representations of post-conflict criminal trials at Memorium Nuremberg Trials in Nuremberg, Germany and the United States Memorial Museum in Washington DC. Yet, I also show how the phantasmagorias of transitional justice manifest in museums are not totalizing, as grounds to disrupt a rhetoric of ends are present in each exhibition, to varying extents, through open-ended spatial and material formations.

<sup>120</sup> Walter Benjamin, “On Language as Such and on the Language of Man,” in *Walter Benjamin: Selected Writings, Volume 1, 1913-1926*, ed. Marcus Bullock and Michael W. Jennings, trans. Harcourt Brace Jovanovich and others (Cambridge: The Belknap Press of Harvard University Press, 2002), 65.

<sup>121</sup> Benjamin, “On Language,” 63, 65.

<sup>122</sup> Benjamin, “On Language,” 65. See also Alison Ross, “The Distinction between Mythic and Divine Violence: Walter Benjamin’s “Critique of Violence” from the Perspective of “Goethe’s Elective Affinities,” *New German Critique* 41, no. 1 (2014): 116.

to sign or intention, and deposes of itself in its engagement with itself.<sup>123</sup> It exists prior to performance, representation, and prior to positing. It interrupts, and perpetuates irresolution.<sup>124</sup> It advances a politics of pure mediacy.

Benjamin evokes the allegory of the second story of Creation presented in Genesis, in order to clarify this distinction.<sup>125</sup> In Benjamin's political theology, God is unavailable to the human world and to speak for God or to project God's wishes is idolatrous.<sup>126</sup> In "On Language" Benjamin evokes the hollow figure of God to demonstrate the failure of truth claims, or more precisely, the failure of language as a gateway to the truth of the world. In Paradise, God created and summoned Adam and Eve to participate in the creation of the world by naming the objects that compose it. In the act of naming in Paradise, as described in Benjamin's later work "Origin of German Tragic Drama" (1928), "[i]deas are displayed, without intention."<sup>127</sup> As such, the language of knowledge was born as objects communicated truth, and therefore reality. However, this access to truth vis-à-vis language in Paradise is shattered with the Fall of Adam and Eve. To quote Benjamin:

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<sup>123</sup> Hamacher, "Afformative, Strike," 1141.

<sup>124</sup> Benjamin, "On Language," 65; Hamacher, "Afformative Strike," 1154. According to Hamacher, deposing language or is prior to representation. As such, it is "not the opposite of positing and cannot be defined as negation—determinate or indeterminate—of a position as long as the logic of negation is governed by the premises of positional or propositional logic... The affirmative character of political deposing, therefore, does not stand opposed to legal positings, it lies beyond position and opposition and is—as athetical, immediate mediacy—the precondition for both, without, however, being expressible, representable, or presentable in either of them." Hamacher, "Afformative, Strike," 1139n.

<sup>125</sup> Benjamin provides a caveat before reciting the story of Creation to explain that his evocation of the figure of God is not religious, but allegorical: "...the objective is neither biblical interpretation nor subjection of the Bible to objective consideration as revealed truth, but the discovery of what emerges of itself from the biblical text with regard to the nature of language; and the Bible is only initially indispensable for this purpose, because the present argument broadly follows it in presupposing language as an ultimate reality, perceptible only in its manifestation, inexplicable and mystical." Benjamin, "On Language," 67; emphasis his.

<sup>126</sup> James Martel, "Anarchist All the Way Down," *Parrhesia* no. 21 (2014): 4. For a systematic engagement with Benjamin's distinction between religion and theology, see Andrew Benjamin, *Working with Walter Benjamin: Recovering a Political Philosophy* (Oxford: Oxford University Press, 2013).

<sup>127</sup> Walter Benjamin, *Origin of German Tragic Drama*, trans. John Osborne (New York: Verso, 2003), 37.

[t]he knowledge to which the snake seduced, that of good and evil, is nameless. It is vain in the deepest sense, and this very knowledge is itself the only evil known to the paradisiacal state. Knowledge of good and evil abandons name; it is knowledge from outside, the uncreated imitation of the creative world. Name steps outside itself in this knowledge: the Fall marks the birth of the human world, in which name no longer lives intact and which has stepped out of name-language, the language of knowledge.<sup>128</sup>

Here, Benjamin points to how the abstract concepts of good and evil brought into Paradise by the snake inaugurated judgment, severing language's access to truth.<sup>129</sup> Language became "a knowledge from the outside, the uncreated imitation of the creative world."<sup>130</sup> For Benjamin, the Fall from Paradise describes the point when our sense of reality could not help but be figured through representation despite its constant failure to express being.

This essay supplies insight into Benjamin's political theory that is centered on rupturing systems that organize, delimit, and close-down possible ways of being in the world. Benjamin's essay evaluates language as a site that is implicated in such foreclosures as it is a system of representation that engages in ends-oriented politics (the "language of man"). However, language can also interrupt projections of truth that attempt to order the world (the "language of God"). Central, here, is Benjamin's consistent position, which I hope to demonstrate through-out this dissertation, that our inability to access absolute truth does not mean there are no grounds to engage in a politics that subverts dominant

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<sup>128</sup> Benjamin, "Language as Such," 71.

<sup>129</sup> James R. Martel, *Divine Violence: Walter Benjamin and the Eschatology of Sovereignty* (New York: Routledge, 2012), 49.

<sup>130</sup> Benjamin, "Language as Such," 72. See also, Alison Ross, "The Ambiguity of Ambiguity in Benjamin's "Critique of Violence," in *Towards the Critique of Violence: Walter Benjamin and Giorgio Agamben*, eds. Brendan Moran and Carlo Salzani (London: Bloomsbury Academic, 2015), 53.

systems of authority. For instance, while the first order of language posits, the second order deposes; the former sets boundaries by stabilizing symbols in order to communicate unequivocally; the latter destroys boundaries by leaving language as an open-ended expression. What this means is that while the rhetoric of ends is a world making apparatus, it is infinitely vulnerable to chance subversions enacted with language, and other forms of representation like those found at the museum.

The dangers of a politics premised on means/ends relations are further fleshed out in "Critique of Violence." In this essay, Benjamin discriminates between two categories of violence [*Gewalt*], or force.<sup>131</sup> The first category, which he calls mythic violence, imposes, and preserves law. The second category, which he names divine violence, destroys law. Benjamin tells us that we can distinguish between the two forms of violence by charting how they relate to ends.

Like the first register of language, mythic violence is premised on a means/ends relation. This violence justifies itself in reference to the ends it sets out to achieve.<sup>132</sup> During civil unrest, for example, the state will resort to mythic violence in order to preserve itself.<sup>133</sup> However, a community that seeks political transformation may also engage in mythic violence. On this point, Benjamin tells us that after revolution, a community may

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<sup>131</sup> "Critique of Violence" is translated from the German title *Zur Kritik der Gewalt*. In German, *Gewalt* can mean "legitimate power, authority, public force." *Gesetzgebende Gewalt* is legislative power, *geistliche Gewalt* is the spiritual power of the church, and *Staatsgewalt* the authority of power of the state. *Gewalt*, then, is both violence and legitimate power, justified authority." Jacques Derrida, "The Force of Law: The "Mystical Foundation of Authority," in *Deconstruction and the Possibility of Justice*, eds. Drucilla Cornell, Michel Rosenfeld and David Gray Carlson, trans. Mary Quaintance (New York: Routledge, 1992), 6.

<sup>132</sup> Benjamin, "Critique of Violence," 237.

<sup>133</sup> Benjamin, "Critique of Violence," 243.

enact mythic violence by establishing a new system of law.<sup>134</sup> In both cases, the resort to violence, or force, is justified on the basis of the ends it seeks to achieve: the preservation or positing of law.

Benjamin borrows George Sorel's framing of the political general strike to explain how political community revolt can enact mythic violence.<sup>135</sup> In the political strike, workers withdraw their labour to extort (means) their employer into concessions (ends), which is followed by the resumption of work.<sup>136</sup> Here, the suspension of labour only serves to reform and preserve the legal order. Dominant structures of authority accommodate this type of worker-action because it is not law destroying, nor does it expose the mythic foundations upon which it is premised. The force used as a means to attain concession in the political strike accords with the violence used as a means to make law.<sup>137</sup> In this means/ends relation, law appears as neutral, however dominant systems are maintained as "power is transferred from the privileged to the privileged."<sup>138</sup> The political strike does not eject the capitalist order, or depose of the state and achieve a more peaceful future where power is distributed equally.<sup>139</sup> It does not break the system of means/ends relations that is used to grasp and maintain the power necessary to dominate and control others. Rather, it changes the circumstances of the few, and reproduces the system of oppression it ostensibly aims to dismantle. The political general strike is managed and

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<sup>134</sup> Benjamin, "Critique of Violence," 248-249.

<sup>135</sup> Benjamin interestingly draws a comparison to the failed German revolution to the failing strategy of the political general strike to achieve revolution. Benjamin, "Critique of Violence," 246.

<sup>136</sup> Benjamin, "Critique of Violence," 239.

<sup>137</sup> Benjamin, "Critique of Violence," 239- 240.

<sup>138</sup> Benjamin, "Critique of Violence," 246.

<sup>139</sup> Drawing on Sorel, Benjamin rejects "every kind of program, of utopia—in a word, of lawmaking—for the revolutionary movement." Benjamin, "Critique of Violence," 246.

governed by law, which directs, curtails, and delimits the political and economic transformation. Mythic violence re-inscribes law's authority and establishes a boundary that curtails the possibilities of work action.<sup>140</sup> It is caught in a cycle of positing and persevering the law, in perpetuity.

Mythic violence represents law as an irresistible destiny removed from injury or oppression.<sup>141</sup> Law's investment in its own preservation, which is premised on a means/ends relation, creates "false projections, misleading representations of truth that claim to be rooted in God, in nature or in other sources of authority that are no longer available to us."<sup>142</sup> By orienting law as a natural destiny for political community, the mythical foundations of law are concealed. Here, the preservation or establishment of new law is naturalized to the point where the source of its authority remains unquestioned.<sup>143</sup> Mythic violence oscillates between founding and preserving law because it is driven by a myth of a desired future. Law's imposition is therefore premised on a politics of means/ends relations.

In contrast, divine violence is not premised on means/ends relations. Instead, it is a politics of pure means. Here, means are pure because they do not impart ends beyond their own mediacy.<sup>144</sup> As such, divine violence is law deposing, anarchistic, and thus unconcerned with institutionalization or self-preservation.<sup>145</sup> To elaborate, Benjamin

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<sup>140</sup> Benjamin, "Critique of Violence," 248-249;

<sup>141</sup> Benjamin, "Critique of Violence," 242; James Martel, "The One and Only Law: Walter Benjamin, Utopianism, and the Second Commandments," in *Law and the Utopian Imagination*, eds. Austin Sarat et al. (Stanford: Stanford University Press, 2014), 27.

<sup>142</sup> Martel, "All the Way," 4.

<sup>143</sup> Benjamin, "Critique of Violence," 242.

<sup>144</sup> Benjamin, "Critique of Violence," 251-252; Hamacher, "Affirmative, Strike," 1141.

<sup>145</sup> Benjamin, "Critique of Violence," 246.

contrasts the political strike with the proletarian general strike. The former maintains the state and legal order while the later expresses indifference towards material, social, or political gains.<sup>146</sup> Here, the proletarian general strike skirts extortion, and instead withholds work until the collapse of the state and its correlative legal order that oscillates between law positing and preserving violence.<sup>147</sup> It deposes as opposed to posits — the proletarian general strike interrupts relations with ends through non-action, inaugurating an infinitely indeterminable opening of what is to come.

This section considers the basis for a politics premised on means/ends relations and the politics of pure mediacy. The insights marshalled from “On Language,” and “Critique of Violence,” expose the problem of ends-oriented discursive formations that trend in transitional justice theory. However, both essays also illuminate the radical potential for a caesura or opening by evoking a politics of pure means. In sum, the language of man and mythic violence organize understandings of the world through their ends-oriented postulations.<sup>148</sup> These specifications illuminate how a politics of means/end relations performs its imposition. The language of God and divine violence are pure means, a politics of pure mediacy. Both are born within themselves as opposed to an end emerging from the outside. They do not produce, but interrupt and depose of representations that dominate understandings of the world. Before analyzing the problematic of the rhetoric of ends prevalent in transitional justice discourse through Benjamin’s theoretical tools, I consider how ends-orientated politics projects an image of a coherent world, or what

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<sup>146</sup> Benjamin, “Critique of Violence,” 246.

<sup>147</sup> Benjamin, “Critique of Violence,” 246.

<sup>148</sup> Hamacher, “Afformative, Strike,” 1133.

Benjamin would call “phantasmagoria.” In doing so, I suggest how the rhetoric of ends present in transitional justice theory projects a “phantasmagoria of transitional justice” in the final section on this Chapter.

### *Benjamin’s phantasmagoria*

The etymology of “phantasmagoria” pre-dates Benjamin’s use of the term. In the late 1790s, inventor and physicist Étienne-Gaspard Robertson popularized the concept with his “fantasmagorie” show.<sup>149</sup> Using a magic lantern, rear projector, smoke, and sound effects he produced a ghostly reality that overwhelmed audiences despite their acknowledgment of the show’s fictitious basis.

Benjamin appropriates the concept “phantasmagoria” from Karl Marx to describe the dominant representations — whether they be expressed through language, law, or another system — that cohere the world.<sup>150</sup> Marx first deploys the term in “Capital, Volume One.”<sup>151</sup> For Marx, it is the precise mystification of the labor-commodity relation

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<sup>149</sup> Theodore Barbar, “Phantasmagorical Wonders: The Magic Lantern Ghost Show in Nineteenth Century America,” *Film History* 3, no. 2 (1989): 74-75.

<sup>150</sup> Walter Benjamin, “Paris, Capital of the Nineteenth Century (1935),” in *The Arcades Project*, trans. Howard Eiland and Kevin McLaughlin (Cambridge: The Belknap Press of Harvard University Press, 2002), 26.

<sup>151</sup> Marx employs the term phantasmagoria to define the mystical form of commodities in “Capital: Volume One.” Marx provides a basis for his concept of phantasmagoria by explaining how objects take on two values. In simple terms, an object’s “use value” defines the transformation of a simple object into an object that is consumed to satisfy the desires of individuals. Here, labor is essential to the establishment of an object’s use value as it is labor that transforms an object into another that satisfies ostensible needs. Marx uses the example of a wooden table. Here, a piece of wood is a simple object. When it is transformed into a wooden table, or some other product that attends to the desires of people, the object takes on a “use value.” “Exchange value,” according to Marx, is the amount of labor contained in a commodity that can render two different commodities equal. He uses the example of two commodities: linen and a coat. The exchange value of these commodities is expressed as 10 yards of linen = W, the coat = 2W. Karl Marx, “Capital, Volume 1,” in *The Marx-Engels Reader: Second Edition*, ed. Robert C. Tucker (New York: W. W. Norton & Company, 1978), 308-321. When labor and objects enter the market and take commodity form, the “value [of a commodity] can only manifest itself in the social relations of commodity to commodity.” Marx, “Capital,” 313.

that produces the “fantastic form of a relation between things” [*phantasmagorische Form eines Verhältnis von Dingen annimmt*].<sup>152</sup> Marx further describes the distorted reality created by ideological transposition in “The German Ideology.” There, Marx argues that “[i]n all ideology, men and their circumstances appear upside-down as in a camera obscura.”<sup>153</sup> By evoking the metaphor of the camera obscura, Marx describes the obfuscation of a knowable, objective world by capitalist modes of production, which leads to the perversion of reality, and production of false consciousness.

Since the Fall, Benjamin argues, the human world has no recourse but to representation.<sup>154</sup> As such, Benjamin’s phantasmagoria does not describe the mystification of the objective, knowable, and truthful world. Rather, his phantasmagoria accords with a magic lantern that “inverts painted slides which are themselves artistic productions.”<sup>155</sup>

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<sup>152</sup> Marx, “Capital,” 321; Karl Marx, *Das Kapital: Kritik der politischen Ökonomie* (Berlin: Dietz, 2013), 86. Marx evokes the spectral nature of the commodity, describing it as a “mysterious thing, simply because in it the social character of men’s labor appears to them as an objective character stamped upon the product of that labor; because the relation of the producers to the sum total of their own labor is presented to them as a social relation, existing not between themselves, but between the products of their labor. This is the reason why the products of labor become commodities, social things whose qualities are at the same time perceptible and imperceptible by the senses.” Marx, “Capital,” 320-321. English translations of *Das Kapital* have chronically translated “*phantasmagorische*” as “fantastic,” which has obfuscated Marx’s engagement with the concept of phantasmagoria in English-text.

<sup>153</sup> Karl Marx, “The German Ideology: Part I,” in *The Marx-Engels Reader: Second Edition*, ed. Robert C. Tucker (New York: W. W. Norton & Company, 1978), 154.

<sup>154</sup> I follow James Martel who emphasizes that Benjamin does believe that there is truth, but that such truth is inaccessible to the human court. Martel, *Textual Conspiracies*, 13.

<sup>155</sup> Margaret Cohen, “Walter Benjamin’s Phantasmagoria,” *The New German Critique* 48, no. 48 (1989): 93-94. Benjamin’s conceptual development of phantasmagoria begins at this point of immaturity in Marx’s thought. Referring to how Marx conceives the relationship between infrastructure (modes of economic production) and superstructure (law, politics, art, etc.) in “Capital,” Benjamin writes, “[i]t is well known that Marx never explained in any detail how the relationship between superstructure and infrastructure should be thought of in individual cases. All we can determine is that he envisaged a series of mediations—transmissions, one might say—which interpolate between the material relations of production and the remoter domains of the superstructure, which includes art.” Benjamin, “Eduard Fuchs,” 294. This quote reflects Benjamin’s struggle to characterize Marx’s conception of the relationship between infrastructure and superstructure. As opposed to sketching a theory towards the “economic origins of culture” mounted on the theoretical basis constructed by Marx in “Capital,” Benjamin charts the “expression of the economy in culture.” In *Arcades* [convolute K2, 5], Benjamin corrects Marx: “[i]t seems, at first sight, that Marx wanted

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For Benjamin, it is representation masquerading as a truth that governs and manages ways of being in the world, as opposed to the obfuscation of an accessible truthful world hidden by ideology. Put another way: Benjamin affirms the radical irreconcilabilities and ambiguities of the world, and the impossibility to attain a truthful representation of it, and thus, he opposes representations that attempt to conceal these tensions.

Benjamin's primary definition of phantasmagoria is presented in the 1939 rendition of "Paris, Capital of the Nineteenth Century," which serves as an introduction of sorts to

*The Arcades Project*:

[o]ur investigation proposes to show how, as a consequence of this reifying representation of civilization, the new forms of behavior and the new economically and technologically based creations that we owe to the nineteenth century enter into the universe of a phantasmagoria. These creations undergo this "illumination" not only in a theoretical manner, by

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to establish here only a causal relation between superstructure and infrastructure. But already the observation that ideologies of the superstructure reflect conditions falsely and invidiously goes beyond this. The question, in effect, is the following: if the infrastructure in a certain way (in the materials of thought and experience) determines the superstructure, but if such determination is not reducible to simple reflection, how is it then—entirely apart from any question about the originating cause—to be characterized? As its expression. The superstructure is the expression of the infrastructure. The economic conditions under which society exists are expressed in the superstructure—precisely as, with the sleeper, an overfull stomach finds not its reflection but its expression in the contents of dreams, which, from a causal point of view, it may be said to condition." Benjamin, *Arcades*, 392; emphasis his.

<sup>156</sup> Walter Benjamin, "Eduard Fuchs, Collector and Historian," in *Walter Benjamin, Selected Writings Volume 3: 1935-1938*, eds. Howard Eiland and Michael W. Jennings, trans. Edmund Jephcott and others (Cambridge: The Belknap Press of Harvard University Press, 2002), 294.

an ideological transposition, but also in the immediacy of their perceptible presence. They are manifest as phantasmagorias.<sup>157</sup>

The project sought to dispel the myth of progress reified in nineteenth century Paris. Organized into convolutes, which function like thematic chapters, *Arcades* charts the illusion of sequential temporality imbued in the city's cultural commodities, urban redevelopment projects, and technology.<sup>158</sup>

The gentrification of Paris was central to his analysis. The city's urban renewal was spearheaded by urban planner George-Eugène Haussmann in the 1850s.<sup>159</sup> Under the banner of progress, public parks, elegant boulevards, brilliant arcades, and railroad stations were developed. Technological innovation was seen to represent civilization's advancement. The introduction of glass into architectural design, and electricity to illuminate casinos, streets, and department stores also became emblematic of progress.<sup>160</sup> The city served as the site for world expositions that brought together international delegations to discuss common interests.<sup>161</sup> Susan Buck-Morss writes that,

[a] phantasmagoria of politics had its source in the world expositions... wherein industry and technology were presented as mythic powers capable of producing out of themselves a future world of peace, class harmony, and abundance... of social progress for the masses without revolution.<sup>162</sup>

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<sup>157</sup> Walter Benjamin, "Paris, The Capital of the Ninetieth Century (1939)," in *The Arcades Project*, trans. Howard Eiland and Kevin McLaughlin (Cambridge: The Belknap Press of Harvard University Press, 2002), 14.

<sup>158</sup> Benjamin collected fragments from archival material domiciled at Berlin's *Staatsbibliothek* and Paris' *Bibliothèque Nationale* and arranged them into thirty-six pseudo thematic chapters that he referred to as "convolutes" [*Konvoluts*].

<sup>159</sup> For more on the exclusionary outcome of Haussmann's vicious plan which included mass eviction and demolition of housing stock, see Nathaniel Robert Walker "Lost in the City of Light: Dystopia and Utopia in the Wake of Haussmann's Paris," *Utopian Studies*, 25 no. 1 (2014): 24-51.

<sup>160</sup> Walter Benjamin, *Arcades Project*, trans. Howard Eiland and Kevin McLaughlin (Cambridge: The Belknap Press of Harvard University Press, 2002), 152-153 [F1a,5], 564 [T1a,4, T1a, 8]; Susan Buck-Morss, *The Dialectics of Seeing: Walter Benjamin and the Arcades Project* (Cambridge: The MIT Press, 1991), 81-90.

<sup>161</sup> Buck-Morss, *Dialectics of Seeing*, 86.

<sup>162</sup> Buck-Morss, *Dialectics of Seeing*, 86.

Monuments were constructed to marvel the splendor of early France and ostensibly show that each national accomplishment was more grand and spectacular than the last.<sup>163</sup> Here, the so-called new city of Paris symbolized progress and social utopia. Benjamin referred to the mass gentrification of Paris as an urban phantasmagoria that rendered civilization in stone.<sup>164</sup>

The illusion of progress, peace, and social development was used to govern and manage political and social relations in the city. Paris expressed an image of individuals as consumers as opposed to producers, which maintained the social stratification of city dwellers.<sup>165</sup> The ejection of the working class from the center of the city in order to build palaces, arcades, and boulevards in abundance was performed without attention to the security and health of everyone, and dissolved neighborhood-based community bonds that previously united the proletariat with the bourgeoisie.<sup>166</sup> Rents doubled after the construction of new buildings, which dovetailed with the rise of real-estate speculation, while the government subsidized private capital ventures with public funds.<sup>167</sup>

As such, the city of Paris in the nineteenth century was developed on a governing myth of progress. This myth was reified in buildings, commodities, and technology in the service of dominant structures of authority and power. Its force influenced the fashioning

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<sup>163</sup> Benjamin, *Arcades*, 407 [L1a, 7]; Buck-Morss, *Dialectics of Seeing*, 87.

<sup>164</sup> In his 1939 exposé "Paris, the Capital of the Nineteenth Century," Benjamin writes "[a]s for the phantasmagoria of civilization itself, it found its champion in Haussmann and its manifest expression in his transformation of Paris," and that "with the Haussmannization of Paris, the phantasmagoria was rendered in stone." Benjamin, "Paris (1939)," 14-15, 24.

<sup>165</sup> Buck-Morss, *Dialectics of Seeing*, 82.

<sup>166</sup> Benjamin, *Arcades*, 123 [E2, 1], 136 [E6a, 3].

<sup>167</sup> Benjamin, *Arcades*, 131-132 [E5,3]; Buck-Morss, *Dialectics of Seeing*, 89.

of cultural, social, and political spaces, material culture, discourse, and institutions. *Arcades* is a scholastic effort to show the myriad material, discursive, and institutional manifestations that produced this phantasmagoria of progress in Paris. It illuminates how justifications for the re-development of the city's space were premised on means/ends relations: to attain the "ends" of social advancement, city dwellers must embrace the "means" of Haussmann's project, among other social and economic transformations.

Yet such projections are not totalizing. Although Benjamin describes progressive notions of history as a phantasmagoria in *Arcades*, his critique of sequential time is most pronounced in his essay "On the Concept of History" (1940).<sup>168</sup> Benjamin takes issue with a historicism that establishes a causal nexus that lines up in sequence various moments in history.<sup>169</sup> Historicism places events into a series and charts a historical moment as a reaction to the preceding moment, or the overcoming of an earlier period.<sup>170</sup> Sequential links are composed to fill up a time that is seen as empty, projecting a coherent image of the past.<sup>171</sup> Here the course of history is set, naturalizing what is (said) to come for a particular political vision.<sup>172</sup> For Benjamin, the illusion produced by a temporality of sequential continuity is one of the most persuasive, overpowering, and pacifying narcotics of our time.<sup>173</sup>

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<sup>168</sup> Benjamin, "Paris (1939)," 26. See also Buck-Morss, *Dialectics of Seeing*, 56, 107.

<sup>169</sup> Benjamin, "Concept of History," 397.

<sup>170</sup> Benjamin, "Collector and Historian," 261.

<sup>171</sup> Walter Benjamin, "Central Park," in *Walter Benjamin, Selected Writings Volume 4 1938-1940*, eds. Howard Eiland and Michael W. Jennings, trans. Edmund Jephcott and others (Cambridge: The Belknap Press of Harvard University Press, 2003), 164. This imagery is also evoked in his sixth thesis. Benjamin, "Concept of History," 391.

<sup>172</sup> Martel, *Divine Violence*, 7.

<sup>173</sup> Benjamin, *Arcades*, 463.

His critique of objective time was addressed to both members of the Social Democratic Party (SPD) and fascists alike. According to Benjamin, the SPD occasionally took a stand against the illusions of positivist historicism but nevertheless remained largely enthralled by it.<sup>174</sup> By holding constant a progressive view of history, social democrats naturalized the rise of fascism. According to Benjamin, the party's view of progress was underpinned by a notion that humankind—including advances in knowledge and ability—was capable of perfection along an inevitable straight or spiral course.<sup>175</sup> Social democrats maintained that revolution would inaugurate reconciliation between communities, classes and individuals.<sup>176</sup> Benjamin argues that the SPD conceived of time as homogeneous and empty, as an open field that can be filled by the transposition of a historical narrative that fetishizes a link between revolution and the deliverance of peace, equality, and a better future.<sup>177</sup>

The phantasmagorical illusion of progressive time fostered a world that lulled social democrats into constructing and maintaining a historically determined political project. Once the socialist utopia was projected, empty time was transformed into a room, “in which one could wait for the emergence of the revolutionary situation with more or less

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<sup>174</sup> Benjamin, “Collector and Historian,” 267. The Social Democratic Party of Germany (SPD) was founded as a Marxist revolutionary organization in 1863, but it has transformed into a “social-reformist” party by the 1880s, and became Germany’s largest political party after WWI. Walter Benjamin, “Paralipomena to “On the Concept of History,” in *Walter Benjamin, Selected Writings, Volume 4: 1938-1940*, eds. Howard Eiland and Michael W. Jennings, trans. Edmund Jephcott and others (Cambridge: The Belknap Press of Harvard University Press, 2003), 408n3.

<sup>175</sup> Benjamin, “Concept of History,” 394.

<sup>176</sup> Walter Benjamin, “Surrealism,” in *Walter Benjamin: Selected Writings, Volume 2, Part 1: 1927-1930*, ed. Michael W. Jennings, Howard Eiland, and Gary Smith, trans. Rodney Livingstone and others (Cambridge: The Belknap Press of Harvard University Press, 2005), 217.

<sup>177</sup> Benjamin, “Concept of History,” 394.

equanimity.”<sup>178</sup> In doing so, according to Benjamin, they were seduced by the same projection of an objective, linear continuum that justified the political prerogatives of the ruling class. By treating the rise of fascism as an inevitable historical norm in the name of progress, Benjamin argues, the social democrats stood idle and witnessed the rise of National Socialism.<sup>179</sup> According to Benjamin, the SPD’s naturalization of historical time was a fatal theoretical error that was responsible for the co-optation of the working-class movement and their failure to militantly opposed the rise of fascism.<sup>180</sup>

What binds the examples of Paris in the nineteenth century, the SDP, and the political general strike is that they all were misguided by the myth of social utopia brought along by a means/ends politic. Further, Paris’s reformulation, which was ostensibly emblematic of progress, was a phantasmagorical image produced and sustained by a capitalist order that was busy further ingraining its power differential. Social democrats advanced a historically determined narrative of progress based on the coming moment of revolution. However, the 1918 German revolution and a durable opposition to fascism failed, according to Benjamin, precisely because it was based on the phantom of progress that empowered the ruling class. Furthermore, the political strike was lulled by the illusion that ends-oriented politics, and law, was a site for social transformation. As such, it worked within the existing legal system, which resulted in the maintenance of social and economic positions.<sup>181</sup> In all three cases the role of progress is central. To break away from the pull

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<sup>178</sup> Benjamin, “Paralipomena,” 402.

<sup>179</sup> Benjamin, “Concept of History,” 392.

<sup>180</sup> Buck-Morss, *Dialectics of Seeing*, 288.

<sup>181</sup> It is important to emphasize that disruptions of means/ends relations do not necessarily advance a politics of pure means. Rather, programs fashioned to disrupt social, political and legal orders may also advance a means/ends logic.

of the phantasmagoria of progress and perform a critical function, Benjamin tells us, the notion of progress itself must be undermined.<sup>182</sup> I will show how aesthetics inadvertently heeds this call in Chapter two, three, and four.

## Transitional Justice's Rhetoric of Ends

Transitional justice is typically understood as a concept forged in the early 1990s, yet political transitions to democratic rule are almost as old as democracy itself.<sup>183</sup> Contemporary discourse characterizes modern political transition as a bounded moment on a temporal plane where a political community confronts wrongs committed by former repressive regimes or other perpetrators of mass violence.<sup>184</sup> Many transitional justice mechanisms are often evoked in order to “turn a page,” “draw a line,” or “break with the past,” and transition from an illiberal to liberal, democratic order.<sup>185</sup> For instance, security

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<sup>182</sup> This position is articulated in contrast to Marx's conception of the relationship between revolution and progress in “Paralipomena to On The Concept of History”: “Marx says that revolutions are the locomotive of world history. But perhaps it is quite the otherwise. Perhaps revolutions are an attempt by the passengers of the train—namely, the human race—to activate the emergency brake.” Benjamin, “Paralipomena,” 402; Buck-Morss, *Dialectics of Seeing*, 92.

<sup>183</sup> Jon Elster charts the history of transitional justice back to the early 400s B.C. in Athens, where citizens of the state struggled to overthrow the oligarchy and re-establish a democratic order. Conversely, Ruti Teitel's genealogy of transitional justice locates the concept in the post WWI-era. Neil Kritz's edited collection was instrumental to the formal establishment of the concept in the early 1990s. Finally, Christine Bell suggests that the ‘field’ of transitional justice took shape in the early 2000s. See Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004), 3-24; Ruti Teitel, “Transitional Justice Genealogy” *Harvard Human Rights Journal* 16 (2003): 69-94; Neil Kritz, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes, Volume 1: General Considerations* (Washington DC: United States Institute of Peace Press, 1995); Christine Bell, “Transitional Justice, Interdisciplinarity and the State of the “Field” or “Non-Field,”” *The International Journal of Transitional Justice* 3, no. 1 (2009): 5-27. See also, Paige Arthur, “How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly* 31, no. 2 (2009): 327-333.

<sup>184</sup> Teitel, “Genealogy,” 69.

<sup>185</sup> Roger Duthie argues that transitional justice mechanisms “signal the state's commitment to breaking with the past.” Roger Duthie, “Transitional Justice, Development, and Economic Violence,” in *Justice and Economic Violence in Transition*, ed. Dustin Sharpe (New York: Springer, 2014), 180. For example, President Patricio Aylwin emphasized the need for Chileans to “accept the truth and turn the page” without mentioning

sector reform, which includes the professionalization and reorganization of military, police, and correctional services, is typically established on the assumption that “fragmented, poorly managed and politicized state security institutions” threaten a political community’s ability to achieve democratic order.<sup>186</sup> Truth commissions are organized on the promise that a journey from “a past marked by conflict, injustice, oppression, and exploitation to a new democratic dispensation” is achieved by clarifying the past and proposing recommendations that direct the re-fashioning of political institutions based on gathered testimony.<sup>187</sup> The post-conflict erection of memorials that acknowledge victim suffering are noted for their “constructive role in the shaping of cultures of democracy” by “vindicating the dignity of victims and stimulating open debates amongst past injustices” and thus should “be taken seriously in any democracy-building project.”<sup>188</sup> Reconstructive

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the crimes committed by the General Augusto Pinochet. Kritz, *Reckon*, 38. Ruti Teitel claims “[t]ransitional accountings incorporate a state’s repressive legacy and their very account draw a line that both redefines a past and reconstructs a state’s political identity.” Teitel, *Transitional Justice*, 8.

<sup>186</sup> Selver B. Sahin and Donald Feaver, “The Politics of Security Sector Reform in “Fragile” or “Post-conflict” Settings: A Critical Review of the Experience in Timor-Leste,” *Democratization* 20, no. 6 (2013): 1056; Mark Duffield, *Global Governance and the New Wars: The Merging of Development and Security* (London: Zed Books, 2001); Joseph Derdzinski, *Internal Security Services in Liberalizing States: Transitions, Turmoil, and (In)Security* (Farnham: Ashgate, 2009); Herbert Wulf, “Security Sector Reform in Developing and Transitional Countries,” in *Security Sector Reform: Potentials and Challenges for Conflict Transformation*, eds. Clem McCartney, Martina Fisher and Oliver Wills (Berlin: Berghof Foundation, 2004) 9-27.

<sup>187</sup> Archbishop Desmond Tutu, *Truth and Reconciliation Commission of South Africa Report: Volume One*, accessed October 29, 2016, [http://www.justice.gov.za/trc/report/finalreport/Volume\\_201.pdf](http://www.justice.gov.za/trc/report/finalreport/Volume_201.pdf). See also Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (New York: Routledge, 2001), 192; Chrisje Brants and Katrien Klep, “Transitional Justice: History-Telling, Collective Memory, and Victim-Witness,” *International Journal of Conflict and Violence* 7, no. 1 (2013): 44. Paul Gready tells us that South Africa’s Truth and Reconciliation Commission contributed to the “extraordinary” achievement of democracy and peace in the state, but that deep inequality and racism persists in the post-apartheid era. See Paul Gready, *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond* (New York: Routledge, 2011), 1.

<sup>188</sup> Susanne Buckley-Zistel and Stefanie Schafer, “Memorials in Times of Transition,” in *Memorials in Times of Transition*, eds. Susanne Buckley-Zistel and Stefanie Schafer (Cambridge: Intersentia, 2014), 9; Sebastian Brett, “Memorialization and Democracy: State Policy and Civic Action,” *International Centre for Transitional Justice*, accessed November 2, 2016, [https://www.ictj.org/sites/default/files/ICTJ-Global-Memorialization-Democracy-2007-English\\_0.pdf](https://www.ictj.org/sites/default/files/ICTJ-Global-Memorialization-Democracy-2007-English_0.pdf).

criminal trials are also projected as guarantors of a better life. Accordingly, Norbert Ehrenfreund argues that the “60 years of peace and democracy in Germany, the longest such period in modern times for that nation” can be directly linked to the success of the Nuremberg trials.<sup>189</sup>

This rhetoric of ends imagines the relationship between criminal trials and democratic transition as follows. First, “ends-oriented” transitional justice discourse suggests that a political community should return to the past in order to imagine a shared future. Contributors to this train of thought place a premium on the production of history vis-à-vis the legal form that is then used to establish a collective memory of past violence and social solidarity amongst community members.<sup>190</sup> Second, this rhetoric posits that trials re-affirm respect for human rights and compel new governments to adopt international human rights frameworks to demonstrate their commitment to democratic ideals.<sup>191</sup> A rhetoric of ends also places criminal trials in a sequence proceeding the creation of peace, or as a transitional justice measure policymakers must endeavor to establish alongside other peace building initiatives.<sup>192</sup> What unites these patterns of thought is a common promise to deliver a community to a definitive place characterized by democratic ideals and respect for human rights. Here, political transition under the

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<sup>189</sup> Norbert Ehrenfreund, *The Nuremberg Legacy: How the Nazi War Crimes Trials Changed the Course of History* (New York: Palgrave MacMillan, 2007), 139.

<sup>190</sup> Osiel, “Ever Again,” 478.

<sup>191</sup> Diane Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime,” *The Yale Law Journal* 100, no. 8 (1991): 2537-2615; Diane Orentlicher, “Settling Accounts Revisited: Reconciling Global Norms with Local Agency,” *The International Journal of Transitional Justice* 1, no. 1 (2007): 10-22; Paige Arthur, “How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly* 31, no. 2 (2009): 321-367.

<sup>192</sup> Naomi Roht-Arriaza and Javier Mariezurrena eds., *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (Cambridge: Cambridge University Press, 2006), 8; Orentlicher, “Revisited,” 16.

supervision of transitional justice mechanisms unfolds in a progressive, sequential manner, on a future-oriented trajectory. In this section, I critically analyze these three imagined ends in transitional justice theory.

### *Trials, and collective memory*

Scholars writing at the intersection of trials and collective memory often present a logic that posits that a political community must look back and grapple with their difficult pasts in order to transition towards a more peaceful future. Although it is broadly acknowledged that history established through the trial medium can be re-interpreted or refined in later proceedings or events, the causal relationship between trials and the establishment of a collective consciousness is alive and well in the literature's ends-oriented discursive formations.<sup>193</sup> That trials are historiographical dramas and powerful sites for the creation of "collective memory" holds considerable traction in the transitional justice literature.<sup>194</sup> This collective memory is shaped, according to some scholars, by granting space for competing historical narratives to surface and affirming the judge's

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<sup>193</sup> Nicola Henry, "Memory of an Injustice: The "Comfort Women" and the Legacy of the Tokyo Trial," *Asia Studies* 37, no. 3 (2013): 362-380; Alexandra Barahona de Brito, "Transitional Justice and Memory," *South European Society and Politics* 15, no. 3 (2010): 359-376; Stiina Löytömäki, "The Law and Collective Memory of Colonialism: France and the Case of "Belated" Transitional Justice," *The International Journal of Transitional Justice* 7, no. 2 (2013): 205-223.

<sup>194</sup> Maurice Halbwachs is generally considered one of the first scholars to theorize the social function of memory. He argues that individual memories do not exist separately from the social world. Rather, individual memories are sparked and made meaningful by social frameworks. As opposed to conceiving of individual memory as relentlessly conditioned by and made sensible through social frameworks, Paul Ricoeur argues that individual and collective memory are dialogical, where individual reflections on the past inform collective understandings and vice-versa. Here, "collective consciousness" is understood as a process rather than a substantive concept. See Maurice Halbwachs, *On Collective Memory*, ed. Lewis Coser (Chicago: University of Chicago Press, 1992); Paul Ricoeur, *Memory, History, Forgetting*, trans. Kathleen Blamey and David Pellauer (Chicago: Chicago University Press, 2004).

ultimate interpretation of the past.<sup>195</sup> Central to the trials-and-collective-memory discourse is the view that an authoritative record of the past, disciplined by the logic of law, acknowledges victim suffering.<sup>196</sup>

Some transitional justice theorists turn to trial archives as a site of collective memory that can assist in the production of a national narrative that will serve as the foundation for emerging democratic orders.<sup>197</sup> For example, legal historian Lawrence Douglas points to how legal processes, such as the use of documentary evidence, witness testimony, or professional historians serving as expert witnesses, can achieve the double-end of legal justice and collective pedagogy. To achieve both outcomes, “a trial must be justly conducted insofar as one of the principle pedagogic aims of such a proceeding must be to make visible and public the sober authority of the rule of law,” “clarify the historical record,” and “define the terms of responsible memory.”<sup>198</sup> To make his case, he turns to the trial of high-ranking Nazi officials to show how the legal form and responsible memory converge. Prosecutors at the IMT, he argues, successfully enhanced the didactic dimensions of the trial by introducing two key pieces of visual evidence: the documentary

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<sup>195</sup> Susana Kaiser, “Argentina’s Trials: New Ways of Writing Memory,” *Latin American Perspectives* 202, no. 3 (2015): 195; Richard Ashby Wilson, “Judging History: The Historical Record of the International Criminal Tribunal for the Former Yugoslavia,” *Human Rights Quarterly* 27, no. 3 (2005): 925; Osiel, “Ever Again”; Leora Bilsky, *Transformative Justice: Israeli Identity on Trial* (Ann Arbor, University of Michigan Press, 2004).

<sup>196</sup> See John Borneman, *Settling Accounts: Violence, Justice, and Accountability in Postconflict Europe* (Princeton: Princeton University Press, 2007).

<sup>197</sup> Turning to the criminal trials of Kastner, Eichmann, Kufr Qassem and Yigal Amir, which took place over the span of decades after Israel’s occupation of Palestine, Leora Bilsky points out how the Jewish and democratic character of the state was renegotiated in each proceeding. In particular, she argues that each of these trials reoriented Israel’s collective memory and identity, reshaping the form of Israel’s democracy. See Leora Bilsky, *Transformative Justice: Israeli Identity on Trial* (Ann Arbor: University of Michigan Press, 2004).

<sup>198</sup> Douglas, *Memory of Judgement*, 3, 260.

film “Nazi Concentration Camp,” and a skull-less, taxidermied human head.<sup>199</sup> Both criminal artefacts “gave dramatic shape to the prosecutorial argument that conjured Nazi atrocities as crimes of atavism.”<sup>200</sup> These representations of Nazi barbarism were auxiliary as opposed to central to the US prosecution’s objective to prove a Nazi conspiracy to commit crimes against humanity existed. Notwithstanding, both symbolic artefacts captured the so-called international community’s imagination and represented the depths of Nazi criminality.<sup>201</sup>

What we see is that law’s materiality at the site of the archive is a *lieux de mémoire*, a place “where memory crystalizes and secretes itself.”<sup>202</sup> With the onslaught of modernity and the corresponding acceleration of history, everyday lived experience (memory) is usurped by historical documentation — prosthetics that now stand-in for past “environments of memory.”<sup>203</sup> Sites of memory, like museums, archives, and days of commemoration, emerge central devices for the establishment and maintenance of the nation-state, as the means through which governing structures can engineer tradition in order to cast forward an image of the nation’s past and in order to secure its imagined future.

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<sup>199</sup> Lawrence Douglas, “The Shrunken Head of Buchenwald: Icons of Atrocity at Nuremberg,” *Representations* no. 63 (1998): 40; Lawrence Douglas, “Film as Witness: Screening Nazi Concentration camps before the Nuremberg Tribunal,” *The Yale Law Journal* 1052 (1995): 449-481.

<sup>200</sup> Douglas, *Memory*, 86.

<sup>201</sup> Douglas, “Icons of Atrocity,” 56.

<sup>202</sup> Kirsten Campbell, “The Laws of Memory: The ICTY, the Archive, and Transitional Justice,” *Social & Legal Studies* 22, no. 2 (2012): 253; Pierre Nora, “Between Memory and History: Les Lieux de Mémoire,” *Representations* no. 26 (1989): 7.

<sup>203</sup> Nora, “Lieux de Mémoire,” 8.

Mark Osiel further emphasized the relationship between trials and the cultivation of collective memory. Premised on liberal values of respect, equality, and public deliberation, he argues that courtrooms are significant sites that can cultivate a common narrative of “administrative massacre,” and that this narrative produces a “social solidarity” between community members.<sup>204</sup> Osiel writes:

political conflict often extends to the question of how a prior regime and those who served it should be remembered, and how the law should be employed to that end... The recovery of a more accurate past, the correction of collective memory, is an integral aspect of democratization.<sup>205</sup>

In addition to the establishment of a common memory of past violence, he also posits that a *common memory of the trial itself* would further secure a political community’s social solidarity.<sup>206</sup>

Shoshana Felman’s up-take of the trial-memory nexus underscores the ostensible therapeutic value this legal platform provides. She argues that criminal trials are a prism within which a community can see the relationship between historical wrongs and collective trauma. Pointing to the IMT’s inability to illuminate the specific contours of Nazi anti-Semitic policy, Felman explains how the Eichmann trial was fashioned as a forum where public acknowledgment of collective trauma was established for a new, post-WWII generation of Israeli Jews. She explains that “the introduction of the dimension of trauma into the court unsettles the stereotypical division between the public and private which

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<sup>204</sup> Osiel, “Ever Again,” 513. Osiel defines administrative massacre as, “large-scale violations of basic human rights to life and liberty by the central state in a systematic and organized fashion, often against its own citizens, generally in a climate of war—civil or international, real or imagined.” Osiel, “Ever Again,” 468.

<sup>205</sup> Osiel, “Ever Again,” 504.

<sup>206</sup> Osiel, “Ever Again,” 619. Here, Osiel anticipates the commemoration of transitional trials in museums and at other cultural sites.

requires a rethinking, in particular, of the relationship between what is presumed to be private trauma and what is presumed to be collective, public trauma.”<sup>207</sup> Here, Felman suggests that trials take on a symbolic function where private trauma becomes representative of a collective trauma, where the conviction and sentencing of perpetrators can be seen as legal justice for those beyond the courtroom’s proceedings. As such, she posits that trials are productive spaces to publicly acknowledge collective grievances and, by extension, that promote a collective memory of past violence for victim groups.

By placing the trial medium as the device that allows for a historical contemplation that ignites political transformation, Douglas, Osiel, and Felman advance ends-oriented future projections that justify the trial medium. Douglas, Osiel, and Felman postulate that post-conflict communities must grapple with their past in order to transition away from unequal social conditions, and that trials are crucial prisms for such historical reflections. These interlocutors place a premium on law’s interpretation and representation of the past, law’s determination of guilt and innocents, and of law’s comprehension of violence.<sup>208</sup> In doing so, they place violence in a past that is *delimited*, which permits the discourse to fashion it as something that can be broken with, or overcome.

The politicization and management of court archives produced by international tribunals is emblematic of policy positions that similarly place a premium on law’s historical

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<sup>207</sup> Felman, *Juridical Unconscious*, 5.

<sup>208</sup> Costas Douzinas, Emiliios Christodoulidis, and Scott Veitch argue that criminal trials shape collective memory by constituting the past while simultaneously concealing it—revealing while foreclosing on other potential historical narratives. I expand on the arguments advanced by Douzinas, Christodoulidis, and Veitch in Chapter Three. For now, see Costas Douzinas, “History Trials: Can Law Decide History?” *Annual Review of Law and Social Science* 8, no. 1 (2012): 284; Emiliios Christodoulidis and Scott Veitch, “Reflections on Law and Memory,” in *Legal Institutions and Collective Memories*, ed. Susanne Karstedt (London: Hart Publishing, 2009), 63-65.

accounts of the past. Take the controversy over the domiciliation of archives generated by the International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunals for Rwanda (ICTR). Both tribunals were established in countries beyond the frontiers of violence that erupted in the Balkans and Rwanda — the ICTY was established in The Hague, Netherlands, while the ICTR operated from Arusha, Tanzania. When both tribunals transitioned to residual duties, a debate over whether their archives should be re-patriated to the region or state to serve as a site for the public memory of violence ensued. The United Nations (UN), who established and financed the Tribunal, justified maintaining control of the documents as they served as a site of law that supports the function of the United Nations Mechanism for International Criminal Tribunals (MICT), and institutional memory. However, IBUKA, an advocacy group constituted by survivors of the genocide, claims that Rwanda is the proper home for the ICTR record collection. According to IBUKA Executive Secretary, Naftar Ahishakiye,

[w]e can only be able to teach the next generations about the reality of what happened and how it damaged the nation using those very archives [...] It is not in any way logical to take evidence of these crimes committed against Rwandans to another country. Those who committed these atrocities are also Rwandans so that decision would not be right at all.<sup>209</sup>

While I affirm the advocacy group's call for the re-appropriation of the Tribunal's archives, their demand re-inscribes law's claim to historical truth. IBUKA, along with the Rwandan government, position the ICTR archive as the *most* important site upon which a public memory of the 100 day-long genocide can materialize. While the MICT will retain the

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<sup>209</sup> Edwin Musoni, "Experts on why Rwanda should take custody of ICTR archives," *The New Times Rwanda*, February 10, 2015, <http://www.newtimes.co.rw/section/read/185831/>

materials for the foreseeable future, the connection between the trial's documentation of violence as a means that may assist political transformation is similarly held. In description of the archive's function, the MICT explains that

[t]he records related to the investigations and prosecutions provide insight into the motivations and causes that led to these atrocities, thereby having the potential to educate and inform in the interest of preventing the occurrence of future violations of international humanitarian law.<sup>210</sup>

Dovetailing with justifications for the repatriation the ICTR's archives is a rhetoric that links the trial's organization and articulation of history as a means that will assist in the broader process of delivering Rwanda to a better future, free from violence.

Indeed, post-war trials can bring important closure for victim groups. Through documentation, trials acknowledge the targeted nature of particular acts of violence, and thus recognize the fatal discrimination experienced by particular groups. The adversarial format does provide a stage for competing narratives about the past to emerge. Further, the criminal prosecutions may operate as a platform for witness testimony that might supply a form of therapeutic catharsis for victims. However, my concerns are more pressing. Configuring the trial as a means to achieve the definitive ends of collective memory over-determines the role trials play in reconstructing the past. Moreover, by depending on the trial medium as the central device to return to and understand violence, these discourses deploy a rhetoric of ends that places violence into a bounded, and totalized past.

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<sup>210</sup> United Nations Mechanism for International Criminal Tribunals, "About Us," accessed August 27, 2017, <http://www.unmict.org/en/about/functions/archives>

## *Trials, and democracy*

This rhetoric of ends frames the post-conflict criminal trial as the means to achieve the ends of democratization. Some suggest “democratic consolidation” occurs after the evocation of transitional justice measures, like trials.<sup>211</sup> Here, consolidation refers to the completion of the process of democratization. Others take a more nuanced position and posit that trials “deepen” or “enhance” existing democratic institutions.<sup>212</sup> As such, trials are framed as an ingredient that strengthens liberal-democratic institutions like the judiciary, military, as well as the executive and legislative branches of government. Others postulate that trials only embolden broad democratization efforts if established in response to community demands as opposed to the state.<sup>213</sup> Still, others suggest that trials contribute to the establishment of democracy only when they are paired with other transitional justice measures.<sup>214</sup> Drawing on Bruce Ackermann, others posit that criminal

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<sup>211</sup> Juan J. Linz and Alfred Stephan, “Towards Consolidated Democracies,” in *Consolidating the Third Wave Democracies: Themes and Perspectives*, eds. Larry Diamond et al. (Baltimore: The John Hopkins University Press, 1997), 14; Ian Dunbar, “Consolidated Democracies and the Past: Transitional Justice in Spain and Canada,” *Federal Governance* 8, no. 2 (2011): 15-28; Theresa M. Clark, “Assessing the Special Court’s Contribution to Achieving Transitional Justice,” in *The Sierra Leone Special Court and Its Legacy: The Impact for Africa and International Criminal Law*, eds. Charles C. Jalloh (Cambridge: Cambridge University Press, 2014), 747; Neil Kritz, “Brazil: Editor’s Introduction,” in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes: Volume 2*, eds. Neil Kritz (Washington DC: United States Institute of Peace Press, 1995), 436. Linz and Stephan draw on Robert Dahl’s framework for determining when democracy has “arrived” for political communities. See Robert Dahl, *Polyarchy: Participation and Opposing* (New Haven: Yale University Press, 1971).

<sup>212</sup> Alexandra Barahona De Brito, “Introduction” in *The Politics of Memory: Transitional Justice in Democratizing Societies*, eds. Alexandra Barahona De Brito, Carmen González-Enríquez, and Paloma Aguilar (Oxford: Oxford University Press, 2001), 29-32; Anja Mihr, “Transitional Justice and the Quality of Democracy,” *International Journal of Conflict and Violence* 7, no. 2 (2013): 299-302.

<sup>213</sup> Aneta Wierzyńska, “Consolidating Democracy through Transitional Justice: Rwanda’s Gacaca Courts,” *New York University Law Review* 79 (2004): 1948; Janine Natalya Clark, “The State Court of Bosnia and Herzegovina: A Path to Reconciliation?” *Contemporary Justice Review* 13, no. 4 (2010): 382.

<sup>214</sup> Naomi Roht-Arriaza, “Introduction,” in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, eds. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006), 2; Barahona de Brito, “Introduction,” 20.

trials during transitional times are “constitutional moments” that produce a normative change that establishes anew the values and principles that shape a democratic culture.<sup>215</sup> Despite these differences, the arc of their rhetoric is common: trials are a means that – to varying degrees – trigger democratization or carry community to the fixed end of total democracy.

For instance, Judith Shklar points to the type of politics advanced in the trial medium as that which cultivates cultures of democracy. She argues that, during political transition, criminal trials are founded in part on liberal political values such as equality, freedom, and tolerance. A resort to political as opposed to legal foundations for post-war trials is, according to Shklar, an act of “creative legalism.” Rejecting the common view of legal formalism that sees law as separate from and exalted above politics, “creative legalism” establishes legalism as one political ideology among many, situating legal theory as one branch of political theory. She explains that,

[i]t is the politics of persecution which political trials serve that is the real horror, not the fact that courts are used to give it effect. There are occasions when political trials may actually serve liberal ends, where they promote legalistic values in such a way as to contribute to constitutional politics and to a decent legal system.<sup>216</sup>

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<sup>215</sup> Bilsky, *Transformative Justice*, 8; Carlos Santiago Nino, *Radical Evil on Trial* (New Haven: Yale University Press, 1996), 131. According to Nino, the enactment of a new constitution does not always offer an occasion for a community to deliberate the values that will underwrite newly formed public institutions, as they are “viewed by many people as too technical, or the result of politicians’ rather corrupt self-interests. Instead, the drama of a trial, with the victims and perpetrators in public light, with accusations and defenses, with witnesses from all social sectors, and with the terrifying prospect of punishment, inevitably attracts great public attention and may even provoke “dummy trials” in the streets or around dinner tables. In this sense, trials for human rights violations might be much closer to what Ackerman label’s “constitutional moments” than many attempts at formal or informal constitutional reforms.” See also Bruce Ackerman, *We the People, Volume 2: Transformations* (Cambridge: Belknap Press of Harvard University Press, 2000) for a theory of “constitutional moments” that pays particular attention to the founding of the United States.

<sup>216</sup> Shklar, *Legalism*, 145.

As such, it is “the quality of the politics pursued” in trials that distinguishes creative legalism from show-trials.<sup>217</sup> The choice to resort to criminal trials, especially after periods of massive violence, she argues, ought to be underpinned by the political need to foster a democratic order based on the liberal values.<sup>218</sup>

Shklar posits that the International Military Tribunal (IMT) trial (1945-1946) was an act of creative legalism founded and guided by sound political judgement as opposed to international and municipal laws. According to her, allied states took on the responsibility of establishing the tribunal and prosecuting high-ranking members of the Nazi administration to ensure the creation of a tolerant, pluralistic, and peaceful democratic order. The most critical contribution by the IMT to legalistic politics is the formulation of and prosecution for crimes against humanity, and, according to Shklar, it was this alone that justified the trial.<sup>219</sup> The legal category “crimes against humanity” was established in the London Charter, as was the “crime of aggressive war” — the latter provoking much discussion in the *travaux préparatoires* while state officials were silent on the terms of the former.<sup>220</sup> Lack of debate and negotiation over the Charter’s definition of crimes against humanity was explained by Shklar, in part, as a reflection of the anxiety state officials had over being perceived as sympathetic to the crimes committed against civilians before and during WWII. However, the silence may be better explained, she suggests, by the inability to provide a legal basis for the category, which was revealed throughout the trial and

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<sup>217</sup> Shklar, *Legalism*, 145.

<sup>218</sup> Shklar frames creative legalism as “a defense of social diversity, inspired by that barebones liberalism which... is committed only to the belief that tolerance is a primary virtue and that a diversity of opinions and habits is not only to be endured but to be cherished and encouraged.” Shklar, *Legalism*, 5.

<sup>219</sup> Shklar, *Legalism*, 165.

<sup>220</sup> Shklar, *Legalism*, 191-192.

ostensibly remedied by the Tribunal's decision to arbitrarily interpret crimes against humanity in connection to war crimes after 1939. In other words, "crimes against humanity" appeared in the Charter without much discussion as to its legal foundation.<sup>221</sup> Here, Shklar argues that the IMT's prosecution for crimes against humanity was premised on political values as opposed to legal principles or precedence. As such, she concludes that the IMT judgement was a grand act of creative legalism that delivered Germany to a more "decent" political future.<sup>222</sup>

Similarly, Ruti Teitel charts how the operation of criminal law is reconfigured in response to the nuanced needs of a political community after war. Through a comparative analysis, she describes how criminal courts break from the ordinary rule of law during periods of political transition in order to attend to the unique historical context experienced by a political community. Accordingly, "[l]egal measures during such periods follow a distinctive paradigm, guided by rule-of-law principles tailored to the goal of political transformation... the extraordinary paradigm of transformative law helps to construct liberalizing change."<sup>223</sup> The varying demands launched by a political community on newly minted criminal justice systems demand a "transitional" understanding of the

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<sup>221</sup> Shklar, *Legalism*, 165.

<sup>222</sup> Shklar, *Legalism*, 165. Legal historian, Devin O. Pendas, illuminates how the embracement of legalism by German judges in German courts between 1945 and 1950 to thwart the prosecution of Nazis had inadvertent, yet important political consequences. Nazi legal culture was structured around the promotion of Nazi ideology that was made possible by the general abandonment of legal positivism. While post-war German judges adhered to legal formalism to guard against the prosecution of Nazi perpetrators, it also reformed German legal culture by returning the importance of the rule of law to legal reasoning. As such, Pendas departs from Shklar by pointing out how adherence to the rule of law can contribute to the advancement of a new democratic order. Devin O. Pendas, "Retroactive Law and Proactive Justice: Debating Crimes against Humanity in Germany, 1945-1950," *Central European History* 43, no. 3 (2010): 459-463.

<sup>223</sup> Teitel, *Transitional Justice*, 213. Here, Teitel argues that ordinary rule of law must be abandoned to re-make the law in a manner that promotes political reconciliation and inaugurates transformation.

justice and the rule of law, both of which are ultimately informed by prior injustice. By permitting criminal law to flex in response to nuanced conceptions of justice after massive violence, she argues, communities can move forward and return to a liberal order.<sup>224</sup>

To demonstrate, Teitel also points to the establishment of crimes against humanity at the IMT trial. There, the tribunal extended its jurisdiction to include crimes committed by the state against its own citizens, including mass murder, deportation, and torture.<sup>225</sup> The widespread and systematic nature of these crimes enacted across state borders was an affront to the consciousness of the international community. Although the IMT judgement only considered crimes against humanity in connection with war crimes, the development of this new category of crime produced a normative shift in thinking about individual rights vis-a-vis the state. In doing so, prosecutions for crimes against humanity now constitute and direct the very meaning of global contemporary responses to systematic persecution.<sup>226</sup> As such, Teitel argues that adherence to this special rule-of-law principle guides inter-legal decision making on the road to democracy, as it condemns past violence whilst consolidating a future democracy through the legitimization of the rule of law."<sup>227</sup> Here, Teitel over-determines the role of criminal trials in the making of democratic orders, thus framing prosecutions as a necessary linchpin in most transitional processes. I acknowledge that Teitel also sheds light on the power of administrative and constitutional

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<sup>224</sup> Ruti Teitel, *Globalizing Transitional Justice: Contemporary Essays* (Oxford: Oxford University Press, 2014), 102.

<sup>225</sup> Teitel, *Transitional Justice*, 60.

<sup>226</sup> Teitel, *Transitional Justice*, 61.

<sup>227</sup> Teitel, *Transitional Justice*, 25, 30.

law to assist political transformation in war-torn states. However, her over valuation of the rule of law and criminal justice are vital to her theory of transitional justice.

Carlos Nino makes a similar argument. In reference to the so-called dirty war, Nino argues that Argentina's junta trials brokered rational and widespread social agreement on how to judge the actions of the military even though only a narrow selection of military leaders were prosecuted. To quote, at length:

[t]he trials promote public deliberation in a unique manner. Public deliberation counteracts the authoritarian tendencies which has led, and continue to lead, to a weakening of the democratic system and massive human rights violations. All public deliberation has this effect, but even more so when the subject of the public discussion is those very authoritarian tendencies. The disclosure of the truth through the trials feeds public discussion and generates a collective consciousness and process of self-examination... The contrast between legality of the trials and the way the defendants acted is prominently noticed in public discussion and further contributes to the collective appreciation to the rule of law.<sup>228</sup>

Here, the trial is a space for the public to deliberate the values that will guide future democratic institutions. Nino places a premium on the narratives produced during proceedings, marking them as more precise, dramatic, and cooperative than truth commissions because in the adversarial system the accused is guaranteed the right to co-author the story established in trial.<sup>229</sup> Ultimately, he contends that prosecutions demonstrate to community members that law is the backbone to a democratic society, and that its power is what introduces democratic order.

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<sup>228</sup> Nino, *Radical Evil*, 147.

<sup>229</sup> Nino, *Radical Evil*, 146.

Orentlicher's rhetoric of ends also places prosecutions of international crimes at the center of democratic transitions.<sup>230</sup> According to Orentlicher, trials that prosecute international crimes contribute to democratization, especially for states transitioning away from military rule. Crucial to her reasoning is the notion that awarding amnesty to former state officials for the sake of reconciliation perpetuates impunity and stifles democratic transition. To combat impunity for the most "serious violations of human integrity," she argues for the creation of provisions within international human rights instruments that place a duty on states party to prosecute alleged perpetrators.<sup>231</sup> However, she demands that such instruments be applied with sensitivity to the political and historical needs that define each transitioning political community. Projecting a context where widespread criminal prosecution of perpetrators might unsettle political transitions, she suggests that only those who appear to bear the most responsibility for mass atrocities or individuals who have committed crimes that were "emblematic of a regime's depredations" should face criminal proceedings.<sup>232</sup>

Although diverse in their views on how international criminal law's attention to mass violence contributes to the formation of democratic futures, these scholars are united by the rhetoric of ends they evoke in transitional justice discourse. That post-conflict trials are acts of creative legalism, flexible forums that attend to nuanced needs

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<sup>230</sup> Orentlicher, "Revisited," 14.

<sup>231</sup> Orentlicher, "Settling Accounts," 2568. Orentlicher points to the Convention on the Prevention and Punishment of the Crimes of Genocide and the Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment and Punishment, International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the American Convention on Human Rights as examples.

<sup>232</sup> Orentlicher, "Settling Accounts," 2599.

after periods of mass violence, and a means to combat impunity are all framed as contributing somehow to the cultivation of a democratic ethos. Although the imagined relationship between trials and democracy are concocted in a myriad of ways beyond what I re-cast here, these renditions are emblematic of a broader trend that seeks to establish this ostensible connection.

### *Trials, peace, and human rights*

While in the last section I illuminated narratives that suggest trials embolden democratic institutions, in this section I chart a rhetoric that posits that trials contribute to the making of better social relationships and respect for human rights. A number of studies have considered the effects of criminal trials on the cultivation of peace among community members after periods of massive violence. Traditionally, the transitional justice discourse postulates that prosecutions are integral to reconciling fractured political communities, and it is prominently stipulated in statutes of ad-hoc tribunals. For instance, the United Nations Security Council Resolution 827 (1993) that constituted the International Criminal Tribunal for the Former Yugoslavia (ICTY) posits “the prosecution of persons responsible for serious violations international humanitarian law... would contribute to the restoration and maintenance of peace.”<sup>233</sup> Similarly, the International Criminal Tribunal for Rwanda’s preamble argues that criminal prosecutions “would contribute to the process of national reconciliation and to the restoration and maintenance of peace.”<sup>234</sup> While the Statute for

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<sup>233</sup> United Nations Security Council (SC) Resolution 827 (1993).

<sup>234</sup> Statute of the International Criminal Tribunal for Rwanda (1994): [http://www.icls.de/dokumente/ictr\\_statute.pdf](http://www.icls.de/dokumente/ictr_statute.pdf)

the Special Court for Sierra Leone does not stipulate a connection between the creation of the tribunal and the inauguration of peace and stability in the Preamble, the Court's prosecutor David Crane argues that "[f]or justice, reconciliation, and peace to take hold in Sierra Leone, both the Special Court and the TRC must succeed."<sup>235</sup> The President of the International Criminal Court (ICC), Judge Silvia Fernández de Gurmendi, imagines the Court's work achieving similar ends.<sup>236</sup>

The rhetorical relationship between trials and "social repair" in transitional justice theory is underpinned by the position that retributive and restorative approaches do not necessarily conflict, but can be "harmonized" or "combined."<sup>237</sup> Such discourse projects the notion that prosecutions acknowledge the crimes committed against individuals and restores "a sense of control to community members."<sup>238</sup> By reasserting the agency of those wronged, trials "facilitate a positive change in the perception about their future," and the political community's social fabric begins to mend.<sup>239</sup> In order for prosecutions to

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<sup>235</sup> On December 10, 2002, Special Court for Sierra Leone prosecutor David Crane remarked "For justice, reconciliation, and peace to take hold in Sierra Leone, both the Special Court and the TRC must succeed. Special Court for Sierra Leone, "Remarks by Prosecutor David M. Crane for International Human Rights Day," press release, December 10, 2002, <http://www.rscsl.org/Documents/Press/2002/pressrelease-121002.pdf>

<sup>236</sup> On "World Peace Day," the ICC tweeted a picture of Fernández de Gurmendi along with the following quote attributed to her, "The rule of law is essential for sustainable peace and development. We must strengthen the global justice system." Int'l Criminal Court (@IntlCrimCourt), "#ICC Prsident #PeaceDay The rule of law is essential for sustainable peace and development. We must strengthen the global justice system." Twitter, September 21, 2017, 8:44 a.m., [https://twitter.com/IntlCrimCourt/status/910892465741336578/photo/1?ref\\_src=twsrc%5Etfw&ref\\_url=https%3A%2F%2Fwww.icc-cpi.int](https://twitter.com/IntlCrimCourt/status/910892465741336578/photo/1?ref_src=twsrc%5Etfw&ref_url=https%3A%2F%2Fwww.icc-cpi.int)

<sup>237</sup> Geetanjali Mukherjee, "Achieving Reconciliation through Prosecution in the Courts: Lessons from Rwanda," *Conflict Resolution Quarterly* 28, no. 3 (2001): 332; Mark Findlay and Ralph Henham, *Transforming International Criminal Justice: Retributive and Restorative Justice in the Trial Process* (Uffculme: Willan Publishing, 2005), xiv.

<sup>238</sup> Laurel E. Fletcher, Harvey M. Weinstein, "Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation," *Human Rights Quarterly* 24, no. 3 (2002): 626.

<sup>239</sup> Fletcher and Weinstein, "Social Repair," 628; Mark Findlay, "Collective Responsibility for Global Crime: Limitations with the liability paradigm," in *Exploring Boundaries of International Criminal Justice* eds. Ralph Henham and Mark Findlay (New York: Routledge, 2016), 54.

systematically serve the ends of social repair and peace courts must recognize communitarian principles that expand victim participation and include community rights.<sup>240</sup>

Others assume that a state's commitment to due process and defendant rights cultivates communal faith in newly established legal systems. This line of thinking suggests that the reconciliation of a fractured political community will flow from the state's careful and neutral wielding of criminal law.<sup>241</sup> Peace and Security scholar Rama Mani contends that the link between trials and reconciliation is further strengthened if the trial is conducted in the home country of victims. For her, national trials are more accessible and less alien to the local population "who most need to benefit from and follow the process closely."<sup>242</sup> Transitional justice interlocutor, Janine Clark, also supports this position and argues that if international criminal tribunals are going to "achieve their objectives," and "contribute to peace," they must bolster the resources of their public outreach facilities.<sup>243</sup> Her examination takes critical aim at the ICTY, which was the first tribunal with an organized public outreach section:

[o]utreach work that directly targets the grassroots level is particularly fundamental. This is because whether the ICTY can succeed in achieving its goal of contributing to the restoration and maintenance of peace in the former Yugoslavia will ultimately depend on how the Tribunal and its work are perceived by ordinary people in the region. To cite Pickering, "ordinary people influence the implementation of peace building programs through their everyday reactions to [court outreach] projects."<sup>244</sup>

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<sup>240</sup> See Findlay and Henham, "Retributive and Restorative."

<sup>241</sup> Colleen Murphy, *A Moral Theory of Political Reconciliation* (New York: Cambridge University Press, 2010), 178.

<sup>242</sup> Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge: Polity Press, 2007), 99.

<sup>243</sup> Janine Natalya Clark, "International War Crimes Tribunals and the Challenge of Outreach," *International Criminal Law Review* 9 (2009): 100.

<sup>244</sup> Clark, "Challenge of Outreach," 102.

Her study determined that the ICTY's outreach program could have gone further in establishing durable links with the community, especially in comparison to the outreach measures taken by the SCSL and the ICC. Yet, Clark ultimately returns to the position that the more tribunals communicate their work, the more likely the court will contribute to the forging of peace.

Other scholars suggest that trials enact a culture of human rights irrespective of outreach efforts, or whether domestic or international tribunals conduct them. In *The Justice Cascade*, Katherin Sikkink interrogates the relationship between the prevalence of domestic, international, and third-state human rights prosecutions, and the rise of human rights norms.<sup>245</sup> Human rights prosecutions, as a tool that enforces human rights norms, she argues, decreases instances of state repression, and increases the prevalence of human rights practices within the state, *and* immediate global region.<sup>246</sup> As such, she posits that criminal prosecutions have enacted a global normative shift, which figures trials as important and legitimate tools to combat human rights abuses.<sup>247</sup>

While Sikkink charts the imagined positive relationship between criminal prosecutions and societies that respect human rights, Colleen Murphy argues that trials inaugurate political reconciliation because they promote a general respect for the rule of

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<sup>245</sup> Sikkink, *Justice Cascade*, 195.

<sup>246</sup> Sikkink, *Justice Cascade*, 265-269. Sikkink indicates that while her quantitative analysis of US State Department Country Reports on Human Rights Reports, Amnesty International Annual Reports, as well as data collected by human rights organizations, intergovernmental and non-governmental organizations indicates a positive relationship between human rights prosecution and human rights norms, she concedes that her framework cannot yet identify whether this relationship exists through deterrence, or collective memory. See Sikkink, *Justice Cascade*, 271.

<sup>247</sup> Sikkink, *Justice Cascade*, 25.

law. Here, “international criminal trials contribute to reconciliation by cultivating legal decency and good judgement among officials and encouraging faith in law among citizens.”<sup>248</sup> Such decency is distilled in the political community through the didactic nature of tribunals. For Murphy, adhering to principles of due process, such as the presumption of innocence and the humane treatment of defendants, is integral to the cultivation of public trust in the system as it repairs the political relationship between citizens and the state after periods of repression or political breakdown after war.<sup>249</sup>

Linking post-conflict prosecutions to ideas of democratization, memory, and peace fashions the trial as something that holds significance beyond the mere punishment of alleged perpetrators of violence and end impunity. The future oriented rhetoric described above is premised on the notion that an exclusive focus on legal punishment is inadequate when dealing with mass injustices. As such, they argue that the ostensible work of the trial medium generates effects that assist in a political community’s transition away from a period of massive violence.

Yet the power dynamics that underpin such rhetoric of ends are not lost in critical transitional justice theorists. Some raise concerns over how mainstream transitional justice theorists tend to control the terms within which their mechanisms are deployed.<sup>250</sup> Still, others illuminate how the legal time deployed by criminal tribunals obfuscate historical

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<sup>248</sup> Murphy, *Political Reconciliation*, 178.

<sup>249</sup> Murphy, *Political Reconciliation*, 177.

<sup>250</sup> For instance, Rosemary Nagy argues that typical transitional justice theorists often suggest when their mechanisms should be established, when they cease, and for whom criminal prosecutions are for. In doing so, they control the temporality of the field’s mechanisms, and identification of victims as benefactors of the process. Rosemary Nagy, “Transitional Justice as Global Project: Critical Reflections,” *Third World Quarterly* 29, no. 2 (2008): 275-276.

wrongs and skirt collective responsibility.<sup>251</sup> Moreover, some scholars challenge law's capacity to interpret the past and produce an authoritative historical record.<sup>252</sup> These interventions illuminate the shadow side of the tribunalization of violence in the name of political transition. Capturing historical and systematic violence within law's constructs not only misconstrues the ostensible history that empowers political communities to transition towards a different, more peaceful future, but it also obfuscates notions of responsibility and violence. While I share these criticisms, my concern is over how this rhetoric imagines the relationship between trials and a political community's future. The discourses I track construct bounded periods of time, a future moment, that a political community is imagined to be transitioning towards.

Such future oriented discursive formations surface in international development funding bodies. Take the 2017 World Bank Development Report on Governance and the Law for instance. Currently, the World Bank's aid disbursement instruments are outcome

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<sup>251</sup> Kamari Clarke advances this argument on two registers. First, the jurisdictions of international and ad-hoc tribunals are delimited by a period stipulated in their founding statutes. For instance, the International Criminal Court (ICC) only holds jurisdiction over the crime of genocide, war crimes, crimes against humanity, and the crime of aggression that occurred after the Statute's entry into force. Delimiting ICC prosecutions temporally forecloses the adjudication of the longue durée of colonial violence. On another register, western legal principles utilized by international criminal law, like command responsibility and individual culpability, place a premium on proximity to violence. For Clarke, the individualization of guilt along the logic of superior orders construes a narrow image of the perpetrator, and ameliorate the potential to capture longstanding historical injustices and collective liability. Kamari Maxine Clarke, "Reconfiguring the Perpetrator: Culpability, History, and International Criminal Law's Impunity Gap," *The International Journal of Human Rights* 19, no. 5 (2015): 594, 606-609.

<sup>252</sup> Kirsten Campbell argues that criminal law can only take notice of forms of violence already defined in law's vernacular. Speaking to the exclusion of rape as a distinct act of violence in the context of war by international humanitarian law, Kirsten Campbell explains that "traumatic injury must give rise to a legal claim and so fall subject to the jurisdiction of the court. In this sense, justiciability is a formal condition for the memory of an injury to become subject to the law such that the court will recognize the claim of the injury as a legal memory of a formal wrong. Justiciability is the condition for the recognition of the memory of a traumatic injury as a legal claim." Kirsten Campbell, "Legal Memories: Sexual Assault, Memory, and International Humanitarian Law," *Signs* 28, no. 1 (2002): 151.

based, meaning that monetary support is afforded to states that perform and achieve certain benchmarks of good governance.<sup>253</sup> The Report renders state attendance to the rule of law as the very basis of sound governing dynamics, and thus, as the means that will permit them to overcome power asymmetries, and minimize violence, especially after periods of mass atrocity. For instance, the 2017 Report states that law “serves to order contestation by providing the substantive and procedural tools needed to promote accountability,” “resolve disputes peacefully,” and achieve “stable, equitable development.”<sup>254</sup> The Bank reasons that law — including criminal prosecutions — orders the behavior of individuals, organizes power, and manages political contestation, and thus, financial modes of aid should be used as an incentive to attract developing states into committing to strengthening the rule of law within their jurisdiction.<sup>255</sup> The World Bank’s *Country Policy and Institutional Assessment Report 2016: Assessing Africa’s Policies and Institutions* argues that

[e]ffective, accountable, and transparent institutions... strengthen the rule of law... and ensure equal access to justice for all. They also help combat corruption, reduce illicit financial flows, fight crime, and promote peace in society.<sup>256</sup>

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<sup>253</sup> World Bank, *World Development Report 2017: Development and the Law*, accessed August 25, 2017, <http://www.worldbank.org/en/publication/wdr2017>

<sup>254</sup> World Bank, *Development and the Law*, 83, 95.

<sup>255</sup> World Bank, *Development and the Law*, 83.

<sup>256</sup> World Bank, *Country Policy and Institutional Assessment Report 2016: Assessing Africa’s Policies and Institutions*, accessed August 25, 2017, <http://documents.worldbank.org/curated/en/733581467039657221/pdf/106632-MAIN-WB-CPIA-Report-June2016-v10-web.pdf>

Others explain how economic logics of commodity exchange are deployed by tribunals in their institution's fundraising efforts, whereby international courts are discursively framed as a market-product which will yield a profit of stability and security.<sup>257</sup>

That criminal prosecutions defend human rights and stabilize democratic orders further emerges in policy imperatives established by non-governmental organizations like Amnesty International, and the International Center for Transitional Justice (ICTJ).<sup>258</sup> In *Amnesty International Report 2016/17: The States of the World's Human Rights*, the organization condemned the African Union for failing to establish a Hybrid Court for South Sudan (HCSS) as required by the *2015 Agreement on the Resolution of the Crisis in the Republic of South Sudan*. They argue that

[t]he establishment of the HCSS could contribute to holding perpetrators of past crimes to account; building public confidence in the peace process; strengthening the South Sudanese justice system; and bringing an end to the pervasive culture of impunity.<sup>259</sup>

The implied relationship between criminal prosecutions, democratic institutions, and peace is also present in the ICTJ justification as to why criminal justice is a fundamental aspect of transitional justice processes in many cases. In particular, they argue that

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<sup>257</sup> See Sara Kendall, "Commodifying Global Justice: Economies of Accountability at the International Criminal Court," *Journal of International Criminal Justice* 13 (2015): 113-134; Sara Kendall, "Donors' Justice: Recasting International Criminal Accountability," *Leiden Journal of International Law* 24 (2011): 585-606.

<sup>258</sup> The ICTJ is an international, non-profit organization that advocates for the establishment of transitional justice mechanisms after episodic violence. See ICTJ, "About Us," accessed August 23, 2017, <https://www.ictj.org/about>

<sup>259</sup> Amnesty International and FUDA, *Looking for Justice: Recommendations for the Establishment of the Hybrid Court for South Sudan*, accessed August 25, 2017, <https://www.amnesty.org/en/documents/afr65/4742/2016/en/>. This position is reiterated in their 2016-2017 report: "[s]uch a court would represent the most viable option for ensuring accountability for crimes such as war crimes and crimes against humanity committed during the conflict, and for deterring further abuses." Amnesty International, *Amnesty International Report 2016/17: The States of the World's Human Rights*, accessed August 27, 2017, <https://www.amnesty.org/en/latest/research/2017/02/amnesty-international-annual-report-201617/>

[i]nvestigations and trials of powerful leaders (whether political or military) help strengthen the rule of law and send a strong signal that such crimes will not be tolerated in a rights-respecting society.<sup>260</sup>

Emboldening states legal obligation, or “duty,” to prosecute, the ICTJ claims in *Failing to Deal with the Past: What Cost to Lebanon?* that

[c]riminal law is the most significant expression of a state’s commitment to human rights values in that it condemns and denounces conduct in violation of universally recognized rights. Beyond deterrence and retribution, the duty to prosecute is, therefore, grounded in the importance of rebuilding a society respectful of the rule of law and restoring public trust in state institutions.<sup>261</sup>

Here, the ICTJ further entrenches the rhetoric of ends discourse by referring to international legal instruments, like the Convention on the Prevention and Punishment of the Crimes of Genocide, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, that include provisions that legally bound states to establish criminal trials in the name of human rights, and good governance.<sup>262</sup>

As demonstrated, rhetoric of ends orientated towards the attainment of a better future through criminal prosecutions leaps outside academic discourse, and is recapitulated in the policy positions constructed within international organizations like the World Bank, Amnesty International, and the ICTJ. As such, they similarly contribute to

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<sup>260</sup> ICTJ, *Criminal Justice*, accessed August 23, 2017, <https://www.ictj.org/our-work/transitional-justice-issues/criminal-justice>

<sup>261</sup> ICTJ, *Failing to Deal with the Past: What Cost to Lebanon?*, accessed August 23, 2017, <https://www.ictj.org/sites/default/files/ICTJ-Lebanon-Impunity-Report-2014.pdf>

<sup>262</sup> Article 4 of the Genocide Convention reads, “[p]ersons committing genocide or any of the other acts enumerated in article 3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals. Convention on the Prevention and Punishment of the Crimes of Genocide, Article 4, December 9, 1948. Article 4 of the Torture Convention stipulates that “1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.” Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 4, December 10, 1984.

production of stable narratives of what can and should be done in order to break from violent pasts.

These ends-oriented discursive formations are premised on notions of finite periods of time. Transitional justice theorists, like Lawrence, Osiel, and Felman, who write at the intersection of trials and collective memory organize and block-off the period of violence that must be returned to and mastered. Their position insinuates that violence is in the past and that violence has come to an end, which allows them to “return to” and “master” difficult histories in order to inaugurate a collective memory of what was. Further, they all suggest that the trial medium is the central means to achieve this end. As such, their logic suggests the finite moment of transition is the period when political communities conduct such grappling. I also analyze how other interlocutors, like Teitel, Shklar, and Orentlicher, configure the relationship between trials and democratization. Here, criminal prosecutions are figured as the means to resurrect the rule of law, and promote democratic values like freedom and tolerance. Again, trials are rhetorically placed in the period of transition, which comes to an end by delivering a political community to a bounded future constituted by democratic principles and institutions. Finally, I illuminate a rhetoric that connects criminal prosecutions to the cultivation of peace, and to a culture that respects human rights ideals. This ends-oriented rhetoric, I suggest, manages the trajectory and forecloses the possibilities for political transformations by postulating their claims on a politics of means/ends relations.

### **Phantasmagoria of Transitional Justice**

The rhetoric of ends I outline above constructs and tames political transition by establishing boundaries around the past, around the moment of transition, and around projected futures. These horizons are underpinned by a politics of means/ends relations. Using sequential temporality as an organizing device, ends-oriented transitional justice theory manages and fixes the time of violence, the time of a just transition, and the time of the future in order to project an idea of progress and govern the trajectory of political transformations.

The ends-oriented discursive formations manage the past so that violence may be accounted for and “dealt with.” Time permits the discourse to define and fix a moment of violence. Isolating this moment is crucial to the notion that the past can be accounted for because if violence is intractable, and on-going, if its origins are unavailable to us, then there could be no “mastering” of difficult histories. Isolating a period of time and particular forms of violence are then key to the rhetoric’s conception of effectively grappling, and accounting for the past. In other words, according to the narratives, political communities must know what past they are acknowledging and breaking with in order to move on. As such, ends-oriented transitional justice theory enlists the trial medium which delimits, constitutes, and privileges a bounded moment of violence. The rhetoric draws the frontier of violence to match the frontiers of criminal justice: the difficult history the trial documents is the only history we must consider. In doing so, transitional justice theory attempts to place violence in the past.

While trials are secured as the central prisms within which political communities may re-encounter the past, the time of the trial is also construed as the moment of

*transition*. According to the rhetoric of ends, political transformation begins in the moment political communities begin to engage with their past in an effort to break with and overcome it. Here, criminal tribunals, truth and reconciliation commissions are rendered as central to a transition which is imagined as a finite moment. By figuring political transformation in this way, the rhetoric of ends curtails efforts to re-think the modes of political transformation as something that perseveres beyond the trial. As described in “Critique of Violence,” after revolution, a community is confronted with the violence of ends-oriented projections. As opposed to conceiving political transformation as the ongoing acknowledgment of infinitely indeterminable political difference which enacts a caesura of ends-oriented positings, the rhetoric of ends produces a phantasmagoria that a new legal order will account for the past and set political community on a smooth and coherent trajectory towards democracy and peace. It fetishizes trials as the tool for transition, as that which begins and ends the period of transition. As with the political general strike, this discourse projects the notion that victimization and oppression can and will be alleviated through the workings of ends. Caught in the same pattern of thinking that governed the actions of social democrats at the turn of the last century, the temporality of sequential continuity organizes the past to signal which road leads to a better future. The criminal trial is imagined as an event that will shift a community’s trajectory away from the path of violence and oppression to a path of peace and democracy. Along the way, the criminal trial is marked as a monumental moment, as a marker of progress that the community is on the “right track.” It empowers a distorted understanding that peace and democracy are available — they only have to choose it. The phantasmagoria presents itself

as the gateway to a utopic future that is better than the past, and the present, to govern the horizon of political transformation.

Ends-oriented discursive formations also construct the horizon of democracy, peace, and reconciliation by projecting these concepts as fixed and realizable goals or achievements. Here, democratization is figured as something that “begins” during the “period” of transition. For instance, Shklar posits that the pursuit of liberal democratic values, like equality, freedom, and tolerance, through the trial medium inaugurates a culture of democracy, while Nino and Teitel argue that the reestablishment of the rule of law triggers democratic transformation.<sup>263</sup> According to these thinkers, a political community’s commitment to grapple with the particular moment of violence through criminal trials or international tribunals, signals the beginning of a democratic culture. For others, political communities are imagined as “delivered” into a democracy after transitional justice mechanisms have been exhausted, the past diligently accounted for. The projected commencement of democracy or democratization both depend on organizations of bounded periods. This dependence is derived from the discursive need to mark the break between the *ancien régime* and the *supposed newly founded democratic order*.

## Conclusion

In this Chapter I identify a discursive trend advanced by interlocutors of transitional justice that places criminal prosecutions as the gateway to democratization, collective

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<sup>263</sup> Shklar, *Legalism*, 145; Nino, *Radical Evil*, 147; Teitel, *Transitional Justice*, 213.

memory, and the peaceful reconciliation of fractured political communities after periods of massive violence. I argue that such future oriented discursive formations are founded on a politics of means/ends relations, which are underpinned by notions that organizes the past, transition, and the future into bounded periods. Further, I track how ends-oriented politics produce phantasmagorias of transitional justice. In the next Chapter, I show how this rhetoric of ends travels and established itself at the site of the museum. In particular, I show how Memorium Nuremberg Trials and municipality fashion the history of the IMT trial and contemporary ad-hoc tribunals as systems that delivered Nuremberg — and will deliver other political communities — into a future defined by democracy and respect for human rights. There, visitors are figured as “transitioned” and thus delivered to the time of democracy, peace, and human rights. However, I also illuminate how the dual use of Courtroom 600 may resist the totalizing force of ends-oriented aesthetic projections.

## Chapter Two: Bounded Futures

They spoke of Paris as *la ville qui remue* — the city that never stops moving. But no less important than the life of this city's layout is here the unconquerable power in the names of streets, squares, and theaters, a power that persists in the face of all topographic displacement.

— Walter Benjamin<sup>264</sup>

Nuremberg has been called the city of many things. As the Holy Roman Empire's seat of political power in the late Middle Ages, Nuremberg was known as "The Imperial City."<sup>265</sup> During the Reformation in the fifteenth century, Nuremberg reinvented itself through mass spectacles, festivals and plays [*Fastnaclitsfhele*], and was commonly referred to as "The City of Carnivals."<sup>266</sup> In the fifteenth century, artists like Albrecht Dürer, Veit Stoss, Hans Suess von Kulmbach, and Peter Vischer, established themselves in the city's urban core. Capitalizing on the vibrant artistic scene and cultural transformation occurring within the city's walls, municipal authorities labored to establish the town as a

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<sup>264</sup> Walter Benjamin, "The Streets of Paris," in *Arcades Project*, trans. Howard Eiland and Kevin McLaughlin (Cambridge: The Belknap Press of Harvard University Press, 2002), 516 [P1,1].

<sup>265</sup> Christopher W. Close, *The Negotiated Reformation: Imperial Cities and the Politics of Urban Reform 1525-1550* (New York: Cambridge University Press, 2009), 22-25; Alfred Wenderhorst, "Nuremberg, the Imperial City: From Its Beginnings to the End of Its Glory," in *Gothic and Renaissance Art in Nuremberg 1300-1550*, eds. John P. O'Neill and Ellen Shultz (New York: Metropolitan Museum of Art, 1986), 11-26; For an account of Nuremberg as an Imperial City from another vantage, see Joel F. Harrington, *The Executioner's Journal: Meister Frantz Schmidt of the Imperial City of Nuremberg* (Charlottesville: University of Virginia Press, 2016).

<sup>266</sup> For an overview of Nuremberg's carnival culture in this period, see Samuel Kinser, "Presentation and Representation: Carnival at Nuremberg, 1450-1550," *Representations* no. 13 (1986): 1-41; James R. Erb, "Fictions, Realities and the Fifteenth-Century Nuremberg Fastnachtspiel," in *Carnival and the Carnavalesque: The Fool, the Reformer, the Wildman, and Others in Early Modern Theater*, ed. Konrad Eisenbichler and Wim Hüskens Ludus (Atlanta: Rodopi, 1999), 98-116; Konrad Schoell, "Individual and Social Affiliation in the Nuremberg Shrovetide Plays," in *Drama and Community: People and Plays in Medieval Europe*, ed. Alan Hindley (Turnhout: Brepols, 1999), 161-178. The *Fastnaclitsfhele* in Nuremberg between 1450-1550 have been noted for their anti-Semitic narratives. See David Price, "Hans Folz's Anti-Jewish Carnival Plays," *Fifteenth Century Studies* 19 (1992): 209-228.

“Renaissance City,” and the capital of the period’s artistic movement in Germany.<sup>267</sup> From 1933 until the late 1980s, Nuremberg was referred to as “The City of the Nazi Party Rallies.”<sup>268</sup> This projection was stabilized by the imagined reification of Nazi ideology into Nuremberg’s topography by way of the Zeppelin Field and Congress Hall.<sup>269</sup> For the past two decades, Nuremberg’s City Council has made moves to “overcome” the unsavory legacies of Nazism that mark its landscape, and inaugurate a new image for itself as “The City of Human Rights.”

Like Benjamin’s reflection on how urban materiality is enlisted to project and sustain a vision of Paris as the “City of Progress,” these municipal and popular adages project what Nuremberg ostensibly represented through-out the ages. Yet they do more than suggest the city’s interests, and persona. They also render city inhabitants and visitors “in time” by painting a picture of what Nuremberg “is” in the present. The most recent rendition posited by municipal authorities figures Nuremberg as the City of Human Rights. In doing so, City councilors orient Nuremberg dwellers as a democratic municipality

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<sup>267</sup> For an excellent account of the city’s formulation of self in this period under municipal auspicious, see Heidi Eberhardt Bate, “The Measures of Men: Virtue and the Arts in the Civic Imagery of Sixteenth-century Nuremberg” (PhD dissertation, University of California Berkley, 2001); Carl Christensen, “The Nuremberg City Council as Patron of the Fine Arts, 1500-1550,” (PhD dissertation, Ohio State University, 1965); Arthur Groos, “The City as Community and Space: Nuremberg Stadlob 1447-1530,” in *Spatial Practices: Medieval/Modern*, eds. Markus Stock and Nicola Vöhringer (Göttingen: Vandenhoeck & Ruprecht University Press, 2014), 187-206; Jeffrey Chipps Smith, “Imaging and Imagining Nuremberg,” in *Topographies of the Early Modern City*, eds. Arthus Groos, Hans-Jochen Schiewer and Markus Stock (Göttingen: Vandenhoeck & Ruprecht University Press, 2008), 17-41; Jeffrey Smith, *Nuremberg, A Renaissance City, 1500-1618* (Austin: University of Texas Press, 1983).

<sup>268</sup> Sharon Macdonald, “Undesirable Heritage: Fascist Material Culture and Historical Consciousness in Nuremberg,” *International Journal of Heritage Studies* 12, no. 1 (2006): 9-28; Inge Manka, “A (Trans) National Site of Remembrance: The Former Nazi Party Rally Grounds in Nuremberg,” *German Politics and Society* 26, no. 4 (2008): 113-117; Nadine Rossol, “Party Rallies and the Thingspiel In the Third Reich,” in *Performing Nation in Interwar Germany: Sport, Spectacle and Political Symbolism, 1926-1936* (New York: Palgrave, 2010), 102.

<sup>269</sup> I use NSDAP and Nazi interchangeably through-out this Chapter.

presently concerned with the protection and advancement of human rights. From this vantage, Nuremberg is figured as a place that has achieved the ends of democracy, peace, and a culture of respect for the dignity of others. Like the rhetoric of ends wielded by transitional justice theorists, the municipality anamorphically places political communities in the “time of human rights” by projecting itself as a progressive advocate through the establishment of various human rights-focused memorials, awards, and festivals.

Memorium Nuremberg Trial’s exhibition narrative accords with the municipality’s projected self-reformulation. In this Chapter, I critically examine how Memorium Nuremberg Trials fashions the history of the International Military Tribunal (IMT), and contemporary international criminal tribunals, as critical devices that deliver political communities to a society defined by its commitment to human rights ideals. I argue that the museum renders museum visitors and city dwellers as *transitioned*—as a community that has completed the period of transformation, and as a community that has attained the future promised. In this way, museum curators use chronological time to demonstrate the city’s “break” with the past, and its ostensible “arrival” in a present freed from legacies of Nazi violence.

I supply an overview of the Nazi Party rallies and the Nuremberg race laws, along with the municipality’s efforts to narrate itself away from these pasts until the 1990s, in part one of this chapter. Further, I present a history of the IMT. The City of Nuremberg did not render the trial, and Courtroom 600—the place where the most senior captured Nazi officials were prosecuted by allied states—as a significant event and place until the early

2000s. As such, I recount the historical context within which the City of Nuremberg ignored this moment in its past.

In part two I explore the rhetoric and materials deployed by City Council in order to fashion Nuremberg as the “City of Human Rights.” Nuremberg’s ostensible transformation relegates Nazi violence to the past, and ascribes a culture of respect for human rights to the present. Further, I show how Memorium Nuremberg Trials represents international criminal law, both past and present, as a critical mechanism that delivered Nuremberg to a present defined by peace and a commitment to human rights ideals. I argue that the City’s and museum’s organization of the time of violence and the time of human rights obfuscates the presence of contemporary neo-Nazi activity occurring within Courtroom 600 *and* the Nuremberg’s administration. Finally, in part three of this chapter, I illuminate how the dual use of Courtroom 600—which serves as the Museum’s central artefact *and* as a place of local and regional jurisdiction—and activist interruptions at one of the City’s human rights award ceremonies, subvert the municipality’s and museum’s material and discursive representations.

### **Battling History, and Nuremberg’s Identity Crisis**

The National Socialist German Workers’ Party [*Nationalsozialistische Deutsche Arbeiterpartei*] (NSDAP) rallies took place in Nuremberg. There, the political leadership, military [*Wehrmacht*], Storm Troopers [*Sturmabteilung*] (SA), Reich Labour Service [*Reichsarbeitsdienst*], SS [*Schutzstaffel*], and others came together with party members to re-affirm their commitment to NSDAP unity and power, and constitute a German

community [*Volksgemeinschaft*]. The Nuremberg-based rallies were also used to announce prized legislation integral to the advancement of Nazi ideology, such as the “Nuremberg race laws.”<sup>270</sup>

The Nazi Party rallies and the Nuremberg race laws underpinned Nuremberg’s cultural and municipal identity in the 1930s and early 1940s. Restoring the Nazi Party Rally Grounds after the reunification of Germany signaled the municipality’s commitment to grapple with and acknowledge the manners in which its urban spaces were implicated in the projection of Nazi ideology. In this section, I show how the Nazi Party Rally Grounds are used to ascribe Nazi violence to the past in order for the municipality to demonstrate that it has grappled with, mastered, and broken the legacy of politically organized white supremacy. I argue that this material and discursive “break” is necessary in order for the City to claim its new identity as the *transitioned* City of Human Rights. To this end, I supply an overview of the Nazi Party rallies including the constellation of buildings, like the Zeppelin Field and Congress Hall, which dominate the City’s memorial architecture. These buildings are an imposing, but unwanted aspect of the City’s urban imaginary—they are immense in size, and legislation requires their preservation and up-keep. Further, I recount and analyze the Nuremberg race laws, the suite of legal instruments crucial to the Nazi’s plan to marginalize and annihilate select demographics. The memory of these laws, and the Rally Grounds, were ignored by City Council for decades. This section supplies context

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<sup>270</sup> The NSDAP selected Nuremberg for the symbolic capital represented by the city’s cultural spaces and the ostensible historical greatness that emanated from the city’s medieval architecture. The NSDAP’s tooling of German histories in order to illuminate the nation’s “greatness” was part of their broader mission to craft the German *Volk*. See Joshua Hagen and Robert Ostergren, “Spectacle, Architecture and Place at the Nuremberg Party Rallies: Projecting a Nazi Vision of the Past, Present and Future,” *Cultural Geographies* 13, no. 2 (2006): 157-181.

for the analysis I launch in part two, which argues that the municipality eventually acknowledges its Nazi past in order to relegate it to the past so that it may demonstrate its “break” with Nazism, and establish itself anew.

### *Nazi Party Rally Grounds and the Nuremberg Race Laws*

The Nazi Party rallies set-out to introduce political and legal decrees, reinforce the ideological goals of the Party, conjure a potent sense of community and belonging under the banner of National Socialism, and perform political and military power to domestic and international orders.<sup>271</sup> Nuremberg was selected as the Party’s preferred destination for the rallies because of its symbolic association with Germany’s ostensibly stellar political, artistic, and cultural history, and its general geographic accessibility.<sup>272</sup> From 1933 until the outbreak of WWII, Nuremberg was the “City of the Nazi Party Rallies.”<sup>273</sup>

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<sup>271</sup> Paul B. Jaskot, *The Architecture of Oppression: The SS, Forced Labor and the Nazi Monumental Building Economy* (New York: Routledge, 2000), 50. For more, see Hamilton Burden, *The Nuremberg Party Rallies: 1923-39* (London: Paul Mall Press, 1967); see Siegfried Zelhefner, *Die Reichaparteitage der NSDAP in Nürnberg* (Nuremberg: Verlag Nürnberger Presse, 2002).

<sup>272</sup> Rossol, *Performing the Nation*, 105; Hagen and Ostergren, “Nazi Vision,” 159.

<sup>273</sup> Anne G. Kosefeld, “Nürnberg,” in *Deutsche Erinnerungsorte I*, eds. Etienne François and Hagen Schulze (Munich: Verlag C.H. Beck, 2001), 83; Bernd-A Rusinek, “Die deutscheste aller deutschen Städte: Nürnberg als seine Hauptstadt des Nationalsozialismus,” in *Hauptstadt Zentren, Residence, Metropolen in der deutschen Geschichte*, eds. Bodo-Michael Baumunck and Gerhard Brunn (Cologne: Dumont Schauberg, 1989), 92-98.



**Figure 1.0:** German troops parade through the streets of Nuremberg carrying military banners during Reich Party Day [*Reichsparteitag*] parade September 1935. Photo Credit: United States Holocaust Memorial Museum

The rallies took place in September of every year between 1933 and 1938 over an eight-day period. They opened with the grand arrival the Party's leader, Adolf Hitler, who paraded through civilian-lined streets.<sup>274</sup> During this time, the entire city was fashioned with black, red, and white flags, and banners that bore the NSDAP's emblem. The following

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<sup>274</sup> The National Socialist Party held rallies in 1923 and 1927, but they were less organized and took place in other cities. The NSDAP did organize a rally for 1939, but it was permanently suspended due to the out-break of WWII.

days featured cultural events, march-pasts, and events that celebrated the “German community,” Labour Service, Hitler Youth, and SA.<sup>275</sup> Ceremonies organized for the German Military and the closing Party Congress rounded out the final day.

Hitler believed architecture was “more compelling than the spoken word,” and as such, architecture was imagined as central to the success of the events.<sup>276</sup> To this end, architect Albert Speer was commissioned to design a constellation of buildings to enhance NSDAP’s rally propaganda. The Zeppelin Field, the most prominent site of the affair, was developed between 1935 and 1937 and featured a stadium that evoked both neo-classical and abstract design elements.<sup>277</sup> Stone spectator stands flanked three sides of the three hundred and seventy-meter wide field, and held up to two-hundred thousand visitors. These stands were built into thirty-four rampart tower structures that produced the illusion of a fortress when viewed from the outside, but projected the image of a coherent collective from the inside. The remaining end of the field featured a rostrum that extended into elevated stands reserved for guests of honour. A gold version of the Party’s emblem topped the rostrum. The elevated grandstand and ramparts were densely dressed with flags bearing the swastika. Party leaders would enter the field on the grounds occupied by rally participants to demonstrate that the political leadership is “of the people” before

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<sup>275</sup> Hagen and Ostergren, “Nazi Vision,” 159.

<sup>276</sup> Adolf Hitler, quoted from Ingmar Reither, *“Worte aus Stein” und die Sprache der Dichter. Das Reichsparteitagsgelände als poetische Landschaft* (Nuremberg: Sandberg, 2000), 6. Albert Speer denied knowledge of death camps despite his close relationship to Adolf Hitler, his standing in the Reichstag, and his position as Reich Minister for Armament and Munitions. In his memoirs, Speer argues that Hitler “only mentioned the Jewish problem peripherally,” and that Hitler “scarcely ever said anything about the Jews, about his domestic opponents, let alone the necessity for setting up concentration camps.” Albert Speer, *Inside the Third Reich: Memoirs by Albert Speer*, trans. Richard and Clara Winston (New York: Macmillan, 1970), 74, 284.

<sup>277</sup> Speer, *Inside*, 198.

emerging from the crowd. From there, a physical hierarchy appeared: the altar-like stand used by the leadership for political proclamations was elevated above all else.



**Figure 1.1:** Zeppelin Field, Photo Credit: Documentation Center Nazi Party Rally Grounds

Other buildings were designed to augment the symbolic power of the Zeppelin Field. Plans for the March Field and the German Stadium, designed to hold five-hundred thousand and four-hundred-and-five thousand individuals respectively, were crafted by Speer but were never developed past initial planning stages. Located only moments away from the central rally site on Dutzendteich Lake was Congress Hall. Designed by Ludwig and Franz Ruff in 1934, this building was modeled after the Roman Colosseum, and had the capacity to hold fifty-thousand rally delegates.<sup>278</sup> Although the interior of the building was never fully completed, it served as the headquarters for the NSDAP. The Zeppelin Field,

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<sup>278</sup> Macdonald, "Undesirable Heritage," 14.

March Field, German Stadium, Great Street, and Congress Hall, together, constitute the Nazi Party Rally Grounds. These excessive structures were physical testaments of the political dominance of the Nazi party in Nuremberg, and beyond. The permanent and grandiose nature of the buildings were crucial to the establishment of Nuremberg as the City of the Nazi Party Rallies, and ostensible testaments of Nazi strength and power seen by city dwellers and travelers year-round, through-out the decades.

The rallies were also used as opportune moments to announce legislation tooled to advance the Party's political prerogatives, which were later tied to Nuremberg's urban imaginary. At the "Rally of Freedom," which took place on September 15, 1935, the NSDAP leadership introduced two pieces of legislation to align Germany's citizenship laws with their political ideology that reduced citizenship to an ethnic basis.<sup>279</sup> The Reich Citizenship Law [*Reichsbürgergesetz*], and the Law for the Protection of German Blood and German Honour [*Gesetz zum Schutze des Deutschen Blutes und der Deutschen Ehre*] were essential to the manufacturing of the racial state through the denaturalization of citizenship, the creation of racial categories, and the suspension of civil liberties.<sup>280</sup> The introduction of §2 of the Reich Citizenship Law, which stipulated that "[a] citizen of the Reich is only that subject who is of German or kindred blood and who, through his conduct, shows that he is both willing and able to faithfully serve the German people of Reich," provided the NSDAP legal footing to establish who is and who is not a person of German or kindred blood

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<sup>279</sup> Diemut Majer, *"Non-Germans" Under the Third Reich: The Nazi Judicial and Administrative System in Germany and Occupied Eastern Europe, with Special Regard to Occupied Poland, 1939-1945*, trans. Peter Hill, Edward Humphrey, and Brian Levin (Baltimore: John Hopkins University Press, 2003), 111.

<sup>280</sup> Saul Friedländer, *Nazi Germany and the Jews, Volume I: The Years of Persecution, 1933-1939* (New York: HarperCollins Publishers, 1997), 149.

[*Volk*] and therefore a subject of the state<sup>281</sup> On November 14, 1935 the First Regulation to the Reich Citizenship Law defined what constituted “full Jews [*Volljuden*]” and “Jewish mixed breeds [*Mischlinge*].” The law’s stipulation of three general categories of race within the state further radicalizing NSDAP’s race-based approach to citizenship.<sup>282</sup>

The Reich Citizenship Law, the Law for the Protection of German Blood and German Honour, and Law for the Protection of the Hereditary Health of the German Volk, together, are referred to as the Nuremberg race laws.<sup>283</sup> This trinity of legislation established particular demographics as inferior, supplied grounds for the later institutionalization of NSDAP racism, and provided the foundation upon which a “racially pure” German community could be built.<sup>284</sup> Distinctions between those “worthy” and “unworthy” of

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<sup>281</sup> “The Reich Citizenship Law of September 15, 1935,” In *United States Chief Counsel for the Prosecution of Axis Criminality, Nazi Conspiracy and Aggression, Volume IV* (Washington, DC: United States Government Printing Office, 1946), Documents 1416-PS and 1417-PS, 7-10. For more on the NSDAP’s cultivation of the German “Volk” see Michael Stolleis, *The Law under the Swastika: Studies on Legal History in Nazi Germany* (Chicago: University of Chicago Press, 1998), 64- 86.

<sup>282</sup> The citizenship held by “Jewish mixed breeds [*Mischlinge*]” endured the 1935 suite of reformulated citizenship laws, but was later curtailed by future legislation. Friedländer, *Years of Persecution*, 137-151; Lothar Gruchmann, “Blutschutzgesetz und Justiz,” *Vierteljahrshefte für Zeitgeschichte* 31, no. 3 (1983): 418-442. For a discussion on how high-ranking members of the NSDAP had different concepts of race, see Dan Stone, “Nazi Race Ideologies,” *Patterns of Prejudice* 50, no. 4-5 (2016): 445-457.

<sup>283</sup> Although the Nuremberg Race Laws erroneously established the racial basis to “determine” who is Jewish, these laws were also extended and applied to Sinti, Roma, and Black populations in the state. According to the Race Policy Office of the Reich Ministry of the Interior, this suite of laws was “the result of the breakthrough recognition, put into real-life practice at the twelfth hour, of the inequality of the human race, as opposed to the smarmy liberal slogan touting the equality of anything that has a human visage.” Reich Ministry of the Interior, quoted in Majer, “Non-Germans,” 111. See also Eve Rosenhaft, “Blacks and Gypsies in Nazi Germany: The Limits of the “Racial State,”” *History Workshop Journal* 72, no. 1 (2011): 161-170; Guenter Lewy, *The Nazi Persecution of the Gypsies* (Oxford: Oxford University Press, 2000).

<sup>284</sup> The Law for the Protection of German Blood and German Honour further engendered a unitary hierarchy of race through criminal law. Marriage to and “extramarital relations” with “subjects of the state of German or related blood” was prohibited, and violators were subject to imprisonment for “race defilement [*Rassenschande*].” On October 18, 1935, the Law for the Protection of the Hereditary Health of the German Volk [*Gesetz zum Schutz der Erbgesundheit des deutschen Volkes*] was passed. This legislation enhanced the NSDAP’s interrogation of relationships. All individuals pursuing a marriage license were required to pass a “fit for marriage” physical examination designed to screen out those who suffer from so-called “hereditary illness” or “contagious diseases.” For more, see Martina Steber and Bernhard Gotto eds., *Visions of Community in Nazi Germany: Social Engineering and Private Lives* (Oxford: Oxford University Press, 2014);

German citizenship, as established by the laws, guided the allocation and denial of social benefits and civil liberties.<sup>285</sup> The NSDAP's engineering of white supremacy retooled subjects of the state's class-based identity into one connected to the "*Volksgemeinschaft*," which "tapped into German traditions that lauded social harmony over conflict and... valued hard work, clean living, and law and order."<sup>286</sup> This strategy dovetailed with aggressive propaganda that defined "enemies of the Volk" who were subjected to inhumane treatment, torture, and murder *en masse* until 1945.<sup>287</sup>

After the war, the architectural memory of Nazi rallies, and the short-hand reference to racist Nazi legislation—the "Nuremberg race laws"—remained in the collective imaginary, but was unacknowledged by municipal authorities. At the time, Nuremberg was located within US occupied territory and under the purview of the Office of the Military Government of the United States (OMGUS), which was quick to establish local and regional governments in the area. Most of the Nazi Party rally grounds were returned to the newly instated local authority in 1948, which had considerable control over

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Michelle Mouton, *From Nurturing the Nation to Purifying the Volk: Weimar and Nazi Family Policy, 1918-1945* (New York: Cambridge University Press, 2007); Carol Poore, "Disability and Nazi Culture," in *Disability in Twentieth-Century German Culture* (Ann Arbor: University of Michigan Press, 2007), 67-138.

<sup>285</sup> Civic rights were suspended for Jews, including their right to vote. Furthermore, Jewish civil servants were forced to retire, and later decrees prohibited Jews from maintaining employment as professors, physicians and lawyers. Friedländer, *Years of Persecution*, 149-150. See also Martin Dean, "The Development and Implementation of Nazi Denaturalization and Confiscation Policy up to the Eleventh Decree to the Reich Citizenship Law," *Holocaust and Genocide Studies* 16, no. 2 (2002): 217-242.

<sup>286</sup> Robert Gellately and Nathan Stolfus eds., "Social Outsiders and the Construction of the Community of the People," in *Social Outsiders in Nazi Germany* (Princeton: Princeton University Press, 2001), 4.

<sup>287</sup> See Donald Bloxham, *The Final Solution: A Genocide* (Oxford: Oxford University Press, 2009); Friedländer, *Years of Extermination*; Lewy, *Gypsies*; Christopher Browning, *The Origins of the Final Solution: The Evolution of Nazi Jewish Policy, September 1939 - March 1942* (Lincoln: University of Nebraska Press, 2004); Susanne Evans, *Forgotten Crimes: The Holocaust and People with Disabilities* (Chicago: Ivan Dee, 2004); Raul Hilberg, *The Destruction of the European Jews* (New Haven: Yale University Press, 2003); Henry Friedlander, *The Origins of Nazi Genocide: From Euthanasia to the Final Solution* (Chapel Hill: University of North Carolina Press, 1995); Patrick Camiller, Claudia Schoppmann, and Günter Grau, *Hidden Holocaust?: Gay and Lesbian Persecution in Germany, 1933-1945* (Chicago: Fitzroy Dearborn, 1995).

the day-to-day administration of Nuremberg, and its property.<sup>288</sup> The local authorities were quick to use the grounds for purposes that did not call attention to its previous Nazi affiliation. For instance, Congress Hall was used in 1949 for a German Building Exhibition, and then later, on an annual basis, for the Nuremberg *Volksfest*, sports events like the 200 Meilen von Nürnberg motor race, and World Cup football matches.<sup>289</sup>

The move to re-purpose the space in the decades after the war is indicative of the municipality's uncertainty over how to publically approach the history of the grounds.<sup>290</sup> When the Bavarian Historic Preservation Law [*Denkmalschutzgesetz*] came into force in 1973, it triggered the designation of all Nazi buildings as "witnesses of the past" [*Zeugen der Vergangenheit*], including structures that constitute the former rally grounds.<sup>291</sup> In particular, it prohibited the demolition of the buildings, and required the City to maintain and protect the site. Municipal counsellors were aware of Speer's intention to create structures that would maintain ideological power after falling into ruins—allowing the buildings to molder would be to fulfil the objective the architect held for his designs.<sup>292</sup> Yet the city planners were less committed to preserving and restoring the site, and more interested in the economic advantages the grounds offered to general urban development

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<sup>288</sup> Macdonald, *Difficult Heritage*, 57-58.

<sup>289</sup> For an excellent discussion of how nationalism is performed at the former Rally Grounds during World Cup football events, see Manka, "A (Trans) National Site," 113-167.

<sup>290</sup> Nuremberg City councilors united to oppose to the rise and election of neo-Nazi National Democratic Party (NDP) members to City Council in the mid 1960s. See Neil Gregor, *Haunted City: Nuremberg and the Nazi Past* (New Haven, Yale University Press, 2008), 355-374.

<sup>291</sup> *Denkmalschutzgesetz*, June 25, 1973 (BayRS 2242-1-K); Macdonald, *Undesirable*, 17.

<sup>292</sup> In his memoir, Speer wrote, "To illustrate my ideas I had a romantic drawing prepared. It showed what the viewing stand on the Zeppelin Field would look like after generations of neglect, overgrown with ivy, its columns fallen, the walls crumbling here and there, but the outlines still clearly recognizable. In Hitler's entourage this drawing was regarded as blasphemous... But he himself accepted my ideas as logical and illuminating. He gave orders that in the future the important buildings of his Reich were to be erected in keeping with the principles of this law of ruins." Speer, *Inside*, 181.

projects. However, the Bavarian Historical Preservation Law prevented the municipality from developing the grounds for commercial purposes. Instead, it required the City to expand their budget in order to cover maintenance costs, securing the material history of the rallies to Nuremberg's topography for decades to come.<sup>293</sup>

By 1988, few permanent efforts were made to mark the history of the site. Through constant efforts, the Green Party secured a mandate for the City Councilor of Cultural Affairs to organize an international symposium entitled "Legacy—The Approach to Nazi Architecture" [*Das Erbe-vom Umgang mit NS-Architektur*], the discussions of which led to the development of the Documentation Centre Nazi Party Rally Grounds [*Dokumentationszentrum Reichsparteitagsgelände*] (hereinafter Documentation Centre).<sup>294</sup> According to the Director of Nuremberg Municipal Museums, the Documentation Centre is a living confrontation with the history of the Nazi Party in Nuremberg.<sup>295</sup> It is located in the north wing of Congress Hall.

While the establishment of the Documentation Centre is an expression of the municipality's commitment to take responsibility for the legacy of Nazi violence in Nuremberg, this history is also something the City strives to go beyond. Sharon Macdonald describes City Council's uneasy approach to the Rally Grounds as an "oscillation of cultural

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<sup>293</sup> Sharon Macdonald, "Reassembling Nuremberg, Reassembling Heritage," in *Assembling Culture*, (eds.) Tony Bennett and Chris Healy (New York, Routledge, 2011), 120-121; Macdonald, "Undesirable Heritage," 17-18. The Bavarian Historic Preservation Law indicated the municipality of Nuremberg to continually engage with the heritage of the site even in the absence of City-run memorializing practices, meaning that the City must acknowledge its Nazi past alongside its own re-branding, which I explore in the next section of this Chapter.

<sup>294</sup> For a thorough analysis of how the history of the Nazi Party Rally Grounds were commemorated by Nuremberg in the late 1990s and into the 2000s, see Macdonald, *Difficult Heritage*.

<sup>295</sup> Franz Sonnenberger, "A City Confronts its Past: Nuremberg's Documentation Centre on the Reich Party Congress Site," *Museum International* 51, no. 3 (1999): 57.

politics”—the simultaneous implementation of competing policies that preserve, restore, re-develop, and ignore the grounds.<sup>296</sup> This oscillation, she argues, is fueled by the municipality’s desire to responsibly confront its Nazi past, and broker a new image for itself. While I agree that the Nuremberg has taken an uneven approach to the preservation and cultural management of the rally grounds, I characterize the city’s shift in policy differently. Municipal commemorations of the site are material and rhetorical attempts to demonstrate that it has acknowledged *and overcome* the legacy of Nazism distilled in its urban spaces. For city authorities, the Documentation Centre represents its Nazi past—a bounded time of violence—that they have broken with and moved beyond. By demonstrating that they have accounted for their difficult history, City Council can discursively orient city dwellers “in the time of democracy and rights”—that is, as a community that has *transitioned* away from its violent past, whose political transformation is over, and complete. This position was affirmed by Lord Mayor of Nuremberg Ulrich Maly, who argued that, “today’s Nuremberg has absolutely nothing to do with Nuremberg under the swastika.”<sup>297</sup> Yet in order for the city to anamorphically place individuals in a time defined by a general commitment to human rights ideals, they turned to another moment in the city’s history: the IMT trial in Courtroom 600 at the Palace of Justice. It is to this history that I turn as well.

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<sup>296</sup> Macdonald, *Difficult Heritage*, 84-85.

<sup>297</sup> Dr. Ulrich Maly et al, “Ein Diskussionsbeitrag über den Umgang mit dem ehemaligen Reichsparteitagsgelände in Nürnberg,” February 2003, [https://www.nuernberg.de/imperia/md/stadtportal/dokumente/03\\_umgang\\_reichsparteitagsgelaende.pdf](https://www.nuernberg.de/imperia/md/stadtportal/dokumente/03_umgang_reichsparteitagsgelaende.pdf) from the original German, “*dass das Nürnberg von heute mit dem Nürnberg unterm Hakenkreuz nicht das Geringste mehr zu tun hat.*”

### *International Military Tribunal (1945-1946)*

The debate between the United Kingdom, France, the Soviet Union, and the United States as to what should be done after WWII in response to the widespread and systematic atrocities that took place under the direction of the NSDAP commenced before the end of the war.<sup>298</sup> Legal and political officials from each allied state expressed differing views on how Nazi criminality should be addressed after the war in a series of position papers, proclamations, and memoranda between the fall of 1942 and the spring of 1945. Whether captured leaders in Germany should be summarily executed or put on trial was eventually resolved at an international conference in London between June 26 and August 8, 1945. The deliberations resulted in the creation of The Charter of the International Military Tribunal, which outlined the jurisdiction and powers of a court that would place twenty-two high-ranking Nazi officials in the dock. It further stipulated that eight judges, two from each allied state, would preside over the tribunal.

The victorious states were empowered by Article 6 of the Charter to try and punish individuals and members of organizations for crimes against peace, war crimes, and crimes against humanity. The US prosecution team, led by Robert H. Jackson, took on the first charge. In his famous opening address to the Tribunal, Jackson holds that the power of the

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<sup>298</sup> The United Kingdom, United States, France, Italy and Japan engaged the question of whether Germany should face criminal punishment for the crimes committed during WWI during the 1919 Peace conference in Paris at the Commission of Responsibilities of the Authors of War and the Enforcement of Penalties. The irreconcilable positions on whether criminal trials would be the appropriate course of action even after the Commission established the need to hold individuals to account was a spectacular display of the dysfunctional relationship between Allied powers. The international criminal tribunal stipulated in art 227 of 1919 The Treaty of Versailles never materialized. See James F. Willis, *Prologue to Nuremberg: The Politics of Diplomacy of Punishing War Criminals of the First World War* (Westport: Greenwood Press, 1981).

newly minted practice of international criminal law will, once and for all, prevent future aggressive wars fueled by racial hatred:

[t]he privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility. The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated [...] Civilization can afford no compromise with the social forces which would gain renewed strength if we deal ambiguously or indecisively with the men in whom those forces now precariously survive.<sup>299</sup>

Jackson's rhetoric suggests that the establishment of the tribunal will permit "civilization" to condemn and overcome Nazi violence, and inaugurate a future whereby mass atrocity on the scale enacted by the NSDAP, and others, will fail to manifest.

To this end, and departing from the London Charter, the IMT's indictments against high ranking Nazi officials were reformulated to include the count of conspiracy, which was described as the participation in the "formation or execution of a common plan or conspiracy to commit, or which involved the commission of, crimes against peace, war crimes and crimes against humanity."<sup>300</sup> Sir Hartley Shawcross led the British prosecution team to prove that each defendant was complicit in "the planning, preparation, initiation and waging of wars of aggression, which were also wars in violation of international treaties, agreements and assurances."<sup>301</sup> The third count, war crimes, was defined as the murder and ill treatment of civilians and prisoners of war between September 1, 1939 and

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<sup>299</sup> International Military Tribunal, *Trial of the Major War Criminals before the International Military Tribunal, Volume 2* (Nuremberg, IMT, 1947), 98-99. For an analysis of how international law and civilization are rhetorically conflated in legal cases within and beyond the Nuremberg trials, see Christiane Wilke, "Reconsecrating the Temple of Justice: Invocations of Civilization and Humanity in the Nuremberg Justice Case," *Canadian Journal of Law and Society* 24, no. 2 (2009): 181-201.

<sup>300</sup> International Military Tribunal, *Trial of the Major War Criminals before the International Military Tribunal, Volume 1* (Nuremberg, IMT, 1947), 30.

<sup>301</sup> IMT, *Vol. 1*, 42.

May 8, 1945 in Germany, and territories occupied by the German military, including the high seas. The fourth count involved crimes against humanity, which included “murder, extermination, enslavement, deportation... persecutions on political, racial, or religious grounds in execution of or in connection within the jurisdiction of the Tribunal.”<sup>302</sup> The cases for the third and fourth counts were shared between the French and Soviet prosecution teams, and were allocated among the prosecutors according to where the crimes took place. France, led by Chief Prosecutor François de Menthon, took responsibility to prove crimes that took place in western European countries, and General R. A. Rudenko, representing the Soviet Union, was responsible for proving that crimes against humanity took place in the east.<sup>303</sup>

The sixty-five-page indictment of twenty-two individuals was presented to the IMT in Berlin in the Grand Conference Room of the Allied Control Authority Building on October 18, 1945. Together, they were said to represent the “unholy trinity of Nazism, militarism and economic imperialism.”<sup>304</sup> Leaders from the following organizations were indicted: National Socialist Party; Reich Cabinet [*Reichsregierung*]; SS [*Schutzstaffel*]; Gestapo; SD [*Sicherheitsdienst*]; and SS Reich Security Head Office [*Reichssicherheitshauptamt*].

Name	Position	Charge
Hermann Göring	Member of the Nazi Party, Supreme Leader of the SA, General in the SS	Conspiracy, Crimes Against Peace, War Crimes, Crimes Against Humanity

<sup>302</sup> IMT, Vol. 1, 11.

<sup>303</sup> Donald Bloxham claims that the US prosecution team took responsibility to prove count one—the common plan or conspiracy to launch an aggressive war—because it was conceived as the most egregious act, and the “ultimate and all inclusive crime.” Donald Bloxham, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory* (New York, Oxford University Press, 2001), 18-20.

<sup>304</sup> Fredrick Elwyn Jones, *In My Time: An Autobiography* (London: Futura, 1983), 129.

Rudolf Hess	Member of the Nazi Party, Deputy to the Fuehrer, Reich Minister without Portfolio, member of the Reichstag	Conspiracy, Crimes Against Peace, War Crimes, Crimes Against Humanity
Joachim von Ribbentrop	Member of the Nazi Party, member of the Nazi Reichstag, advisor to the Fuehrer on matters of foreign policy	Conspiracy, Crimes Against Peace, War Crimes, Crimes Against Humanity
Ernst Kaltenbrunner	Member of the Nazi Party, General in the SS, General of the Police	Conspiracy, Crimes Against Peace, War Crimes, Crimes Against Humanity
Alfred Rosenberg	Member of the Nazi Party, Reichsleiter in the Nazi Party for Ideology and Foreign Policy, the editor of the Nazi newspaper Volkischer Beobachter	Conspiracy, Crimes Against Peace
Hans Frank	Member of the Nazi Party, General in the SS, Reich Minister without Portfolio	Conspiracy, War Crimes, Crimes Against Humanity
Wilhelm Frick	Member of the Nazi Party, Reichsleiter, General in the SS, member of the Reichstag, Reich Minister of the Interior	Conspiracy, Crimes Against Peace, War Crimes, Crimes Against Humanity
Julius Streicher	Member of the Nazi Party, a General in the SA, editor-in-chief of the anti-Semitic newspaper Der Sturmer	Conspiracy, Crimes Against Humanity
Baldur von Schirach	Member of the Nazi Party, a member of the Reichstag, Reich Youth Leader on the Staff of the SA Supreme Command	Conspiracy, Crimes Against Humanity
Fritz Sauckel	Member of the Nazi Party, Gauleiter and Reichsstatthalter of Thuringia, General Plenipotentiary for the Employment of Labor under the Four Year Plan	Conspiracy, Crimes Against Peace, War Crimes
Arthur Seyss-Inquart	Member of the Nazi Party, a General in the SS, State Councillor of Austria	Conspiracy, Crimes Against Peace, War Crimes, Crimes Against Humanity
Albert Speer	Member of the Nazi Party, Reichsleiter, member of the Reichstag, Reich Minister for Armament and Munitions	Conspiracy, Crimes Against Peace, War Crimes, Crimes Against Humanity
Constantin von Neurath	Member of the Nazi Party, a General in the SS, a member of the Reichstag, Reich Minister, Reich Minister of Foreign Affairs	Conspiracy, Crimes Against Peace, War Crimes, Crimes Against Humanity
Hans Fritzsche	Member of the Nazi Party, editor-in-chief of the official German news agency, "Deutsche Nachrichten Buro"	Conspiracy, War Crimes, Crimes Against Humanity
Martin Bormann (tried in absentia)	Member of the Nazi Party, member of the Reichstag, member of the Staff of the Supreme Command of the SA	Conspiracy, War Crimes, Crimes Against Humanity

Robert Ley (committed suicide before the trial)	Member of the Nazi Party, Reichsleiter, Nazi Party Organization Manager, member of the Reichstag, leader of the German Labor Front	Conspiracy, War Crimes, Crimes Against Humanity
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The issuance of indictments and the prosecution of defendants occurred in different locations. The indictments were read in Berlin, where the USSR, US, UK, and France shared administrative control in order to symbolically reflect the joint effort to establish and conduct the IMT’s proceedings.<sup>305</sup> However, the trial took place in Nuremberg, in the Palace of Justice, which was situated in the US occupied zone. Courtroom 600, housed in the east wing of the building, survived the Battle of Nuremberg (April 15-20, 1945) relatively unscathed, rendering it an appropriate site for the tribunal. In order to execute the US military’s public relationship strategy that aimed to broadcast the trial on global mass media platforms, Courtroom 600 underwent comprehensive renovations. In particular, the back wall of the room was removed to create space for a public and press viewing gallery. Chandeliers were exchanged for floodlights to accommodate the lighting preferences of cinematographers, which further dramatized the space.<sup>306</sup>

Courtroom 600 made its international debut on November 20, 1945, and maintained the attention of the press and public throughout.<sup>307</sup> Trial spectatorship and media presence was notable — sixty-thousand trial visitor permits were issued, as were two-hundred and fifty media passes for reporters from local, national and international

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<sup>305</sup> Bloxham, *Genocide on Trial*, 18.

<sup>306</sup> Jean Louis-Cohen, *Architecture in Uniform: Designing and Building for the Second World War* (New Haven: Yale University Press, 2011), 386-388.

<sup>307</sup> Defendants pled “not guilty” to each charge laid against them.

press bureaus over the eleven-month period.<sup>308</sup> The proceedings spanned four-hundred and three trial sessions and received oral testimony from ninety-four witnesses — thirty-three testified on behalf of the prosecution team, and sixty-one by the defense, in addition to one-hundred and forty-three written submissions.<sup>309</sup> Committed to presenting evidence ostensibly more credible than eyewitness testimony, Allied prosecutors submitted four-thousand documents into evidence.<sup>310</sup> This strategy was championed by US Chief Counsel Robert Jackson and articulated in his opening address:

We will not ask you to convict these men on the testimony of their foes. There is no count in the Indictment that cannot be proved by books and records. The Germans were always meticulous record keepers, and these defendants had their share of the Teutonic passion for thoroughness in putting things on paper.<sup>311</sup>

Due to the limitations of the simultaneous translation system developed by the IBM Corporation, each document had to be read aloud in order for it to appear on record.<sup>312</sup> This constellation of events contributed to hundreds of dull and uneventful trial sessions, marking the IMT as a “citadel of boredom” for some.<sup>313</sup>

Documentary films adduced at the IMT interrupted the monotony of the proceedings, transformed Courtroom 600 into a theater, and further endowed the space with historical significance as the IMT was the first trial to adjudicate cinematic evidence. The most well-known film, a forty-eight minute-long black and white documentary

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<sup>308</sup> Lawrence Douglas, *The Memory of Judgement: Making Law and History in the Trials of the Holocaust* (New Haven: Yale University Press, 2005), 12-15.

<sup>309</sup> IMT, *Vol. 2*, 413.

<sup>310</sup> Douglas, *Memory*, 17.

<sup>311</sup> IMT, *Vol. 2*, 102.

<sup>312</sup> IBM’s simultaneous translation technology played a novel role in the IMT proceedings. For more on the history, development and use of the system, see Francesca Gaiba, *The Origins of Simultaneous Interpretation: The Nuremberg Trial* (Ottawa: University of Ottawa Press, 1998)

<sup>313</sup> Rebecca West, “Extraordinary Exile,” *The New Yorker*, September 7, 1946.

commissioned by the US Army Office of Strategic Services entitled *Nazi Concentration Camps*, was submitted into evidence as proof of war crimes and screened on November 29, 1945.<sup>314</sup> The later figuration of *Nazi Concentration Camp* into Hollywood films, such as *Schindler's List* (1993), and educational films about US post war-efforts to hold perpetrators of violence to account, like *Nuremberg: Lessons for Today*, further engrained Courtroom 600 into the trans-national collective imagination.<sup>315</sup>

Yet the films screened for the tribunal also challenged procedural norms that structure the process of evidentiary authentication. Due to the broad latitude afforded to rules of evidence stipulated in Article 19 of the Charter, each film was controversially rendered self-authenticating and elevated as a “privileged witness who could swear the truth of its own images.”<sup>316</sup> The judicial standard that would typically require prosecutors to link the content depicted in the film to one or more of the defendants was overlooked by the presumed greater cause of making visible WWII’s human catastrophe.

The IMT’s judgement earned back the international media that had floundered during the more technical months of the trial, placing Courtroom 600 and Nuremberg in the international spotlight yet again. From September 30, to October 1, 1946, IMT President Lord Justice Colonel Sir Geoffrey Lawrence from the United Kingdom delivered the judgement, establishing his proclamation—in Courtroom 600 in Nuremberg—as a

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<sup>314</sup> Susan Twist, “Evidence of Atrocities or Atrocious Use of Evidence: The Controversial Use of Atrocity Film at Nuremberg,” *Liverpool Law Review* 26, no. 3 (2005): 279.

<sup>315</sup> Two other films, *Reichsbank Loot*, and *Original 8mm film of Atrocities Against Jews*, were also presented to the tribunal.

<sup>316</sup> Lawrence Douglas, “Film as Witness: The Evidence of Nazi Concentration Camps before the Nuremberg Tribunal,” *Yale Law Journal* 105, no. 2 (1995): 449-481.

critical moment in the city's history. According to Lord Lawrence, cases which sought to establish the commission of crimes against humanity were ruled particularly weak:

The policy of persecution, repression and murder of civilians in Germany before the war of 1939, who were likely to be hostile to the Government, was most ruthlessly carried out...To constitute Crimes Against Humanity, the acts relied on before the outbreak of war must have been in execution of, or in connection with, any crime within the jurisdiction of the Tribunal. The Tribunal is of the opinion that revolting and horrible as many of these crimes were, it has not been satisfactorily proved that they were done in execution of, or in connection with, any such crime.<sup>317</sup>

The cases brought forward by the US prosecution team and the final judgement were curiously silent on the criminality of senior SS [*Höheren SS*], police leaders [*Polizeiführer*], Reich detective police [*Kriminalpolizei*], and the Order Police [*Ordnungspolizei*], resulting in a particularly narrow view of which organizations were complicit in the crimes adjudicated.<sup>318</sup>

Soviet IMT member Major-General I. T. Nikitchenko supplied a dissenting reasoning that there was sufficient evidence to prove the criminality of the Reich Cabinet, and the General Staff of the High Command.<sup>319</sup> Further, Judge Nikichenko also argued that the prosecution mounted a case that sufficiently proved the guilt of Schacht, Fritzsche and von Papen, who were acquitted by the tribunal.<sup>320</sup> He further opined that Hess should receive the most severe punishment of death as opposed to life imprisonment.<sup>321</sup> Hess, Funk and Raeder were sentenced to life imprisonment while Dönitz, von Schirach, Speer, and von Neurath were sentenced to prison terms ranging from ten to twenty years. Schacht,

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<sup>317</sup> IMT, Vol. 2, 467.

<sup>318</sup> Bloxham, *Genocide on Trial*, 186.

<sup>319</sup> IMT, Vol. 1, 356-364.

<sup>320</sup> IMT, Vol. 1, 342-355.

<sup>321</sup> IMT, Vol. 1, 356.

Fritzsche and von Papen were acquitted. Twelve defendants were found guilty of various counts and sentenced to death by hanging.<sup>322</sup> They were executed on October 16, 1946.

The hanging of the twelve defendants could be seen as a symbolic end to the *ancien régime* and the “time of transition.”<sup>323</sup> While the death penalty is now abolished in international criminal law, the finality of the IMT’s sentence contributes to fracturing and organization of bounded time.<sup>324</sup>

After their execution, many factors contributed to the public silence over the prosecution of high-ranking Nazi officials in Nuremberg. Public interest in the IMT and subsequent proceedings at the Nuremberg Military Tribunal (NMT) dwindled after the Federal Republic of Germany was established in 1949. Some argue that US foreign policy is partly to blame for the sequestering of a national memory of the IMT.<sup>325</sup> As the

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<sup>322</sup> Hermann Göring committed suicide in his cell by consuming arsenic shortly after receiving his death sentence.

<sup>323</sup> In *The Death Penalty: Volume I*, Jacques Derrida suggests a relationship between the death penalty and the temporality of the sovereign. Eschewing the natural law premise of “right to life” upon which abolitionists like Cesare Beccaria and Victor Hugo launched their critiques of the death penalty, Derrida instead infers a different position from which to articulate opposition to the sovereign’s power over life and death. Derrida was less concerned with the question of retribution (as articulated by Immanuel Kant), murder, death or dying, but rather, the positing of the time of sovereignty that interrupts the indeterminacy of natural death by calculating the end of finite being. Derrida writes, “[t]he calculating decision, by putting an end to life, seems, paradoxically, to put an end to finitude: it affirms its power over time it masters the future; it protects against the irruption of the other.” Jacques Derrida, *The Death Penalty: Volume I*, eds. Geoffrey Bennington, Marc Crépon, and Thomas Dutoit, trans. Peggy Kamuf (Chicago: University of Chicago Press, 2014), 256, 258. To determine the time of death is to master a life’s future, to organize a life’s exposure to their future, and thus, prevent their experience of finitude by severing their relation to what is to come. The sovereign’s mastery over time in the moment of death is concealed by the mythic foundation of law’s authority. Derrida, *Death Penalty*, 93-94, 135, 171-172, 256; Jacques Derrida, “Force of Law: The Mystical Foundation of Authority,” in *Acts of Religion*, ed. Gil Anidjar (New York: Routledge, 2002), 275.

<sup>324</sup> For an overview of the eventual abolishment of the death penalty in international law, see William A. Schabas, *The Abolition of the Death Penalty in International Law, Third Edition* (Cambridge: Cambridge University Press, 2002).

<sup>325</sup> A second trial at the IMT which would focus on German industrialists complicit in the Nazi war machine was slated but eventually axed by the US War Department because it would “emphasize ideological differences between prosecuting nations.” See Donald Bloxham, “The Trial That Never Was: Why there was no Second International Trial of Major War Criminals in Germany,” *History* 87, no. 285 (2002): 51-53.

ideological cleavage between USSR and US grew more pronounced in the late 1940s, America's positive foreign relations with the Federal Republic became the linchpin to US President Harry Truman's broader policy, otherwise known as the "Truman Doctrine," to contain "Soviet threats."<sup>326</sup> In 1950, President Truman bolstered US troops in the Federal Republic and implemented the Marshall Plan which liberalized the Republic's capital market.<sup>327</sup> In order to preserve their relationship with the newly minted West German administration in the face of the political and military restrictions they imposed, strong US interest in denazification processes, and their interest in prosecuting Nazi perpetrators, fell to the way-side. Further, sentences for individuals prosecuted at the twelve trials conducted by the NMT between 1946 and 1949 were commuted to shorter sentences in the early 1950s, releasing individuals shortly after their imprisonment.

The policy platforms of Konrad Adenauer, the first Chancellor of the Federal Republic, contributed to the emerging silence over the IMT, and NMT. Chancellor Adenauer shifted the public's attention away from Nazi violence by rolling back Allied instituted denazification programs, reintegrating former Nazis, pursuing a policy of reconstruction by liberalizing the Republic's economy, and by supplying restitution to Jewish survivors. Adenauer also aimed to stem nationalist sentiments by quashing criminal investigations and prosecutions by the Federal Republic alongside the commutation of

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<sup>326</sup> Detlef Junker, "Politics, Security, Economics, Culture, and Society: Dimensions of Transatlantic Relations," in *The United States and Germany in the Era of the Cold War, 1945-1990*, eds. Philipp Gassert (Cambridge: Cambridge University Press, 2004), 6.

<sup>327</sup> Hubert Zimmermann, "The Improbably Permanence of a Commitment: America's Troop Presence in Europe during the Cold War," *Journal of Cold War Studies* 11, no. 1 (2009): 8.

NMT sentences, and by politically integrating the young state with the US and UK.<sup>328</sup> The Chancellor's effort to turn the newly minted state away from the past and towards a future ostensibly defined by economic and political cooperation further explains the lack Nazi prosecutions in West Germany until the Frankfurt Auschwitz trial that took place between 1963 and 1967.<sup>329</sup> The West German public, who would rather not discuss their support of the Nazi Party or meditate on their own family's complicity in perpetrating atrocities, generally embraced Adenauer's policies.<sup>330</sup> It is argued that the IMT and NMT trials, both of which focused on prosecuting Nazi superiors, absolved the general public of taking up responsibility for their own general racist worldviews.<sup>331</sup>

The municipality of Nuremberg's silence over the past dovetailed with this national trend. Part of this silence was brought along by Adenauer's lenient approach to denazification, which led to re-storing a former member of the Nazi party, Heinz Schmeissner, to Nuremberg's municipal office. From 1940 until the end of the war,

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<sup>328</sup> Jeffrey Herf, *Divided Memory: The Nazi Part in Two Germanys* (Cambridge: Harvard University Press, 1997), 209; Michael Balfour, *The Tides of Power* (New York: Routledge, 2005), 137; Gordon Craig, *The Germans* (New York, Meridian, 1982), 224.

<sup>329</sup> The Frankfurt Auschwitz trial has long been noted as the trial that broke the nearly two decades of silence over Nazi violence in the Federal Republic. For a comprehensive history of the trial, see Rebecca Wittmann, *Beyond Justice: The Auschwitz Trial* (Cambridge: Harvard University Press, 2005); Devin O. Pendas, *The Frankfurt Auschwitz Trial, 1963-1965: Genocide, History, and the Limits of the Law* (Cambridge: Cambridge University Press, 2005).

<sup>330</sup> See Steven Schroeder, *To Forget it all and Begin Anew: Reconciliation in Occupied Germany, 1945-1954* (Toronto: University of Toronto Press, 2013).

<sup>331</sup> Bloxham, *Genocide on Trial*, 148. However, the administration of other de-nazification instruments, like the self-administered surveys [Fragebögen], provided an opportunity for the West German polity to narrate themselves away from their previous Nazi affiliations in order to maintain their political, social and economic standing. See Perry Biddiscombe, *The Denazification of Germany: A History, 1945-1950* (Stroud: Tempus Publishing, 2007); Giles MacDonogh, *After the Reich: The Brutal History of the Allied Occupation* (New York: Basic Books, 2007); Helen Fry, *Denazification: Britain's Enemy Aliens, Nazi War Criminals and the Reconstruction of Post-war Europe* (Stroud: The History Press, 2010); Toby Thacker, *The End of the Third Reich: Defeat, Denazification and Nuremberg, January 1944-November 1946* (Stroud: NPI Media Group, 2006); and Frederick Taylor, *Exorcising Hitler: The Occupation and Denazification of Germany* (New York: Bloomsbury, 2011).

Schmeissner was the director of the main building's office in Nuremberg [*Hochbauamt*], but was later tried for a minor crime, and then re-instated as Nuremberg's Building's Minister [*Baureferent*] in 1949 until 1970.<sup>332</sup> Having a former Nazi official responsible for the management of the city's buildings likely contributed to the municipality's decision to refrain from memorializing the marks the Nazi Party left on the cityscape.

The municipality's and Bavaria's attitude towards the IMT trial was clearly expressed in their approach to Courtroom 600. Throughout the 1960s American occupying forces gradually relinquished control over sections of the Palace of Justice to the Federal Republic of Germany. In June 1961, Courtroom 600 was transferred to the Higher Regional Appellate Court of Nuremberg [*Oberlandesgericht Nürnberg*], Nuremberg-Furth Regional Court [*Landgericht Nürnberg-Fürth*], and Nuremberg District Court [*Amtsgericht Nürnberg*], and the Public Prosecutor's Office for the Nuremberg-Furth Region [*Die Staatsanwaltschaft Nürnberg-Fürth*].<sup>333</sup> All the renovations conducted for the IMT—the expansion of the press and visitor's gallery, the introduction of flood lights, the rearrangement of the judge's bench—were removed, effectively restoring the courtroom to its pre-1945 condition. The municipal and regional government's decision to expel all aspects of IMT history could be interpreted as emblematic of their desire to forget this moment in the city's history.

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<sup>332</sup> Macdonald, *Difficult History*, 57.

<sup>333</sup> German authorities gained complete control of the Palace of Justice in December 1969, when the judicial building in the royal hall was returned. See Oberlandesgericht Nürnberg, "Die Geschichte des Nürnberger Justizpalastes," January 31, 2008, <https://www.justiz.bayern.de/gericht/olg/n/bauwerk/#stmjpagetop>

Courtroom 600 functioned as a typical place for the administration of the law between 1970 and the late 1990s, with court officials, lawyers, administrators, and adjudicating parties populating the building's corridors. For decades after WWII, the history of the IMT was irrelevant for Nuremberg. However, this changed in the mid-1970s. The establishment of the Bavarian Historic Preservation Law forced the city to preserve and document the history of the Rally Grounds. The materialization of public history projects pertaining to the Rally Grounds re-established Nuremberg as the City of the Nazi Party Rallies. In order for the city to narrate itself away from the imposing legacies of Nazi ideology tethered to the urban landscape, it ignited a new narrative that figured Nuremberg as the City of Human Rights. As such, the municipality of Nuremberg recuperated the IMT trial and Courtroom 600 to demonstrate the city's ostensible long-standing commitment to human rights, marking Nuremberg as a place that has *transitioned* and thus as a city that has successfully broken with its violent past. In the next section, I chart the city's reformulation of self and show how Memorium Nuremberg Trials is implicated in the management and governing of Nuremberg's political transformation—as a site that situates Nuremberg as a community that has transitioned away from its Nazi past and towards a present ostensibly defined by a civil commitment to human rights.

### **Relegating Rights to the Present**

Municipalities depend on a variety of rhetorical and material tools to establish and maintain images of themselves. Charting how cityscapes broadcast particular imaginaries

was an enduring and longstanding theme in Benjamin's work.<sup>334</sup> In "Paris, Capital of the Nineteenth Century" (1939), he describes how the gentrification of Paris produced a phantasmagoria that situated Paris as an emblem of progress, and argued that the production of this image depended on a variety of material and visual forms.<sup>335</sup> In *Arcades*, Benjamin documented how the employment of novel architectural design elements like steel and glass, Georges-Eugène Haussmann's evacuation and re-development of the urban core, the erection of national monuments, museums, arcades, and the founding of various annual world exhibitions, together, produced an image of Paris as the "City of Progress."<sup>336</sup> This was achieved, Benjamin argues, by fashioning technological and economic change as indicators of social and political advancement. However, these material and discursive projections of the city—a phantasmagoria produced through means/ends politics—obfuscated dwindling standards of living for the working class, public health crises, and the polarization of wealth.<sup>337</sup>

Taking inspiration from Benjamin, in this section I show how human rights focused monuments, awards, film festivals, along with the opening of the Nuremberg's municipal Human Rights Office, are paraded as evidence that Nuremberg has broken with its past and is now a global leader in the cultivation of rights-respecting global culture. I argue that the municipality's self-fashioning, and Memorium Nuremberg Trials, place city dwellers

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<sup>334</sup> Buck-Morss argues that Benjamin began the Arcades Project in 1924, in Italy, with the series of writings that were published together in 1928 as a collection entitled *One Way Street* [*Einbahnstrasse*]. Susan Buck-Morss, *The Dialectics of Seeing: Walter Benjamin and the Arcades Project* (Cambridge: MIT Press, 1991), 8-24.

<sup>335</sup> Walter Benjamin, "Paris, Capital of the Nineteenth Century (1939)," in *The Arcades Project*, trans. Howard Eiland and Kevin McLaughlin (Cambridge: The Belknap Press of Harvard University Press, 2002)

<sup>336</sup> Buck-Morss, *Dialectics of Seeing*, 95-96.

<sup>337</sup> Buck-Morss, *Dialectics of Seeing*, 89.

and visitors in a present defined by a general commitment to human rights ideals, rendering the city as one that has *transitioned*. I show how the museum figures the IMT trial as the central device that delivered Nuremberg to its imagined peaceful present, and international criminal tribunals as devices that can deliver other political communities to a time marked by a steadfast commitment to democratic values. As such, the anamorphic dramaturgy of museum programming, and the exhibition's exaltation of the ICC as a critical site for the defense of human rights, together, figure the City's inhabitants as those who have overcome their Nazi past, and thus as a transitioned political and social group. However, as I show in Part 3 of this Chapter, white-supremacy in Nuremberg, as expressed through neo-Nazi activist efforts and the institutionalized racism that pervades Nuremberg's police force, is rather present.

The phantasmagoria of progress—of Nuremberg as a city that has mastered the past and thus transitioned—obfuscates neo-Nazi activity in the contemporary political and social cityscape. By figuring the city as that which has attained the democratic “ends” of transitional justice, the municipality and museum has discursively released themselves from the on-going responsibility to grapple with the past in the present. However, this image of Nuremberg is interruptible. I illuminate how the dual use of Courtroom 600 subverts the municipality's projections in the final section of this chapter.

### *The time of human rights in the City*

The municipal government of Nuremberg's effort to establish itself as the City of Human Rights began in 1988. In February of that year, municipal authorities released a

tender for design projects that would adorn the space between the German National Museum [*Germanische Nationalmuseum*], and the Art and Culture Pedagogical Centre of the Museums in Nuremberg [*Kunst und Kulturpädagogisches Zentrum der Museen in Nürnberg*] in the old city along the Karäusergasse walk-way.<sup>338</sup> The jury of twelve unanimously selected the design proposed by Israeli artist Dani Karavan entitled “Way of Human Rights [*Strasse der Menschenrechte*],” which was unveiled to the public in 1993. The memorial’s entrance is demarked by an arch-way made of white concrete, followed by twenty-nine eight-meter tall white pillars, two plaques enmeshed into the ground, and a Cypress oak tree. Each column expresses a different article from the 1948 Universal Declaration of Human Rights in German and one other language. The Cypress tree was imbricated into the memorial to honor all languages beyond the twenty-nine represented in the memorial.

The call for design proposals did not stipulate City Council’s desire for self-transformation, or that human rights should be the substantive focus of prospective submissions. However, the rationale put forward by Karavan as to why his memorial is important in relation to Nuremberg’s history laid the foundation for council’s self-transformation. At the memorial’s public unveiling on October 24, 1993, Karavan proclaimed,

[n]obody asked me to write the “Universal Declaration of Human Rights” onto these twenty-nine columns and an oak tree. It was the place itself that called for it... Nuremberg – the city of culture, of Dürer, of the Nuremberg Laws... the Nuremberg of Hitler... I ask myself: *doesn’t the fact that this work is to be found close to the place where the Nazi Rallies took*

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<sup>338</sup> Ursula Peters, “Dani Karavan: Weg der Menschenrechte,” in *Moderne Zeitsen: Die Sammlungen zum 20. Jahrhundert*, eds. Ursula Peters und Andrea Legde (Nuremberg: Germanic National Museum, 2000), 275.

*place, indicate the victory that mankind has won over Nazism? [emphasis mine]*<sup>339</sup>

The designer places Nazi violence in the past by arguing that Nuremberg has conquered the Nazi ideology that once infused city life by establishing the Way of Human Rights. City Council oriented its newfound interest in human rights advocacy to accord with the rhetoric presented by Karavan. According to the municipality, The Way of Human Rights serves as a public expression of the city's condemnation of NSDAP crimes, and inscribes the municipal office's ostensible commitment to a western rendition of human rights into the very fabric of its urban landscape.<sup>340</sup> The Human Rights Office of the City of Nuremberg [*Menschenrechtsbüro der Stadt Nürnberg*], elaborates on Karavan's statement as follows:

[t]he "Way of Human Rights" has set a new spiritual, political and social accent in Nuremberg, formerly the city of the National Socialist racial laws and of the Nazi party rallies, but also venue of the International Military Tribunal, the starting point of international criminal law. The open-air installation, apart from its high aesthetic quality, has major symbolic value and has thus inspired numerous human rights activities in Nuremberg.<sup>341</sup>

Expanding on Karavan's opening address and re-tooling the meaning of the memorial for Nuremberg in light of its new identity, the Human Right's Office introduces the IMT trial as that which stood up against Nazi fascism, and as a means to defend human rights ideals in Nuremberg, and abroad. Here, the municipality acknowledges its difficult history, however, relegates it to bounded moment in the past. Yet in order to demonstrate its

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<sup>339</sup> Dani Karavan, "Address at the Inauguration of the Way of Human Rights," October 24, 1993, Nuremberg, accessed December 10, 2016, [https://www.nuernberg.de/imperia/md/menschenrechte/dokumente/karavan-rede\\_1993-engl.pdf](https://www.nuernberg.de/imperia/md/menschenrechte/dokumente/karavan-rede_1993-engl.pdf).

<sup>340</sup> "Way of Human Rights," Human Rights Office, City of Nuremberg, accessed November 30, 2016 [https://www.nuernberg.de/internet/menschenrechte\\_e/im\\_stadtbild\\_strasse\\_der\\_menschrechte\\_en.html](https://www.nuernberg.de/internet/menschenrechte_e/im_stadtbild_strasse_der_menschrechte_en.html) For more about how the re-formulation of the German National Museum sparked the municipalities interested in re-formulating the identity of the City, see Stephan Brockman, *Nuremberg: The Imaginary Capital* (Rochester: Camden House, 2006), 261-263.

<sup>341</sup> Human Rights Office, "Way of Human Rights."

ostensible “break” with a period marked by Nazi violence, the City embarked on a public relations effort to project an image of Nuremberg as the place of human rights

City Council depended on a variety of material sites, and local programs to concretize its newly claimed identity. In 1995, the municipality established an International Nuremberg Human Rights Award.<sup>342</sup> Marking the 50<sup>th</sup> anniversary of the proclamation of the Nuremberg race laws, a jury of eleven comprised of lawyers, Nobel Peace Prize winners, politicians, and academics awarded the first award of 15,000 Euros that year. According to § 1 of the Statute the Award

[...] is intended to contribute towards the observance and implementation of human rights as a universal and indivisible principle. This Award is also intended to symbolize that any messages emanating from Nuremberg in the present and in the future will be signals of peace, reconciliation and human understanding.<sup>343</sup>

The discourse of the Statute seeks to frame Nuremberg as a human rights utopia – a city ostensibly defined by a political culture that will defend human rights principles. A city that is no longer stuck in the shadows of its Nazi past.

Mayor Ludwig Scholz, who won Nuremberg’s 1996 mayoral race, continued to advance Nuremberg as a champion of anti-discrimination through the establishment of the Nuremberg City of Peace and Human Rights Foundation [*Stiftung Nürnberg Stadt des Friedens und der Menschenrechte*] in 2000. The foundation provides financial support to projects spearheaded by winners of the International Nuremberg Human Rights Award,

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<sup>342</sup> For the statute of the award, see “Statutes for the Nuremberg International Human Rights Award,” City of Nuremberg, accessed November 30, 2016, <https://www.nuernberg.de/imperia/md/menschenrechte/dokumente/menschenrechtspreis/statutes.pdf>

<sup>343</sup> “Statute for the Nuremberg International Human Rights Award,” City of Nuremberg, June 6, 1995, accessed November 31, 2016, <https://www.nuernberg.de/imperia/md/menschenrechte/dokumente/menschenrechtspreis/statutes.pdf>

and remains an active participant in human rights focused events, and educational programs in the City.<sup>344</sup> The Municipality also lent support to non-governmental organizations, such as the Nuremberg International Human Rights Film Festival, and the Nuremberg Human Rights Center [*Nürnberger Menschenrechtszentrum*], to ostensibly strengthen a culture of human rights activism within its precinct, and beyond.<sup>345</sup>

International and regional organizations have recognized Nuremberg's new projected values and identity. In 2000, the United Nations Educational, Scientific and Cultural Organization (UNESCO) bestowed upon the municipality the UNESCO Prize for Human Rights Education. At the award ceremony, Director-General of UNESCO Koïchiro Matsuura stated that:

[s]ince the 1930s, the very word "Nuremberg" has become a shorthand term of immediate symbolic significance and, indeed, notoriety... Thus, it is indeed remarkable that the City of Nuremberg, associated for decades with racism, the violation of human rights, intolerance, and war crimes and their aftermath, today takes pride in calling itself "a City of Peace and Human Rights." *This transformation*, if not catharsis, which reveals the strong will and ethical commitment of the City and its citizens, contains lessons from which other communities may learn. Nuremberg has earned the right to talk about human rights and to educate others about human rights and peace [emphasis mine].<sup>346</sup>

Throughout the speech, Matsuura acknowledged Nuremberg's difficult histories, but suggested that the city has overcome its "shadows" and emerged as an exceptional human

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<sup>344</sup> "Menschenrechtsbüro der Stadt Nürnberg," accessed November 30, 2016, <https://www.nuernberg.de/internet/menschenrechte/stiftung.html>

<sup>345</sup> The Nuremberg International Human Rights Film Festival began in 1999, and it held every two years. See "Profile," Nuremberg International Human Rights Film Festival, accessed November 30, 2016, <http://www.nihfff.de/>. The Nuremberg Human Rights Centre is a research and information hub concerned with international human rights issues at home and abroad.

<sup>346</sup> Koïchiro Matsuura, "On the occasion of the award ceremony of the UNESCO Prize for Human Rights Education," (speech Nuremberg) April 21, 2001, <http://unesdoc.unesco.org/images/0012/001224/122419E.pdf>.

rights advocate of international esteem.<sup>347</sup> In 2007, Nuremberg's human rights advocacy was also recognized by the Council of Europe, which honored the city with its Europe Prize.<sup>348</sup>

Human rights focused memorials and museums dot the cityscape, further inscribing Nuremberg as a city that has "transitioned" to a present defined by human rights ideals. According to the Human Rights Office, the erection of the Way of Children's Rights memorial, the National Socialist Underground Memorial, the International Academy of Nuremberg Principles, and the Memorium Nuremberg Trials all stand as a material testaments to the city's commitment to human rights norms.<sup>349</sup>

The Memorium Nuremberg Trials is an important component of the city's human rights landscape as it similarly fashions city dwellers as a community that has attained the ends of peace, and social solidarity. According to the Office, preserving the memory of the IMT is critical to human rights advocacy because without the trial, "it would not have been possible to evaluate injustice and develop an international criminal justice system."<sup>350</sup> Reviving a public memory of the IMT trial was also used to justify the City's new-found identity. Before the final text of the Rome Statute of the International Criminal Court (ICC) was adopted in early 1998, for instance, Mayor Scholz petitioned the Federal Government of Germany, requesting that its representatives lobby states negotiating the Statute to

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<sup>347</sup> Matsuura, "UNESCO Prize."

<sup>348</sup> "Nürnberg erhält Europapreis," May 25, 2007, <http://www.europeprize.net/de/?p=13>

<sup>349</sup> "In the Cityscape," Human Rights Office of the City of Nuremberg, accessed February 24, 2017, [https://www.nuernberg.de/internet/menschenrechte\\_e/menschenrechte\\_en.html](https://www.nuernberg.de/internet/menschenrechte_e/menschenrechte_en.html)

<sup>350</sup> Original German reads, "Ohne die Nürnberger Prozesse und die Nürnberger Prinzipien wären eine Aufarbeitung des Unrechts und die Entwicklung zu einer internationalen Völkerstrafgerichtsbarkeit nicht möglich gewesen." "Memorium Nuremberg Trials," Human Rights Office of the City of Nuremberg, accessed February 22, 2017, <https://www.nuernberg.de/internet/menschenrechte/memorium.html>

include a provision that would domicile the ICC at the Palace of Justice in Nuremberg.<sup>351</sup>

In an interview with *Die Zeit*, Scholz argued that Germany's application on behalf of Nuremberg is well founded as "the city strives to become the center of human rights," and "the International Criminal Court will take action if human rights are violated."<sup>352</sup> He went on to say,

[a] new international law began in Nuremberg and with the post WWII war crimes trials it seems therefore obvious that a criminal court of the international community would now return to the place where this new law was practiced for the first time... Nuremberg is a cipher, The Hague is not.<sup>353</sup>

Here, the Mayor attempts to establish Nuremberg as the birthplace of international criminal law, and as such, the rightful destination for an international court mandated to prosecute human rights offenders. While the Mayor failed to secure Nuremberg as the home of the ICC, his effort is emblematic of broader attempts by City Council to relegate peace and tolerance to the present.

The City's transformation is informed by a discontinuous notion of time that permits "events" to be imaged as that which triggers radical transformation. Badiou's

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<sup>351</sup> UN General Assembly, Rome Statute of the International Criminal Court, July 17, 1998. Mayor Scholz directly petitioned Jutta Limbach, President of the Federal Constitutional Court, Ernst Benda, former President of the Federal Constitutional Court, Richard von Weizsäcker, former President of the Federal Republic of Germany, Ignatz Bubis, Chairman of the Central Council of Jews in Germany, the Conference of Ministers' Presidents, and others. Bruckner, "Alles spricht für Nürnberg."

<sup>352</sup> Dietmar Bruckner, "Alles spricht für Nürnberg: Der Internationale Strafgerichtshof sucht ein Domizil-Fragen an den Oberbürgermeister der Stadt der Kriegsverbrecherprozesse," *Die Zeit*, April 16, 1998, [http://www.zeit.de/1998/17/Alles\\_spricht\\_fuer\\_Nuernberg](http://www.zeit.de/1998/17/Alles_spricht_fuer_Nuernberg). The original statement in German reads "*Die Stadt bemüht sich, zu einem Zentrum der Menschenrechte zu werden... Der Internationale Strafgerichtshof soll aktiv werden, wenn gegen die Menschenrechte verstoßen wird.*"

<sup>353</sup> Bruckner, "Alles spricht für Nürnberg." Original German reads "Mit den Kriegsverbrecherprozessen nach dem Zweiten Weltkrieg begann in Nürnberg ein neues Völkerrecht, und es erscheint deshalb naheliegend, daß ein Strafgerichtshof der Völkergemeinschaft nun an den Ort zurückkommt, wo dieses neue Recht zum ersten Mal praktiziert wurde... Nürnberg ist eine Chiffre, Den Haag ist es nicht."

conceptualization of “events” sheds light on Nuremberg’s process of subjectivization.<sup>354</sup> For Badiou, situations are structured by states (like a social or cultural group) that represent their consistent, or “countable” aspects, however, every situation encompasses elements that are presented but not countable.<sup>355</sup> Events are incalculable episodes that are construed in hindsight. They occur when the uncountable aspects in a situation emerge and enact a discontinuity in the schema of representation constituted by the state (or culture, for our purposes).<sup>356</sup> Here, it is the evental interruption of continuity that initiates the prospect of radical change. To illuminate the consequences of the event where its effects recalibrate what is countable or represented by the state, subjects must be, in Badiou’s terms, “faithful” to the event. This fidelity to the event is a retroactive process—a “situational unfolding”—whereby the generative aspects of the happening are made meaningful over time. Badiou refers to the process within which meaning is ascribed to aspects of the event as “forcing.” Here, subjects who are faithful to the event construct names, and attribute meanings to things in a manner that assists in transitioning the

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<sup>354</sup> Anthropologist Joel Robbins, for instance, documents narratives and cultural practices that are informed by Christian models of discontinuous time. In particular, his ethnographic study of the Urapmin of Papua New Guinea, a small community whereby each member converted to Pentecostal faith, documents narratives that pin the year of conversion—of their salvation—as a radical break in time that inaugurated a new order and shifts in their cultural composition. See Joel Robbins, “Anthropology, Pentecostalism, and the New Paul: Conversion, Event, and Social Transformation,” *South Atlantic Quarterly* 109, no. 4 (2010): 637; Joel Robbins, “Continuity Thinking and the Problem of Christian Culture Belief, Time, and the Anthropology of Christianity,” *Current Anthropology* 48, no. 1 (2007): 11. See also Alpa Shah, “‘The Muck of the Past’: Revolution, Social Transformation, and the Maoists in India,” *Journal of the Royal Anthropological Institute* 20 (2014): 337-356; Caroline Humphrey, “Schism, Event, and Revolution: The Old Believers of Trans-Baikalia,” *Current Anthropology* 55, no. S10 (2014): 216-225; Caroline Humphrey, “Resembling Individual Subjects: Events and Decisions in Troubled Times,” *Anthropological Theory* 8, no. 4 (2008): 357-380.

<sup>355</sup> Alain Badiou, *Being and Event*, trans. Oliver Feltham (London: Continuum, 2005), 97. A “situation” in itself is unstructured. The count-for-one makes it comprehensible, and “the state” of the situation, attempts to further structure the count-for-one. The state of the situation is any institution of ordering and meaning-making, but it is not as ontologically meaningful as the count itself.

<sup>356</sup> Badiou, *Being and Event*, 178.

formally uncountable elements of a situation into something that is countable.<sup>357</sup> Importantly, for Badiou, these subjects must also work towards universalizing the truth of the event they have established in the new regime of representation.

Nuremberg's discursive and material "break" with its Nazi's past could be explained through Badiou's framework that tracks the processes of subjectivization in postevental situations.<sup>358</sup> The municipality's claim to be a champion of human rights marks a radical discontinuity, or break, from their former self. Municipal authorities, the creation of the Nuremberg Human Rights Office, various memorials and awards, along with the establishment of film festivals and non-governmental organizations, are instances of various government bodies and individuals expressing fidelity to the event. Furthermore, re-claiming the IMT trial as an exercise that contributed to the founding of universal human rights norms further enforces the city's processes of subjectivization. Moreover, by petitioning states party to the Rome Statute to domicile the ICC in Nuremberg, and for applying to various regional human rights awards that affirm the town as worthy of such merits, are efforts to universalize the city's new representation of self.

This refashioning of Nuremberg dovetails with Germany's political quest to establish itself as a liberal and moral state that has grappled with its past and thus worthy of global citizenship on the international stage post-reunification.<sup>359</sup> This redefinition of

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<sup>357</sup> Badiou, *Being and Event*, 403.

<sup>358</sup> Indeed, whether the IMT is a moment of discontinuity that ruptured the state's structuring of the situation can be diligently classified as an event in strict Badiouian terms that honors the ontological framework of set theory is not of concern to me here. Rather, I, following Robbins, draw of the postevental processes of meaning making that depend upon an imagined rupture in linear time in order to organize how time is deployed to re-orient the City as something that has broken with the past.

<sup>359</sup> Elazar Bakran, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (New York: Norton, 2000), xvii-xviii.

the Federal state, emboldened after unification, included the establishment of memorial architecture that calls attention to Nazi crimes and their correlative victim groups, particularly in Berlin. The Topography of Terror, and the Memorial for the Murdered Jews of Europe, and the Memorial to the Sinti Roma Victims of National Socialism, for instance, are enlisted by political discourse as that which demonstrates Germany's repent for its past, and its endeavor to achieve cosmopolitan nationhood.<sup>360</sup> Further, these memorial sites serve as signs to the international community that Germany is a post-nation society that is committed to universal human rights, and a regional political community member that values peace and cooperation.<sup>361</sup> Here, the "new" Germany is not only politically committed to grappling with its past, but also launching a new identity informed by the horrors of its past.

However, Bavaria, which has consistently elected members from the Christian Social Union in Bavaria [*Christlich-Soziale Union in Bayern*] (CSU) political party to govern the affairs of the deeply conservative state since 1957, has hesitated to confront and publically grapple with Nazi violence during the Cold War and post-reunification. As such, national public displays which illuminate the breadth of German-civilian complicity in Nazi crimes have been met with opposition, or outright thwarted by the State's cities. Between 1995-1999, for instance, the *Vernichtungskrieg. Verbrechen der Wehrmacht 1941-1944* exhibition, succinctly known as the *Wehrmachtsausstellung*, visually argued that most Germans, along with the entire German military [*Wehrmacht*] were responsible for the

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<sup>360</sup> Till, *New Berlin*, 194-197.

<sup>361</sup> William J. Niven, *Facing the Nazi Past: United Germany and the Legacy of the Third Reich* (New York: Routledge, 2002), 210.

perpetuation of Nazi hostilities.<sup>362</sup> The photographic display of collective guilt challenged the notion that only SS officials and organizations were responsible, upsetting the “clean *Wehrmacht*” narrative that sustained the pride of former military service women and men.<sup>363</sup> While *Wehrmachtsausstellung*’s critique of public discourse that renders the German military innocent during the Nazi years was welcomed in many parts of Germany, it was met with hostility in Bavaria. Responding to the Party’s constituents partly populated by veterans and German nationalists, in 1997 Peter Gauweiler, a Bavarian State representative from the CSU, attempted to block the establishment of the travelling exhibition in Munich.<sup>364</sup> While his attempt was unsuccessful, his polemic was carried forward by 5000 militant right-wing extremists, who, returning to the symbolic site of the Nazi movement [*Hauptstadt der Bewegung*], assembled in the City on March 1 to militantly advocate on behalf of the honor, dignity of the *Wehrmacht*.<sup>365</sup>

Bavarian state officials also fumbled efforts to call attention to Munich as a historically important site for the Nazi movement. It is argued that both City and State

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<sup>362</sup> While historians have long held this position, the condemnation of the entire German military remain outside public discourse until *Wehrmachtsausstellung*. The exhibition was curated by Austrian historian Walter Manoschek, German historian Hannes Heer, and University of Hamburg Professor Jan Philipp Reemtsma. They displayed 1500 armature photographs of the violence enacted during Germany’s occupation of Russia between 1941-1944, the murder of civilians in Serbia during the “Partisan war” from up until 1941, and the brutality of the Sixth Army en-route to Stalingrad. The exhibition was financed by the Hamburg Institute for Social Research [*Hamburger Institut für Sozialforschung*], and installed in municipal buildings and accessible public spaces in 33 cities across Germany. For the exhibition catalogue, see “Crimes of the German *Wehrmacht*: Dimensions of a War of Annihilation,” Hamburg Institute for Social Research, accessed July 5, 2017, [http://www.verbrechen-der-wehrmacht.de/pdf/vdw\\_en.pdf](http://www.verbrechen-der-wehrmacht.de/pdf/vdw_en.pdf)

<sup>363</sup> See Wolf Wette, *The Wehrmacht: History, Myth, Reality*, trans. Deborah Lucas Schneider (Cambridge: Harvard University Press, 2006).

<sup>364</sup> David Art, *The Politics of the Nazi Past in Germany and Austria* (New York: Cambridge University Press, 2006), 90. In addition to lobbying politicians, Gauweiler disseminated 300,000 flyers to Munich dwellers that caution against any engagement with the exhibition, and laid a wreath at the Unknown Soldier memorial in the city. Niven, *Nazi Past*, 162.

<sup>365</sup> Niven, *Nazi Past*, 161.

governments were reluctant to establish Documentation Center for the History of National Socialism [*NS-Dokumentationszentrum*] but jointly approved the project in order to deflect the growing negative criticism about the City's evasion of its own political heritage which grew more obvious as Germany's "hyper-visible cosmopolitan Holocaust memory" flourished.<sup>366</sup> While City Council eventually grew supportive of a centralized museum, Bavaria's Minister of Culture and CSU member Monika Hohlmeier instructed the creation of a second proposal that recommended a decentralized memorial comprised of several plaques that would mark politically significant sites within the urban core.<sup>367</sup> This alternative was supposedly justified on the grounds that Munich played a minor role in history of National Socialism, that a new museum would only replicate what has been accomplished elsewhere in the State, and that there would be inadequate parking to service such an institution.<sup>368</sup> Further, Bavarian state officials were reluctant to relinquish ownership and control of the Brown House — the former Nazi headquarters in Munich — which was proposed as the future site of the documentation center. Due to a sharp increase in neo-Nazi activity in Munich, state authorities eventually agreed to donate the building to the project and support the establishment of the museum.<sup>369</sup>

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<sup>366</sup> Gavriel D. Rosenfeld, "Memory and the Museum: Munich's Struggle to Create a Documentation Center for the History of National Socialism," in *Beyond Berlin: Twelve German Cities Confront the Nazi Past*, eds. Gavriel D. Rosenfeld and Paul B. Jaskot (Ann Arbor: University of Michigan Press, 2008), 171. ON the "Hypervisible Cosmopolitan memory boom" see Till, *The New Berlin*, 202.

<sup>367</sup> Rosenfeld, "Munich's Struggle," 172.

<sup>368</sup> Volker Dahm, "Projekt eines NS-Dokumentationszentrums in München: Gutachten des Instituts für Zeitgeschichte, München—Berlin, erstattet im Auftrag der Berischen Landeszentrale für politische Bildungsarbeit," November 2002, 24-25; Rosenfeld, "Munich's Struggle," 173.

<sup>369</sup> Rosenfeld, "Munich's Struggle," 173.

Departing from the national trend, Bavaria's organized opposition to the *Wehrmachtsausstellung*, and their reluctant endorsement of the Documentation Center for the History of National Socialism, among others, are emblematic of the regional unwillingness to acknowledge and publically grapple with the legacy of Nazi violence in the region.<sup>370</sup> As such, Bavaria's political position dovetails with a general desire to break with and move on from its Nazi past. Nuremberg is no different. As I have shown, the municipality of Nuremberg has established a myriad of aesthetic, material, and discursive sites to produce and maintain a phantasmagoria which positions Nuremberg as a city that has transitioned, and thus, as a place that has transformed into the City of Human Rights. At once, these constellations of programs, awards, and memorials can be read as Nuremberg's acknowledgment of its past connection to the Nazi Party, while also demonstrating that it has broken with its violent past and grown to become something else. Cultivating a culture of human rights within the city's jurisdiction by organizing human rights festivals and conferences, and placing rights-focused memorials around the city center as daily reminders of the municipality's commitment to fight injustice, supplies the

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<sup>370</sup> Bavarian officials also prohibited the establishment of other memorial activities in Munich that call attention to the City's Nazi past. In 2003, the State refused Wolfram Kastner's request to burn a circle [*Brandfleck*] into the lawn of a central public square [*Königsplatz*] to commemorate the seventieth anniversary of the 1933 book burnings. In 2014, he was permitted to perform the commemoration. Rosenfeld, "Munich's Struggle," 180; "German Artist Marks Book Burning with Reading," *Tablet*, May 9, 2014, <http://www.tabletmag.com/scroll/172143/german-artist-marks-book-burning-with-reading>. Munich City Council has also curtailed the establishment of memorials which commemorate the victims of Nazi violence. Since 2004, City Council has upheld a ban on the embedment of German artists Gunter Demnig's decentralized memorial, Stumbling Stone [*Stolpersteine*], which adorns the streets of every other major German city. Michael Imort, "Stumbling Blocks: A Decentralized Memorial to Holocaust Victims," in *Memorialization in Germany since 1945*, eds. Bill Niven and Chloe Paver (New York: Palgrave Macmillan, 2010), 237-238.

fodder the municipality needs to ostensibly break and narrate itself away from its Nazi past. It is within this climate that Memorium Nuremberg Trials was conceived.

### *The time of human rights in the Museum*

Like Nuremberg's municipal government, Memorium anamorphically situates the public in a present-time defined by a commitment to human rights. The museum's programing and exhibition both represent contemporary post-war prosecutions as a tool that deters future abuses, and encourages a social climate of solidarity with those suffering from oppression. In the first part of this section I explain how museum questionnaires, post-tour moderated discussions, and lectures establish that the contemporary moment is one marked by the advancement of human rights. Second, I show how the museum represents post-war prosecutions as emblems of rights advocacy. I demonstrate that Memorium's turn away from Nazi violence and towards the contemporary relevance of the IMT today reiterates transitional justice theory's rhetoric of ends by assigning peace, and social solidarity to a bounded present which configures Nuremberg as a place that has transitioned.

The Museum's education programing represents Nuremberg as a place that has been delivered to a present defined by human rights *by way of* the IMT trial. Typically, visitor-outreach and programming aims to establish the museum as a collaborative, inclusive, transparent, and relevant democratic institution.<sup>371</sup> Memorium Nuremberg

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<sup>371</sup> The "new museum" movement that informs contemporary approaches to curation aims to transform the museum from the placeholder of knowledge to a place where the visitors generate knowledge themselves through debate and broad social inclusion. Interlocutors of new museum theory argue that communities

Trial's extensive educational programming is indicative of this trend. The institution attempts to engage visitors by soliciting feedback, and encouraging debate by offering post-tour moderated discussions, work-sheets produced for self-guided tours, and guest lectures that place the museum's themes in dialogue with current affairs.

Three different work-sheets entitled "Questions about the Exhibition" are available for visitors free of charge before exploring the museum. Each package explains that the exhibition focuses on the IMT and its relevance for contemporary efforts that seek to bring accountability for human rights violations.<sup>372</sup> These work-sheets figure post-war prosecutions as imperative, contemporary systems that defend human rights through a series of leading questions: Which Court played a major role in the International Criminal Tribunal for Rwanda?; In your opinion, what importance do the records of the Nuremberg Trial of the Main War Criminals still have today? Listen to the Nuremberg Principles and outline two you find important; How was the "promise of Nuremberg" kept?; In the early 1990s, the UN Security Council established International Tribunals for Former Yugoslavia and Rwanda. Why? Do you think this made sense?<sup>373</sup> These questions induce visitors to reflect on the conditions of violence that would call for the establishment of criminal

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should take part and guide the formulation of exhibitions, ostensibly taking control of their self-representation. As such, museum programming that encourages visitor engagement and input are broadly encouraged as a means to attain these goals. See Peter Vergo, *The New Museology* (London: Reaktion Books, 1989); Richard Sandell, *Museums, Society, Inequality* (London: Routledge, 2002); Kylie Message, *New Museums and the Making of Culture* (Oxford: Berg, 2006); Janet Marstine ed., *New Museum Theory and Practice: An Introduction* (Malden: Blackwell, 2006).

<sup>372</sup> *Group 1: Questions about the Exhibition*, Memorium Nuremberg Trials (Nuremberg: Museums of the City of Nuremberg, n.d.)

<sup>373</sup> *Group 1: Questions about the Exhibition*, Memorium Nuremberg Trials (Nuremberg: Museums of the City of Nuremberg, n.d.); *Group 2: Questions about the Exhibition*, Memorium Nuremberg Trials (Nuremberg: Museums of the City of Nuremberg, n.d.); *Group 3: Questions about the Exhibition*, Memorium Nuremberg Trials (Nuremberg: Museums of the City of Nuremberg, n.d.)

prosecutions. Further, they encourage visitors to meditate on how the trials have ostensibly contributed to social and political progress that defines their imagined present.

The Museum links criminal law and human rights to Nuremberg through their self-guided tour work-sheets. For instance, the questionnaire headings—the “Nuremberg trials,” “Nuremberg Principles,” “Nuremberg promise,” “from Nuremberg to The Hague”—establish the city as the birthplace of international criminal law. By orienting the city as the site of the IMT proceedings, as the historical location that buttresses contemporary post-conflict tribunals and the ICC, *Memorium Nuremberg Trials* contributes to the municipality’s phantasmagoria that ascribes human rights to the present which figures the city as a place that has *transitioned*.

Two of the four post-exhibition moderated discussions organized by *Memorium Nuremberg Trials* also configure a relationship between post-conflict trials and human rights. Moderated discussions are emblematic of the museum’s effort to create a space to debate ideas about its exhibits with guests. In the “From the Nuremberg Trials to the International Criminal Court” discussion, moderators are specifically sourced from the Human Rights Office, and the Nuremberg Centre for Human Rights [*Nürnberger Menschenrechtszentrum*].<sup>374</sup> The discussion synopsis indicates that moderators will “illustrate the link from the Nuremberg “trial of the century” to today’s International Criminal Court, and discuss why the institution is necessary and what it can achieve.”<sup>375</sup>

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<sup>374</sup> The Nuremberg Centre for Human Rights seeks to inform, stimulate exchange over, conduct educational seminars about and interfere in politics that impact human rights. *Nürnberger Menschenrechtszentrum*, accessed December 10, 2016, <http://www.menschenrechte.org/lang/en/ueber-uns>

<sup>375</sup> *Educational Programme: Moderated Discussions, Guided Tours, Memorium Nuremberg Trials* (Nuremberg: Museums of the City of Nuremberg, n.d.)

The second discussion, entitled “Human Rights,” is also moderated by the Human Rights Office and the Nuremberg Centre for Human Rights. However, this discussion takes place at the Way of Human Rights memorial. According to the museum’s education pamphlet,

The National Socialist crimes shocked and horrified the world. In 1948, the “Universal Declaration of Human Rights” was worded as the first ethical, political and legal basis for state action... The discussion will focus on the question of whether and to what extent the hopes of those days have been fulfilled and on the significance of human rights today.<sup>376</sup>

The museum’s description of the “Human Rights” moderated discussion points to the IMT and NMT trials as the catalyst for the development of the 1948 Universal Declaration of Human Rights. As such, this discussion naturalizes the relationship between criminal prosecutions and the production of customary human rights principles, and provokes a logic that the IMT and subsequent trials are responsible for contemporary human rights advocacy efforts. Here, transitional justice theory’s rhetoric of end emerges once more: according to Memorium, the establishment of criminal trials after war will set political communities on a smooth progressive trajectory that will deliver them to a moment defined by peace and respect for human rights.

The museum’s relationship with the International Nuremberg Principles Academy (the Academy, going forward) re-casts the museum’s imaginary that Nuremberg has transitioned away from its Nazi past. The foundation is housed in the east wing of the Palace of Justice, and receives funding from the City of Nuremberg, the Free State of Bavaria, and the German Foreign Office. According to their website, the Academy:

[...] is dedicated to the promotion of international criminal justice and human rights. It is located in Nuremberg, the birthplace of modern

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<sup>376</sup> *Educational Programme: Moderated Discussions, Guided Tours, Memorium Nuremberg Trials* (Nuremberg: Museums of the City of Nuremberg, n.d.)

international criminal law. Conscious of this historic heritage, the Nuremberg Academy supports the fight against impunity for universally recognized international core crimes: genocide, crimes against humanity, war crimes and the crime of aggression... The Nuremberg Academy promotes sustainable peace through justice, the Nuremberg Principles and the rule of law by supporting worldwide enforcement of international criminal law.<sup>377</sup>

This narrative establishes a relationship between Nuremberg, the IMT, and the contemporary human rights movement. It frames international criminal law as the crucial tool in the defense of human rights norms, and as a system that generates a culture of respect for human rights. In doing so, the Academy advances a politics of means/ends relations that fetishizes the place of criminal trials during periods of political transformation as the critical and necessary doorway to a brighter future.

The Academy advances this view by funding programs that promote the development of international criminal law, and illuminate the ICC's ostensible deterrent effects. Further, the Academy also promotes Germany as a state that successfully transitioned by engaging international criminal law.<sup>378</sup> To introduce and establish themselves as allies of the ICC and human rights advocates, the Academy organized an auxiliary event to the 14<sup>th</sup> Assembly of States Party to the ICC. There, President of the Academy's Advisory Council Thomas Buergenthal, "emphasized the Academy's commitment to fight against impunity for the most heinous crimes," and the "high

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<sup>377</sup> "History," International Nuremberg Principles Academy, accessed December 3, 2016, <http://www.nurembergacademy.org/about-us/history/>

<sup>378</sup> "Projects", International Nuremberg Principles Academy, accessed December 12, 2016. The Academy recently published a book on the positive relationship between deterrence and the ICC. Jennifer Schense and Linda Carter (eds.) *Two Steps Forward, One Step Back: The Deterrent Effect of the International Criminal Court* (Nuremberg: International Nuremberg Principles Academy, 2016).

symbolic value” of the Academy’s location in Nuremberg.<sup>379</sup> This discourse transitional justice theory’s rhetoric of ends by relegating Nuremberg into a time that *now* defends and protects human rights ideals.

In addition to museum programming, education sessions, and the Academy, the permanent exhibition also represents Nuremberg as a place that has transitioned away from Nazi violence to a moment defined by peace and stability. Mid-way through the exhibition visitors will find the “Nuremberg Principles”—which were ferreted out and distilled by the United Nations General Assembly from the London Charter and the IMT judgement—displayed on a large wall.<sup>380</sup> The principles include:

PRINCIPLE I: Any person who commits an act which constitutes a crime under international law is responsible and therefore liable to punishment.

PRINCIPLE II: The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

PRINCIPLE III: The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

PRINCIPLE IV: The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

PRINCIPLE V: Any person charged with a crime under international law has the right to a fair trial on the facts and law.

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<sup>379</sup> “Nuremberg Academy Event at the 14<sup>th</sup> Assembly of States Parties of the ICC,” International Nuremberg Principles Academy, accessed December 7, 2016, <http://www.nurembergacademy.org/news/detail/nuremberg-academy-event-at-the-14th-assembly-of-state-parties-of-the-icc-28/>

<sup>380</sup> “Audio-guide,” Memorium Nuremberg Trials, Nuremberg, Germany. The Nuremberg Principles were adopted by the United Nations General Assembly on December 11, 1946, and were later adopted by the International Law Commission in 1950.

PRINCIPLE VI: The crimes hereinafter set out are punishable as crimes under international law: (a) Crimes against peace, (b) War crimes, (c) Crimes against humanity.

PRINCIPLE VII: Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.<sup>381</sup>

Although the principles remained dormant until the 1990s and were distilled by an organization structurally removed from the IMT, the museum spatially presents them after the exhibit on the IMT's judgement. In doing so, the exhibition's narrative establishes two things. First, it suggests that future international courts—ad-hoc, hybrid or permanent—hail from the IMT, placing the tribunal at the center of a story of origins for international criminal law. Yet the exhibition posits that it was the ICC, as opposed to ad-hoc tribunals, that fulfilled the opaque “Nuremberg promise.” This ostensible commitment was evoked in interviews with curators. According to one,

You can see highlighted in the room the promise of Nuremberg—the prosecution of Nazis by four Allied powers—as a kind of exceptional justice. The promise of Nuremberg was a generalized principle for worldwide justice for everybody and as Jackson said, including those who sat on trial here in Nuremberg.<sup>382</sup>

In the final room, which brings the exhibition's narrative to an end, the audio-guide departs from the material presented on the exhibition panels and states “[f]or decades, the “Nuremberg promise” to punish state crimes remained unfulfilled. But the call for an independent international criminal court never ceased. Finally, on July 1, 2002 the International Criminal Court began its work in The Hague.”<sup>383</sup> Benjamin Ferencz, an

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<sup>381</sup> United Nations General Assembly, Resolution 95 (I), “Affirmation of the Principles of International Law recognized by the Charter of the Nuremberg Tribunal,” December 11, 1946. <http://www.un-documents.net/a1r95.htm>

<sup>382</sup> Interview with museum staff, March 2015, Nuremberg, Germany. Quote edited for grammatical clarity.

<sup>383</sup> Audio guide, panel 704, Memorium Nuremberg Trials.

American prosecutor in the 1947 trial at the Nuremberg Military Tribunal of the SS mobile death squads [*Einsatzgruppen*], is represented as a chief advocate of the promise's spirit. A photo of Ferencz at the 1998 Rome Conference that founded the ICC is displayed with the caption: "he was an indefatigable voice for delivering on the 'promise made in Nuremberg.'"<sup>384</sup> The ill-defined discursive jump from the Nuremberg principles to the Nuremberg promise results in the presentation of the ad-hoc tribunals of the 1990s as stepping-stones *en-route* to the ICC's "true" fulfillment of the time of human rights. This is spatially expressed by introducing ad-hoc tribunals in the second to last room, but re-affirmed in a timeline that charts the reverberations of the IMT from 1945 to 2002.

According to one curator, the timeline aimed to show that despite the lack of international criminal prosecutions for human rights abusers between the 1950s and the 1990s, the legacy of the Nuremberg trials is vibrant today. In an interview, the curator explained that

[w]e wanted to show that despite of this deficiency the inspiration for these statutes (ICTY ICTR) is related to the Nuremberg courts and Nuremberg Principles. They literally appear in the statutes of these tribunals. Especially what was kind of reduced in Nuremberg, crimes against humanity, is much more developed now, especially in the Rome Statute. And we wanted to show that this is perhaps the most important legacy of the Nuremberg trials, including repeating the abolition of war crimes.<sup>385</sup>

The audio-guide explains the conceptual trajectory of the Nuremberg promise as follows:

In retrospect, a straight line seems to lead from the 1945 Nuremberg Trial to today's International Criminal Court. But when you take a closer look, you can see that this was a long development which has taken half a

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<sup>384</sup> Audio guide, panel 704, Memorium Nuremberg Trials.

<sup>385</sup> Interview with museum staff, March 2015, Nuremberg, Germany.

century and is still by no means complete. Important major powers, such as the USA, Russia, India, China and Israel, still have not signed or ratified the ICC statute. But at least, the definition of aggressive war as an element of crime which was adopted in 2010 has closed the last gap in the line leading back to the Nuremberg Trial.<sup>386</sup>

Here, the museum's audio-guide acknowledges the long absence of international criminal tribunals between the early 1950s and the 1990s, but maintains that the Nuremberg promise ultimately prevailed. In doing so, the exhibition's logic maintains that unjust actions of states prevented the establishment of such tribunals as opposed to the ostensible poverty of the idea of international criminal law itself.<sup>387</sup>

How the story of the IMT's legacy was going to end shifted the last several months before the opening of the exhibition, however, the room was eventually earmarked for the ICC.<sup>388</sup> In an expressed desire to celebrate the Nuremberg Principles as the bedrock of the ICC's mission and mandate, the Court financed and produced an installation on itself especially for Memorium. In the words of the lead curator at Memorium:

[...] we have this new International Nuremberg Principles Academy founded last November, and they have been working in a project period of about three and a half years. Within these years they had a lot of

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<sup>386</sup> Audioguide, Memorium Nuremberg Trials, Nuremberg, Germany.

<sup>387</sup> Moyn describes this view by evoking the metaphor of the church of human rights: "heros who are viewed as advancing human rights in the world—much like the church historians' apostles and saints—are generally with uncritical wonderment. Hagiography, for the sake of moral imitation of those who chase the flame, becomes the main genre. And the organizations that finally appear to institutionalize human rights are treated like the early church: a fledging, but hopefully universal, community of believers struggling for good in a vale of tears. If the cause fails, it is because of evil; if it succeeds, it is not by accident but because the cause was is just." Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge: The Belknap Press of Harvard University Press, 2010), 6.

<sup>388</sup> While Memorium curators were in the late stages of planning, the ICC was developing "Justice Matters," an exhibition that was to be placed in the atrium of The Hague, where the ICC is domiciled, to commemorate the court's 10-year anniversary. Utilizing video clips, photographs, the installation, "explores how justice matters to the individuals and communities affected by crimes under the Court's jurisdiction, and how justice matters to the world. It also provides information about the daily activities of the ICC in the courtroom in The Hague, the work in the field and the role of witnesses and victims." "Exhibition marks 10-year anniversary of the International Criminal Court," Peace Palace Library, accessed December 1, 2016, <https://www.peacepalacelibrary.nl/2012/12/exhibition-marks-10-year-anniversary-of-icc/>

cooperation with the ICC, ICTY, and ICTR. We had prosecutors and registrars from all these international courts here in Nuremberg. We joined in on seminars with judges. We had a lot of high-ranking people and really active stakeholders in international criminal justice today here. And they were the ones.... there was one bigger project with the ICC which was more or less around their anniversary. So, they said "Wouldn't it be nice..." The ICC really pushed it. They feel so deeply connected to Nuremberg. They refer to it however and whenever they can. The ICC said they'd like to have something on the ICC here so they produced it for us. Special from the ICC for Memorium.<sup>389</sup>

The ICC maintained complete creative control over the installation's development process, skirting consultation with Memorium staff.<sup>390</sup> The small exhibit is comprised of two wall-sized panels and a film about the court's community outreach work. The first panel, which occupies an entire wall, reads "The International Criminal Court tries individuals charged with the gravest crimes of concern to the international community: war crimes, genocide, and crimes against humanity."<sup>391</sup> A large photo of a community outreach session is displayed, along with images of victims in the witness stand, judges and lawyers. The second panel states: "Because justice matters to each person, to every community, and to society as a whole, the Court continues to fight impunity, and asks for your support in its goal to help prevent such atrocities from happening again."<sup>392</sup> Unlike earlier exhibition segments, this display introduces the figure of the wounded victim: a woman baring scars from her mutilation by rebels in northern Uganda; a child soldier holding up a drawing that depicts his violent experiences; a crowd of refugees struggling to walk down a dirt road with all their belongings. The phrases "Using child soldiers is a war crime," "Rape is a war

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<sup>389</sup> Interview with museum staff, March 2015, Nuremberg, Germany.

<sup>390</sup> Interview with museum staff, March 2015, Nuremberg, Germany.

<sup>391</sup> Permanent Exhibition, Memorium Nuremberg Trials, Nuremberg, Germany.

<sup>392</sup> Permanent Exhibition, Memorium Nuremberg Trials, Nuremberg, Germany.

crime and crime against humanity,” “Forcible transfer of a population is a crime against humanity,” and “Genocide is a crime” are placed around the images.



**Figure 1.2:** Memorial Nuremberg Trials Permanent Exhibition. Photo Credit: Tiffany MacLellan

The style and imagery of the ICC exhibit departs radically from the bulk of the preceding permanent exhibition. According to curators, the ICC’s exhibition is “propaganda,” and is more about “self-advertising.”<sup>393</sup> I read this curator’s response to the “gift” they received from the ICC as frustration over the content represented. As

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<sup>393</sup> Interview with museum staff, March 2015, Nuremberg, Germany; Interview with museum staff, March 2015, Nuremberg, Germany.

opposed to representing the international criminal lawyer as human rights advocate like Memorium does through-out the permanent exhibition, the ICC illuminates the suffering of victims to affectively compel museum visitors to appreciate the Court's work. Here, it is the figure of the traumatized victim that fuels the legitimization of the ICC enterprise.<sup>394</sup> Notwithstanding, the ICC installation advances a future-oriented rhetoric ends that posits that the establishment of trials is necessary in order for political communities to break from a time constituted by violence, and transition to a society defined by a commitment to human rights ideals, and peace.

Museum work-sheets, moderated discussions, guest lectures, and its permanent exhibition accords with the municipality of Nuremberg's effort to establish itself anew by relegating peace and respect for human right to the present. This constellation of materials establishes Nuremberg as a geo-historic location, as the place of origins for international criminal law. Here, city public officials exalt a memory of the IMT trial as historical proof of the city's long-standing commitment to human rights. Curator's at Memorium Nuremberg Trials engineer the history of the IMT as a tool to promote human rights. Further, City Council and the Museum relegate peace to the present, which demonstrates the city's ostensible break with its Nazi heritage. The projection of these narratives function to produce a phantasmagoria that holds a link between place, law, and a better life while concealing the on-going presence of militant white supremacy in the City.

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<sup>394</sup> Using the prosecution of Thomas Lubanga Dyilo for conscripting, enlisting and using child soldiers, Kamari Clarke describes how the ICC re-tools the figure of the child soldier into a victim that permits the court to pursue their vision of international justice. See Kamari Clarke, "Crafting the Victim, Crafting the Perpetrator: New Spaces of Power, New Specters of Justice," in *Fictions of Justice: The International Criminal Court and the Challenges of Legal Pluralism in Sub-Saharan Africa* (New York: Cambridge University Press, 2009), 89-116.

Yet the organization of the past, of the period of transition, and of the future (or present in this instance), breaks down in Courtroom 600 through the dual use of the space. It is further subverted through civil engagement with Nuremberg's dissemination of human rights awards.

### **Time Wavers in the Court, Time Wavers in the City**

The municipality and museum relegate violence to the past and human rights to the present. However, such phantasmic totalities breakdown within the city's own administration and the museum's own exhibition. In *Arcades*, Benjamin documented the "dust of history" to interrupt notions of progress that defined Paris in the 20<sup>th</sup> century. He illuminated the phantasmagoria that befell the French capital by placing representations of unequal social relations and consumer culture's excessive debris in constellation with notions of economic and technological advancement. Following Benjamin's methodology, I shine light on the dust of Nuremberg: the contemporary Prosecution of neo-Nazi, Gerhard Ittner, in Courtroom 600, and the institutional racism that informed Nuremberg's police investigation of the National Socialist Underground [*Nationalsozialistischer Untergrund*] (NSU) murder spree.<sup>395</sup> These instances subvert Nuremberg Mayor Maly's comment that

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<sup>395</sup> While hostility towards democratic institutions, the desire for a fascist order premised on German nationalism and the advancement of a militant political platform premised on white-supremacy are present in both Nazism and neo-Nazism, there are important distinctions between both movements, which is further complicated by the nuanced variations of neo-Nazi ideology present in the German sub-culture. "Third Position" neo-Nazism, which informs Ittner's praxis, engages in historical revisionism which aims to challenge the reality that systematic extermination of Jews, Roma, Sinti, homosexuals, and differently abled individuals by way of gas chambers occurred during the NDSAP years. Historical revisionist narratives are augmented by anti-Semitic conspiracy theories that rely on scapegoating Jews and immigrants for the ails and challenges of Germany. Further, neo-Nazism also advance critiques of globalization, and calls for a locally oriented economy within the state. In contradistinction, Nazism organized and implemented wide-spread prosecution

“today’s Nuremberg has absolutely nothing to do with Nuremberg under the swastika.”<sup>396</sup>

The prosecution of neo-Nazis in Courtroom 600, and protests at one human rights award ceremony that infer Nuremberg’s administration’s complicity in the botched investigation of the NSU murders, interrupt ascriptions that place Nazi violence in the past. By illuminating on-going Nazi violence within the court’s and city’s walls, I illustrate how the museum’s and municipality’s relegation of violence to the past and peace to the present is continually vulnerable to chance disruption.

### *Interruptions in Courtroom 600*

The museum’s representation of the promise of the IMT trial sunders when put in constellation with other uses of Courtroom 600. Not only is the space the museum’s central artefact, but it is also a place of jurisdiction for the Higher Regional Court of Nuremberg [*Oberlandesgericht Nürnberg*], Nuremberg-Furth Regional Court [*Landgericht Nürnberg-Fürth*], and the Nuremberg District Court [*Amtsgericht Nürnberg*]. The frequent—as often as three times a week—setting aside of mobile installations and museum programming erected in the court space to make room for public proceedings exposes the museum’s struggle to monumentalize the IMT trial at Courtroom 600. Museum staff carefully prohibit visitation to the space until portable video stations are

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and annihilation of individuals in the service of their fascist, and white-supremacist ideology on a scale far out-matched by the more contained and sporadic violence enacted by the neo-Nazi scene.

<sup>396</sup> Dr. Ulrich Maly, et al, “Ein Diskussionsbeitrag über den Umgang mit dem ehemaligen Reichsparteitagsgelände in Nürnberg,” February 2003, [https://www.nuernberg.de/imperia/md/stadtportal/dokumente/03\\_umgang\\_reichsparteitagsgelaende.pdf](https://www.nuernberg.de/imperia/md/stadtportal/dokumente/03_umgang_reichsparteitagsgelaende.pdf), from the original German, “*dass das Nürnberg von heute mit dem Nürnberg unterm Hakenkreuz nicht das Geringste mehr zu tun hat.*”

placed in the visitor's gallery, and signage is established at various points around the room that mark where trial participants were located.

Although museum visitors do not see Courtroom 600 transform from a place of jurisdiction into a memorial site, morning guests may become trial spectators in the afternoon, when the museum's narrative is suspended. It is museum policy to inform visitors that they are not guaranteed access to Courtroom 600 — entry into the space is dependent on regional and municipal court schedules. Memorium's website includes the following warning:

Courtroom 600 is still used as a court of justice. Therefore, it can only be viewed on days when the court is not in session. As a general rule, court is not in session from Friday to Monday. Therefore, on these four days the chances are good that the courtroom will be accessible to visitors. Only visitors who have purchased tickets to the Memorium Nuremberg Trials will be allowed to visit Courtroom 600.<sup>397</sup>

To capture anticipated visitor disappointment for not being able “to be in the same room that the Nazi's were tried in,” a museum guest feedback form was crafted.<sup>398</sup> Visitor responses, as one staff member stated, were to be used as supporting documents in the museum's request to the regional, district, and municipals courts to take over Courtroom 600 completely.<sup>399</sup>

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<sup>397</sup> Memorium Nuremberg Trials, “Questions About your Exhibition Visit,” accessed February 20, 2017, <https://museums.nuernberg.de/memorium-nuremberg-trials/visitor-information/questions-about-your-exhibition-visit/>

<sup>398</sup> Interview with museum visitor March 2015, Nuremberg, Germany.

<sup>399</sup> Interview with museum staff, March 2015, Nuremberg, Germany. I asked one museum staff member about the forms in an interview, who provided the following response: “I prepared that actually. This was before the opening, or in the first period. We thought “It is going to be terrible! People are going to come but might not see the courtroom!” and complain, and we felt at the time we needed to show that we need the courtroom.” Interview with museum staff, March 2015, Nuremberg, Germany.



**Figure 1.3:** Courtroom 600 arranged for museum visitation by Memorium Nuremberg Trials. Photo Credit: Tiffany MacLellan

Memorium discourages visitors from attending public proceedings that are underway during their visit. Instead of directing them to the front door of the Palace of Justice, they say that Courtroom 600 is not available for visitation. This policy conceals the Nuremberg’s on-going battle with neo-Nazism. For example, in 2015 the Nuremberg-Furth Regional Court held the opening trial session of Gerhard Ittner in Courtroom 600—a NSU and Thuringian Homeland Security [*Thüringer Heimatschutz*] member, and Holocaust denier. Further, he is also an organizer in the Nuremberg-based right-wing extremist, anti-immigrant group Citizens Initiative on Stopping Foreigners [*Bürgerinitiative Ausländerstopp Nürnberg*]. On September 6, 2003 Ittner organized a neo-Nazi march entitled Proud and Faithful: Make Germany Free” [*Stolz und true—macht Deutschland frie*] from the leadership stand at the Nazi Party Rally Grounds to a city square, formerly known as Adolf-Hitler-Platz.

During the event, he presented a speech that that led to his indictment for inciting hate under §86a, The Use of Symbols of Unconstitutional Organizations [*Verwenden von Kennzeichen verfassungswidriger Organisationen*], and §90a, Denigration of the State and its Symbols [*Verunglimpfung des Staates und seiner Symbole*] of the criminal code.<sup>400</sup> He fled to Beja, Portugal, where he remained until 2012, when he was apprehended and extradited back to Germany.

I arrived at Memorium one morning and was informed by museum staff that Courtroom 600 was closed. No alternative avenue to Courtroom 600 was offered to museum guests or myself. I was fully aware of Ittner's trial, and decided to access the Courtroom through the main entrance of the Palace of Justice. I stepped into a line comprised of journalists, neo-Nazis, activists, and others, that was fed through security screening machines established to weed out guns-and-the-like. My citizenship and basic oral German were not barriers—anyone could enter any of the courtrooms at the Palace, space permitting.

The public gallery in Courtroom 600 was mostly empty. I had spent hours in the space before the trial, however, it looked remarkably different as the museum's mobile exhibitions were removed, and judges, lawyers, police officers populated each desk in the space. The trial began with Ittner's delivery of his opening remarks. His political rhetoric—that the Third Reich was still at war, that the Holocaust did not occur—was orated at a volume so unsettling that even his own counsel could not stand him. His remarks, which

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<sup>400</sup> §86a, §90a, Strafgesetzbuch, (1998)

he delivered standing with his finger pointed at the judge, took so long that the trial was adjourned for the day before the judge was able to read the indictment.<sup>401</sup>

Yet his organization of the 2003 neo-Nazi protest was not Ittner's first encounter with the Nuremberg-Furth Regional Court. In 2013, he was interviewed by the Federal Prosecutor's Office [*Generalbundesanwältin*] for his connections to Beate Zschäpe, Uwe Mundlos, and Uwe Bönhardt who, before the death of Mundlos and Bönhardt, were prominent members of the NSU (I return to them in a moment).<sup>402</sup> In particular, Ittner distributed flyers in Nuremberg in September 2000, which stated "From now onwards, it is being re-launched...Wait for other orders (Wednesday or Sunday attack)." The first victim in the NSU murder spree of Turkish-German individuals, Enver Şimşek, was found murdered in Nuremberg days later.

The Thuringian Homeland Security and NSU are not Nuremberg-based organizations, and the prosecution of Ittner was conducted at the Nuremberg-Furth Regional Court as opposed to the Nuremberg District Court. However, the activities of interest to the Regional Office of the Prosecution are centered on his efforts to mobilize and amplify neo-Nazi sentiments in the City. As such, the dual use of Courtroom 600 interrupts the confining of white-supremacist violence to the past because Neo-Nazi violence in the present can be found in contemporary proceedings. The trial of Ittner breaks the rhetoric of ends represented by both the City and the Museum which aims to

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<sup>401</sup> The theatrics of his performance was also noted by the journalists present. Felix Sowa, "Der Prozess gegen den Holocaust-Leugner Gerhard Ittner," *Jungle World*, March 26, 2015, <http://jungle-world.com/artikel/2015/13/51673.html>

<sup>402</sup> Ittner distributed flyers in Nuremberg in September 2000, which stated "From now onwards, it is being re-launched...Wait for other orders (Wednesday or Sunday attack)." The first victim in the NSU murder spree of Turkish-German individuals, Enver Şimşek, was found murdered days later.

show that Nuremberg has transitioned to a present defined by a commitment to human rights. Exposing museum visitors to the aggressive and longstanding presence of Nazism in Nuremberg and beyond undermines the museum's—and the municipality's—broader fashioning of the IMT trial as that which was “victorious” over Nazi ideology.

The museum's request for full control of Courtroom 600 was formally granted by the Free State of Bavaria [*Freistaat Bayern*] in 2016.<sup>403</sup> That fall it was formally announced that Courtroom 600 would be handed over from the State to the City of Nuremberg in 2018 for the benefit of Memorium, and the International Nuremberg Principles Academy.<sup>404</sup> Whether Courtroom 600 is renovated back to its 1945 condition, or remains in its current state is a topic of debate between the Nuremberg Municipal Museums, City Council, and museum staff.<sup>405</sup> While museum visitors could still view prosecution of neo-Nazis in other courtrooms, they will soon be unable to see them in Courtroom 600.

### *Interruptions in the City*

Other spaces in Nuremberg also offered chance disruptions of the municipality's relegation of violence to the past and human rights to the present. For instance, between

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<sup>403</sup> In 2015, the State of Bavaria began building a new space for courtrooms on the west wing of the Palace of Justice, yet whether the museum would have full control and management of Courtroom 600 was decided a year later.

<sup>404</sup> “Neubau am Justizpalast soll Saal 600 ersetzen” *Süddeutsche Zeitung*, November 3, 2016, <http://www.sueddeutsche.de/bayern/nuernberg-neubau-am-justizpalast-soll-saal-ersetzen-1.3233510>; “Bayerns größtes Strafjustizzentrum wird noch größer,” *Bayerischer Rundfunk*, November 3, 2016, <http://www.br.de/nachrichten/mittelfranken/inhalt/richtfest-neubau-strafjustizzentrum-nuernberg-100.html>

<sup>405</sup> According to one tour guide, “A lot of politicians in Nuremberg want to restore it, and I know why they want it, and I guess a lot of people would like to see it happen. But if you don't have the originals then it is like Disneyland. We don't even have pictures of the details so we will have to imagine them, and I don't think that is how history should be presented.” Interview with third-party tour guide, March 2015, Nuremberg, Germany.

2000 and 2007, Turkish, Kurdish, and Greek migrants were murdered in the several German cities, including three in Nuremberg.<sup>406</sup> Several of Germany's security forces, including the Federal Office for the Protection of the Constitution [*Bundesamt für Verfassungsschutz*], and the State Office for the Protection of the Constitution [*Landesämter für Verfassungsschutz*], had infiltrated NSU cells during this time, however, their investigation of the group's activity did not include this series of murders.<sup>407</sup> Instead, police forces, especially Nuremberg's, theorized that the crimes were related to Turkish immigrant gang activity, leading to discriminatorily naming the investigation task force "Bosphorus"—the Turkish name for water way.<sup>408</sup> This police theory was sensationalized by Nuremberg newspapers, which intolerantly named the murders the "döner killings."<sup>409</sup> This race-based and xenophobic reasoning led police officers to investigate members of each victim's family as complicit in organized criminal activity although no evidence was ever brought forward to link the victims, or their family members, to gang activity.<sup>410</sup>

Maintaining this line of investigation delayed the capture of Beate Zschäpe, Uwe Böhnhardt, and Uwe Mundlos, who continued their murder spree through-out Germany un-checked. In 2007, Zschäpe turned herself into local authorities after Böhnhardt and

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<sup>406</sup> The victims of the murder spree are as follows: Enver Şimşek, Abdurrahim Özüdoğru, Süleyman Taşköprü, Habil Kiliç, Mehmet Turgut, İsmail Yaşar, Theodoros Boulgarides, Mehmet Kubaşık, Halit Yozgat, and German Police officer Michèle Kiesewetter. All were killed with a Česká CZ 83 hand pistol.

<sup>407</sup> Nitzan Shoshan, *The Management of Hate: Nation, Affect, and the Governance of Right-Wing Extremism in Germany* (Princeton: Princeton University Press, 2016), 139.

<sup>408</sup> Marcel Fürstenau, "Neo-Nazi Murders: More Questions than Answers," *Deutsche Welle*, November 3, 2012.

<sup>409</sup> Von Christian Fuchs, "Wie der Begriff "Döner-Morde" Entstand," *Der Spiegel*, April 7, 2012.

<sup>410</sup> Amnesty International, "Living in insecurity: How Germany is failing victims of racist violence," accessed May 2, 2017, <https://www.amnesty.de/files/Amnesty-Report-Racist-Violence-in-Germany-June2016.pdf>

Mundlos botched a robbery in a central town in Germany, and killed themselves. A special parliamentary commission was established to investigate the government's misguided NSU undercover operations 2007, and potential cover-ups. It was revealed that security forces shredded documents, tipped off NSU members about police raids, and even joined ring-wing groups.<sup>411</sup> The Nuremberg Police's investigation, along with the State and Federal security apparatus' collusion with the NSU community, illuminates the continual presence of racist ideology within the German state itself.

Anti-racism activists organized in Nuremberg called attention to the presence of racism in the city's and state's security apparatus, which, I argue, interrupts the City's and Museum's ascription of Nazi violence to a bounded past. Staff at Nuremberg-based Radio-Z's program "No to Greyzone [*Nein zur Grauzone*]," which aims to raise awareness about and combat nationalism, racism, anti-Semitism, and sexism within the city through hip-hop music, invited me to the "Mosaic Youth Prize: With Diversity Against Racism [*Mosaik Jugendpreis: Mit Vielfalt gegen Rassismus*]" award ceremony. The Award is organized and administered by the City of Nuremberg and the City of Munich to recognize "youth projects that promote the fight against everyday racism and respect for all people and promote intercultural dialogue."<sup>412</sup> The NSU murders spurred the Human Rights Office of the City of Nuremberg to establish the award, however, the City's failure to publically grapple with its own complicity in the murders was not lost on Radio-Z members, who were awarded

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<sup>411</sup> Shoshan, *Management of Hate*, 140; Susanne Höll and Tanjev Schiltz, "Verfassungsschutz vernichtete Neonazi-Akten," *Süddeutsche Zeitung*, June 29, 2012; Julia Jüttner, "Thüringer Polizei bezahlte Neonazi als Spitzel," *Der Spiegel*, March 17, 2013.

<sup>412</sup> Human Rights Office of the City of Nuremberg, "Mosaic Youth Prize: With Diversity Against Racism," accessed April 20, 2017, [https://www.nuernberg.de/internet/menschenrechte/mosaik\\_jugendpreis.html](https://www.nuernberg.de/internet/menschenrechte/mosaik_jugendpreis.html)

first prize. In their acceptance speech, the recipient shamed the Nuremberg Police and the City's media for wielding racist language while imagining themselves as human-rights defenders:

The nine murders committed by the National Socialist Underground... will not be described by us with the racism term "Döner Murders." It was the Nuremberg newspaper who created this un-word on August 3, 2005. At the time, the murderous racism of the NSU had killed 7 people in a bomb attack in Pilsbar Sunshine in Nuremberg, in the Probsteigasse and Keup Street in Cologne, injuring at least 24 people, some seriously. Hardly any journalist has publicly announced responsibility for "half crescent" or "Bosporus investigations"... In this state of the media, an independent, critical processing of the NSU complex that does not hesitate to ask tough questions, even to itself, is indispensable.<sup>413</sup>

By suggesting that the very city that bestowed the Award could not even face the institutionalized racism prevalent in its police and media, was a powerful attempt turn the city's attention away from its celebration of rights, towards contemporary legacies of Nazi racism.<sup>414</sup>

The prosecution of neo-Nazis in Courtroom 600, and activist struggles to turn the municipal government's attention to the presence of racisms in Nuremberg, interrupt the

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<sup>413</sup> Radio-Z, "Mosaik Jugendpreis: Mit Vielfalt gegen Rassismus," (speech, Nuremberg), March 21, 2015. Translation, mine.

<sup>414</sup> The subsequent rally in Nuremberg was organized to mark the death the NSU's first killing in their spree, which occurred in Nuremberg. As opposed to merely commemorating the death of Enver *Şimşek*, the rally, entitled "Against Germany and their Nazis [*Gegen Deutschland und Seine Nazis*]" sought to bring attention to the presence of racism in Germany today. Their flyer states, "Public discourse has remained focused on the "mistakes" made by German authorities during their investigations, especially the secret services, while debates about racism in the German society remain absent. It was precisely this racism which was the basis of the 90's militant Nazi scene, from which the NSU derived, and which allowed them to kill unhindered... One can easily see how deep the racist resentment is rooted: The task forces investigating the cases were named "Bosporus" and "Halbmond" (crescent) without having any leads, thus blaming victims, while the local newspaper *Nürnberger Zeitung* coined the term "Döner Murders" which was adopted by the German media without hesitation... But whoever is not willing to talk about racism should also keep quiet about the NSU." *Against Germany and their Nazis*, (English flyer), September 19, 2015.

city's and museum's organization of the time of violence and the time of human rights. Instead, it shows that legacies of violence are not mastered; rather, they continue to manifest within the city's core. As such, both examples expose the fragile projection of the city as a champion of rights. Further, both examples show how the organization of time that permits to the City Council to declare that they have arrived, transitioned, and attained peace in facts ignores, sequesters, and fails to take on the indeterminable challenge of striving towards an infinitely open-ended and on-going notion of justice.

## Conclusion

In this chapter, I argue that Nuremberg municipal authorities and Memorium Nuremberg Trials place city dwellers and museum visitors in the time of human rights. In doing so, they attempt to demonstrate that the city has broken and moved on from the legacy of Nazism that once dominated the city. I explore how the city relegates the time of Nazi violence to the past so that they can project themselves as the City of Human Rights in the present. Further, I indicate how Memorium represents international criminal law as that which delivers political communities to the time of human rights. However, I also signal spaces and places where the time of violence is subverted, namely, in Courtroom 600, and through discourses launched from the city's activists. However, both of these interruptions take us out of the exhibition and into public spaces, like the courtroom when enacted as the space of jurisdiction. In the next Chapter I explore how law's materiality — IMT evidence — is used to organize *and* interrupt the museum's relegation of violence to the past.

## Chapter Three: Bounded Pasts

Order is no longer assured.  
— Jacques Derrida

In Frank Kafka's parable "Before the Law," a man requests entry to the door of Law yet is denied admittance by the doorkeeper. The door is ajar, revealing to the man that the room beyond is empty, without content. Responding to the man's expression of curiosity, the guard explains that behind the door lies another door, and another, and so forth, which are also guarded. Despite this information, the man's curiosity as to what lies at the end of the series of doors seduces him, leading him to obsess over gaining access to the door of Law for years, until his death, to no avail.

Kafka's parable is an allegory for the insatiable drive to uncover the origin of that which founds the archive, as well as its baseless authority, and indeterminability.<sup>415</sup> In this way, "Before the Law" dovetails with Jacques Derrida's notion of the archive as a site of commencement, commandment, and infinite opening.<sup>416</sup> In the Greek polis, *archons* held complete dominion over the archive's composition. These custodians collected and ordered material into an ideal configuration to articulate a singular, totalizing representation of the world.<sup>417</sup> Law and museums are such custodians. Both institutions

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<sup>415</sup> Cornelia Vismann draws this connection beautifully in *Files: Law and Media Technology*, trans. Geoffrey Winthrop-Young (Stanford: Stanford University Press, 2008), 16.

<sup>416</sup> Jacques Derrida, *Archive Fever: A Freudian Impression*, trans. Eric Prenowitz (Chicago: University of Chicago Press, 1996), 1.

<sup>417</sup> Derrida, *Archive Fever*, 3.

derive their power, and speak the law, by referencing the archive they alone configure.<sup>418</sup> Both institutions discard, accumulate, and preserve evidence to construct the premises upon which they produce their definitive interpretations of the past.<sup>419</sup> What is more, their archival representations of a coherent world extend to, and hold traction in, political and social life: law and museums beckon the public to appeal to their truths, to conceive of them as worthy of their trust, to affirm them as institutions operating in the service of the public good. This constellation of factors justifies the pressing need to study law and museums together as their distinct logic-systems shape and foreclose possible ways to think “with” records of violence in the present.

What possibilities or foreclosures occur when museums appropriate and display law’s archive? In this chapter I critically analyze the Washington DC-based United States Holocaust Memorial Museum’s (Holocaust Museum, going forward) temporary exhibition “The Nuremberg Trials: What is Justice?” (“What is Justice?” for brevity’s sake).<sup>420</sup> This exhibition represents the “trial-as-historian” by valorizing criminal law as a system that reconstructs authoritative accounts of the past by placing a premium on the trial’s “authentication” of artefacts. More precisely, “What is Justice?” exalts the evidence tendered to the International Military Tribunal (IMT) trial above other artefacts that were

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<sup>418</sup> Derrida, *Archive Fever*, 2, 3, 5, 11. Derrida refers to the museum as a place, “there ... where men and gods command” through-out the book. Derrida, *Archive Fever*, 1.

<sup>419</sup> Derrida, *Archive Fever*, 2, 7, 20; Renisa Mawani, “Law’s Archive,” *Annual Review of Law and Social Science* 8, no. 1 (2012): 341.

<sup>420</sup> “What is Justice?” was replaced by another exhibition on the Extraordinary Chambers in the Courts of Cambodia entitled “I Want Justice!” in 2016. Like its predecessor, this installation suggests that political communities can return to and understand the past through the witness testimony presented in trial. See “I Want Justice,” United States Holocaust Memorial Museum, accessed March 29, 2017, <https://www.ushmm.org/information/exhibitions/museum-exhibitions/i-want-justice>

not submitted for legal scrutiny as the most definitive proof of Nazi violence and historical truth.<sup>421</sup> In doing so, this installation reiterates transitional justice theory's rhetoric of ends by relegating violence to a bounded past determined by the trial medium. Further, "What is Justice?" represents the IMT as a public event that established a collective memory of Nazi violence by cultivating opportunities for the public and media to be "witnesses to history." Here, the installation privileges law as the site from which political communities can return to, account for, and master the past.

However, there is no original artifact upon which to base law's and the museum's interpretation of the past. The archives constructed by both institutions are infinitely vulnerable to interruptions generated through the positing of future archival configurations. Their archives, then, are eternally oriented towards the future, in addition to the past, ameliorating the possibility of producing a durable, finite, and singular account of what was.<sup>422</sup> As such, I further argue that the Holocaust Museum's celebration of law's archive in "What is Justice?" inadvertently exposes the mythical foundation that underpins both the IMT's and Museum's account of the past. In the installation, curators transform

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<sup>421</sup> I am not denying the existence of the Holocaust. The Holocaust did occur. This chapter seeks to illuminate the problem with stable and definitive accounts of violence that are relegated to the past. As Wendy Brown puts it, "There are two important political questions begging in the rejoinder that something "happened" in history: First, what account of this happening has the most veracity, and why? Second, what are the meanings of this historical occurrence for the political and cultural life in the present? [...] Of course the Holocaust happened, but to itemize the devastation that it wrought tells us nothing about what it means for those who, sixty years later on, live in its historical aftermath in different ways in different parts of the world. Thus, an insistence on the materiality or facticity of the Holocaust is just as dodgy about the question of how the Holocaust lives in the present as it claims its putative opposition to be." Wendy Brown, "Futures: Specters and Angels: Benjamin and Derrida," in *Politics out of History* (Princeton: Princeton University Press, 2001), 141.

<sup>422</sup> Derrida, *Archive Fever*, 19, 33-34, 51; See also Stacy Douglas, "Constitutions are Not Enough: The Museum as Law's Counter-Archive," in *Law, Memory, Violence: Uncovering the Counter Archive*, eds. Stewart Motha and Honni van Rijswijk (London: Routledge, 2016), 140-156.

the historical meaning of three criminal artefacts tendered to the IMT as evidence of war crimes, and the crime of conspiracy, by reassigning them to a new archival schematic — that of the Holocaust defined by specifically Jewish persecution. While curators valorize the law’s interpretation of the past, it inadvertently interrupts law’s claims to historical truth. As such, the infinite opening of both law’s and the Museum’s archive is exposed.<sup>423</sup> This exposure subverts definitive, stable, and enduring projections of the past, disrupts rhetorical claims that a political community can fully account for, grapple with, and break from a period wrought by violence. This archival interruption may allow us to comprehend Nazi violence not as something that has ended, but as something that has transformed, and continues on into the present.

While curators inadvertently disturb law’s archive through re-signification, they also reiterate transitional justice’s rhetoric of ends by representing responsibility for such violence as fixed, and of the past. The final segment of the Holocaust Museum’s permanent exhibition entitled “The Killers,” as well as “What is Justice?” call into question the IMT’s capacity to effectively grapple with legal responsibility. However, the narratives launched from both installations comprehend legal culpability as finite, and determinable, as opposed to open-ended, and ongoing. In this way both installations insinuate a rhetoric of ends by projecting a conception of criminal trials as a means that shores-up political transition.

This chapter unfolds in three parts. In part one I track the institution’s conceptual development, the ripening of its exhibitions, and how its archive is shaped by a tension in

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<sup>423</sup> Derrida, *Archive Fever*, 5.

the Museum's mandate that simultaneously attempts to rescue and preserve evidence of the Holocaust whilst committing to a future oriented project that seek to prevent escalating cases of genocide. In part two I describe the general turn to law's archive as an authoritative account of history in order to contextualize the Holocaust Museum curators' representation of the "trial-as-historian" in "What is Justice?". Drawing on Derrida's notion of the archive, I show that the Museum's staging of evidence tendered to the IMT inadvertently inaugurates an open-ended interruption to both the IMT's and Museum's archival configuration. This disruption illuminates how museum displays of law's materiality may be used to depose of transitional justice theory's rhetoric of ends. Part three interrogates how the Holocaust Museum represents law's determination of responsibility. Despite the acerbic critiques advanced by curators over the IMT's establishment of responsibility, I argue that they ultimately fix accountability in a manner that accords with the singular vision of the violence represented in their archive. By imagining responsibility in a manner that corresponds with its collection, the museum ascribes violence and responsibility to the past.

### **History, Authenticity, and Activism at the Holocaust Museum**

Museums strive to realize their missions. The Holocaust Museum is no exception.

Accordingly, the Museum tasks itself

[...] to advance and disseminate knowledge about this unprecedented tragedy; to preserve the memory of those who suffered; and to encourage its visitors to reflect upon the moral and spiritual questions

raised by the events of the Holocaust as well as their own responsibilities as citizens of democracy.<sup>424</sup>

But curatorial interest in documenting the difficult history of Nazism in Germany goes beyond mere didactic exhibition as the museum also endeavors to fix the meaning of its collection in order to combat Holocaust denial in the present.<sup>425</sup> Here, the importance of accumulating “original” material emerges as the crucial linchpin that orients what enters the Museum’s archive. However, the Museum’s mandate also directs it to raise awareness about “areas at risk for genocide,” and lobby domestic and international policy makers to intervene under the banner of “never again.”<sup>426</sup> In this section I chart the Janus face of the Museum’s mandate—to preserve the memory of the Holocaust whilst alerting the public and international authorities to contemporary flare-ups of wide-spread human rights abuses.

### *Preserving the memory of the Holocaust*

On November 8, 1979 US President Jimmy Carter established the President’s Commission on the Holocaust. According to the Executive Order, the Commission was mandated to

[...] submit a report with respect to the establishment and maintenance of an appropriate memorial to those who perished in the Holocaust, to examine the feasibility for the creation and maintenance of the memorial through contributions by the American people, and to recommend appropriate ways for

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<sup>424</sup> “Mission Statement,” United States Holocaust Memorial Museum, accessed January 12, 2017, <https://www.ushmm.org/information/about-the-museum/mission-and-history>

<sup>425</sup> “About the Museum,” United States Holocaust Memorial Museum, accessed March 20, 2017, <https://www.ushmm.org/information/about-the-museum>

<sup>426</sup> “Our Work and Mission,” United States Holocaust Memorial Museum, accessed August 27, 2017, <https://www.ushmm.org/support/why-support/our-work-and-mission>

the nation to commemorate April 28 and 29, 1979, which Congress has resolved shall be Days of Remembrance of Victims of the Holocaust.<sup>427</sup>

President Carter took Israel's 30<sup>th</sup> birthday as the occasion to announce the names of the thirty-two individuals appointed to the Commission, including several professors, and practitioners of law.<sup>428</sup> In 1979 the Commission's Report to the President, Chaired by Elie Wiesel, recommended the establishment of a memorial museum that would transmit the legacy of the Holocaust—including a history of America's experience in combat—and raise fundamental questions about abuses of state power, the fragility of political institutions, and the need for national unity.<sup>429</sup>

Auxiliary recommendations included an accounting of law's role in preserving the memory of the American military's efforts to prosecute high-ranking Nazi officers at various military tribunals, and honoring survivors. Summarizing the moral obligation to remember Nazi atrocities, the Commission wrote,

America did play a major role in bringing Nazi Criminals to justice. Herbert Pell, the United States representative to the War Crimes Commission, was the driving force behind the American assent to charge war criminals with crimes against humanity. The Nuremberg Trials represent a new international moral standard for they reflect the conviction that each individual is responsible for his actions even in times of war.<sup>430</sup>

This quote illuminates the Commission's connection between the US military's participation in the establishment of the IMT and the Nuremberg Military Tribunal (NMT), and their ostensible spearheading of a new international moral order. Placing hope in the

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<sup>427</sup> Exec. Order No. 12093, (November 1, 1978).

<sup>428</sup> Telford Taylor (chief counsel for the US War Crimes Office in Nuremberg, Germany from 1946-1949); Thomas Buergenthal (Professor of international law at the University of Texas and future judge at the International Court of Justice); Arthur J Goldberg (former Supreme Court Justice), Arnold Pickner (former attorney), Richard Schifter (former attorney); Wilton Saug (attorney).

<sup>429</sup> President Commission on the Holocaust, "Report to the President," September 27, 1979, 9.

<sup>430</sup> President's Commission, "Report to the President," 7-8.

legal instruments and processes of the time, the Commission also recommended US ratification of the Genocide Convention on the basis that criminal prosecutions would deter future human rights abuses.<sup>431</sup> So too, did the Commission lobby the Department of Justice to triage the prosecution and extradition of alleged Nazi perpetrators in US jurisdiction to the top of their agenda.

On October 7, 1980, the 96<sup>th</sup> Congress of the US House of Representatives established the United States Holocaust Memorial Council. According to the self-titled Act, the Council was empowered with the responsibility to plan, build, and oversee the operation of a permanent memorial museum to commemorate the victims of the Holocaust.<sup>432</sup> In 1983 the Federal Government donated 1.9 acres of land adjacent to the National Mall in Washington DC for the project, and the final \$200 million-dollar construction cost was financed entirely by private donations.<sup>433</sup> The Museum opened April 26, 1993 with a mandate to preserve memories of past violence, and to use such history

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<sup>431</sup> President's Commission, "Report to the President," 16-17.

<sup>432</sup> 96<sup>th</sup> Congress October 7, 1980, House of Representatives 8081. The Council was also mandated to "provide appropriate ways for the Nation to commemorate the Days of Remembrance, as an annual, national, civic commemoration of the holocaust, and shall encourage and sponsor appropriate observances of such days of Remembrance throughout the United States" and "develop a plan for carrying out the recommendations of the President's Commission on the Holocaust in its report to the President of September 27, 1979, to the extent such recommendations are not otherwise provided for in this Act."

<sup>433</sup> "History of the United States Holocaust Memorial Museum," United States Holocaust Memorial Museum, accessed January 12, 2017, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10005782>. The Committee considered establishing the future museum in New York City to symbolically honor the municipality's past efforts to accommodate Jewish refugees from Displaced Persons Camps across Europe after WWII. However, they decided the pending institution should contribute to national life and, to that end, Washington DC was selected as the Holocaust Museum's future home. Edward Linenthal, *Preserving Memory: The Struggle to Create America's Holocaust Museum* (New York: Columbia University Press, 1996), 57-58.

to fuel contemporary political actions that oppose the many manifestations of anti-Semitism, racism, heteronormativity, and ableism in public life.<sup>434</sup>

Builders broke ground to make way for architect James Ingo Freed's design in 1985. For aesthetic inspiration, Freed turned to the Victorian style red brick and vast neoclassical limestone structures adjacent to the museum lot as his material and structural starting point.<sup>435</sup> Blending seamlessly into the cityscape, the Museum's final 14<sup>th</sup> Street exterior form is remarkably plain, employing limestone and modernist design elements. The five-story high brick walls featured on the inside were laid in an English cross-bond pattern and braced by bolted metal beams, embodying design elements used in the construction of Auschwitz I.<sup>436</sup> Industrial details, such as exposed steel beams fastened by bolt as opposed to welded, refer to the advanced technology used to ameliorate camp prisoners efficiently.<sup>437</sup>

The power of the Museum's architecture goes beyond Freed's imbrication of symbolic design elements that gesture towards the Holocaust, and proves central to fashioning of the permanent exhibition's narrative through spatial configuration. How space coheres and manages stories, and naturalizes movement through the institution has been described as a technology of disciplinary power by Michel Foucault. In *Discipline and*

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<sup>434</sup> "About the Museum: A Living Memorial to the Holocaust," United States Holocaust Memorial Museum, accessed March 6, 2017, <https://www.ushmm.org/information/about-the-museum>; "Take Action," United States Holocaust Memorial Museum, accessed March 6, 2017, <https://www.ushmm.org/confront-genocide/take-action-against-genocide>; "Committee on Conscience Mandate," United States Holocaust Memorial Museum, accessed March 6, 2017, <https://www.ushmm.org/confront-genocide/about/committee-on-conscience-mandate>

<sup>435</sup> James Ingo Freed, "The United States Holocaust Memorial Museum: A Dialogue with Memory," *Curator* 38, no. 2 (1994): 98.

<sup>436</sup> Freed, "Dialogue," 100.

<sup>437</sup> Freed, "Dialogue," 110.

*Punish: The Birth of the Prison*, Foucault describes the architecture of the panopticon as a system of surveillance and subjectification that renders populations observable, knowable, and thus docile. On this, he tells us that,

... architecture is no longer built simply to be seen (as with the ostentation of palaces), or to observe the external space (the geometry of fortresses), but to permit an internal, articulated, and detailed control – to render visible those who are inside it; in more general terms, an architecture that would operate to transform individuals: to act on those it shelters, to provide a hold on their conduct, to carry the effects of power right to them.<sup>438</sup>

He illuminates how the spatial configuration of the prison confines individuals and conceals them from the gaze of the masses, yet renders them inspectable from the panopticon's tower. Here, architecture operates as a technology of power that promotes surveillance so as to calculate, regulate, normalize, and order behavior. Museum studies scholars argue that museum architecture also functions as a disciplinary apparatus. These scholars signal how the institution's structural design positions visitors-as-spectacle by rendering the crowd visible to itself.<sup>439</sup> Bennett refers to this as the "exhibitionary complex," or

a self-monitoring system of looks in which the subject and object positions can be exchanged, in which the crowd comes to commune with and regulate itself through interiorizing the ideal and ordered view of itself as seen from the controlling vision of power—a site of sight accessible to all.<sup>440</sup>

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<sup>438</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Random House, 1995), 172.

<sup>439</sup> Tony Bennett, "The Exhibitionary Complex," *New Formations* 4, no. 80 (1988): 81. The notion of public spectacle is taken up by Foucault in his genealogy of punishment. In Chapter One of *Discipline and Punish*, Foucault describes how power was put on display through the use of the scaffold in city-centers. Foucault, *Discipline and Punish*, 32-72. For other writings on the governing effects of rendering groups as spectacle, see Guy Debord, *Society of the Spectacle* (New York: Zone Books, 1994).

<sup>440</sup> Tony Bennett, "The Exhibitionary Complex," *New Formations* 4, no. 80 (1988): 82.

Visitors move through the museum by following the crowd and floor plan directions because they are susceptible to a social surveillance made possible by architectural force. In this way, exhibition topologies can enact the discursive logic of time by governing movement into a continuous, sequential pattern. In other words, space puts time in motion.

The organization of space in the Holocaust Museum is central to the execution of their permanent exhibition narrative. To arrive at the beginning of the exhibition on the fourth floor, visitors must enter a cramped, distressed metal elevator sonically animated by an audio track that recounts a horror-like situation experienced by an American soldier as he approached Bergen-Belsen concentration camp.<sup>441</sup> Yet the elevators are only used to deliver guests to the beginning of the exhibition, and thus, they close immediately after visitors have cleared its cramped cavity, spatially positioning them to confront the exhibition.<sup>442</sup> The first chapter, “Nazi Assault—1933-1939,” presents an overview of the rise of Nazi fascist tactics and policies, which supplies the historical context for the story of the Holocaust. There is only one route through the gallery, ensuring the exhibition’s narrative unfolds chronologically. On the third floor, entitled “Final Solution—1940-1945,” the story of ghetto and camp suffering is portrayed. To provoke empathy in their guests, enhance feelings of restraint, and curtail opportunities for respite from the drama and

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<sup>441</sup> The recording reads as follows: “The patrol leader called in by radio and said that we have come across something and we are not sure what it is. It is a big prison of some kind, and there are people running all over. Sick, dying, starved people... Such a sight as that, you... you can’t imagine it. You, you just... things like that just don’t happen. “

<sup>442</sup> The Museum’s policy aims to marshal a visceral response from visitors. Although fire escape routes are available, the idea of refusing visitors access to the descending elevator accords with their efforts to cultivate a sense of powerlessness. Edward T. Linenthal, “The Boundaries of Memory: The United States Holocaust Memorial Museum,” *American Quarterly* 46, no. 3 (1993): 407.

intensity of the displays, the walkways on this floor grow progressively narrow, while the ceilings lower.<sup>443</sup> “The Last Chapter” is displayed on the second floor, and is organized by themes that identify various rescuers, resistance fighters, children, and liberators during the war, as well as experiences of emigration. The entrapping elevator, singular route through the exhibition, enclosing walls and ceilings, together, operate as disciplinary technologies that manage movement and evoke a sense of empathy in museum guests.<sup>444</sup>

The Museum’s interest in law’s articulation of Nazi violence and responsibility is made clear by choosing to end the substantive permanent exhibition with “The Killers” segment on war crime trials, and by establishing “What is Justice?” in the room immediately preceding the permanent exhibition gallery.<sup>445</sup> Curators suggest that law played an instrumental role in bringing Nazi violence to an end. “What is Justice?”, for instance, contributed to the institution’s broader efforts to commemorate the past but through the prisms of law. Initially curated to commemorate the 60<sup>th</sup> anniversary of the establishment of the IMT, this exhibit occupied a place immediately preceding the end of

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<sup>443</sup> Linenthal, “Boundaries of Memory,” 408.

<sup>444</sup> Curators personalize the Holocaust in their exhibitions in order to guard against mass-death-as-spectacle voyeurism, reinforce the verisimilitude of the Holocaust experience, and further amplify feelings of empathy in guests. Linenthal, “Boundaries,” 410. For instance, museum employees disseminate “identification cards” to visitors that articulate a history of the Holocaust from the vantage of an individual. These textual personal narratives are, when available, augmented by Holocaust survivors that chaperon museum visitors through the permanent exhibition to further amplify an affective sense of historical realism. In addition, the glass walls that connect each floor with the next are etched with the names of individuals and communities that died due to Nazi persecution.

<sup>445</sup> “What is Justice?” was replaced by another exhibition on the Extraordinary Chambers in the Courts of Cambodia entitled “I Want Justice!” in 2016. Like its predecessor, this installation suggests that political communities can return to and understand the past through the witness testimony presented in trial. See “I Want Justice,” United States Holocaust Memorial Museum, accessed March 29, 2017, <https://www.ushmm.org/information/exhibitions/museum-exhibitions/i-want-justice>

the permanent exhibition until 2015.<sup>446</sup> When visitors enter the square room, they are confronted with the following series of questions, which are strung across the ceiling: How do you prosecute unprecedented crimes?; Who was held legally responsible for the Holocaust?; How do we know what we know about the Holocaust?; Is it ever too late to seek justice? and; What can we do about atrocities today?. These questions are posed again, but with answers, in a set of interactive media consoles.<sup>447</sup>

At the farthest end of the space, visitors find a rectangular-shaped glass display case that contains an array of “authentic” artefacts. A bound copy of *The Buchenwald Case War Crimes Trial: Information Booklet on the Buchenwald Concentration Camp*, portraits of IMT defendants by American illustrator and journalist with the US Army’s publication “Stars and Stripes,” Edward Vebell, one of the forty-two pamphlets created by the US War Department entitled “What Shall Be Done with the War Criminals?,” a pass to enter the Palace of Justice, military dog tags owned by a former US Military guard, a booklet which outlines the charges against IMT defendants, and selected pieces of evidence used by American prosecutors to mount their argument constitute the display. A wall sized photo of the January 2, 1946 IMT afternoon session, which depicts evidence introduced to the

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<sup>446</sup> “What is Justice?” occupies a space the Museum refers to as the Wexner Learning Center. The Centre, which consists of four rooms, was the location of a public data-base of holocaust victims and survivors established to cultivate an interest and supply the resources for further research into the Holocaust by museum guests. The first three rooms are now used for temporary exhibitions. The resource center, in condensed form, currently occupies the fourth and final room, however, the database is accessible online for home-based research free of cost. See “Holocaust Survivors and Victims Database,” United States Holocaust Memorial Museum, accessed March 12, 2017, <https://www.ushmm.org/remember/the-holocaust-survivors-and-victims-resource-center/holocaust-survivors-and-victims-database>

<sup>447</sup> This online-history platform was created by media design company Second Story from Portland, Oregon. The Holocaust Museum and Second Story were presented with a museum design award for its use of flash technology in the design and programming of the consoles in 2006.

Tribunal against Ernst Kaltenbrunner, occupies the space behind the display cabinet.<sup>448</sup> On the west wall of the small square exhibition space visitors can also view original film footage of the IMT and NMT trials, as well as footage submitted to these tribunals as evidence. A three-dimensional elevated map of Courtroom 600 that depicts the placement of various trial actors, as well as the original IBM headphones worn by the defendants, occupy the entire north wall. Slicing the room in half is a six by ten-foot photo of the Palace of Justice's entrance, which is flanked by US, UK, French, and Soviet flags. The presentation of law's materials, as well as evidence tendered to the Tribunal, are brought together by curators to explain the IMT's role in re-interpreting the past—a point I will return to shortly.

While the perspective of the US Military and political figures are presented thought-out, the Museum's narrative is symbolically affirmed as a distinctly *American* story at the end of the exhibition with the presentation of the Presidential Seal stationed spatially at the gallery's exit. The placement of the Seal suggests the triumph of democracy over fascism and tyranny, that America's liberal-democratic order is the defender of freedom and dignity for all. Similarly, the spatial placement of "What is Justice?" affirms the US military's role in the post-war prosecution of Nazi officers. However, it also operates as, in the words of museum studies scholar Andrea Fraser, a "pallet cleanser" of sorts. Turning to the Guggenheim Bilbao as the site of analysis, Fraser outlines how museum architecture can provide respite from the disturbing effects of exhibition content:

[a]rt remains a challenge to be met, a bitter pill after which one needs to "refresh the spirit" with draught of soaring space. The architecture recognizes this. The architecture knows. The architecture understands. It

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<sup>448</sup> Photo Identification: 61335, Collections of United States Holocaust Memorial Museum, accessed January 9, 2017, <https://collections.ushmm.org/search/catalog/pa7366>

not only sees (and speaks) but also listens to visitors. And in the wisdom of its understanding it works not to reinforce art's impositions but to provide a respite from art's disturbing effects. Like in a dentist's chair, we're given a shot of Novocain before a root canal. *Now, you just relax. I'll try to spare you pain. But the operation must be performed* [emphasis hers].<sup>449</sup>

I extend Frasers reflection on the contrived, soothing relationship between art and architecture to the Holocaust Museum as the spatial organization of narrative can also have reassuring, and consoling effects. After consuming the horrific stories presented through-out the three-hour-long permanent exhibition, its museological epilogue, "What is Justice?", gives visitors a sense of hope that perpetrators of mass atrocity did not and will not go unpunished.

The Museum's keen interest in preserving authentic artefacts works towards affirming its exhibition-based narratives. Indeed, its commitment to collecting and preserving evidence of the Holocaust dates back to its legislative founding. Whether displayed in the Holocaust Museum's permanent or temporary exhibitions, the institution's commitment to displaying authentic materials persists.<sup>450</sup> According to the Museum's website, its collection is comprised of

[m]aterials [...] donated by individuals who directly experienced the Holocaust or by their families, or have been acquired from domestic and international institutions. Museum staff collect, preserve, and make available to the public this collection of records of the Holocaust and

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<sup>449</sup> Andrea Fraser, "Isn't This a Wonderful Place?" in *Museum Frictions: Public Culture/Global Transformations*, eds. Ivan Karp, Corrine A Kratz, Lynn Szawaja and Thomas Ybarra-Frauso (Durham: Duke University Press, 2006), 141.

<sup>450</sup> See Samuel J. Alberti, "Objects and the Museum," *Isis* 96, no. 4 (2005): 559-571; Tim Barringer, "The South Kensington Museum and the Colonial Project," in *Colonialism and the Object*, eds. Tim Barringer and Tom Flynn (London: Routledge, 1998), 11-27; Sharon Macdonald, "Collecting Practices," in *A Companion to Museum Studies*, ed. Sharon Macdonald (Oxford: Blackwell, 2006): 81-97; James Clifford, "On Collecting Art and Culture," in *The Predicament of Culture: Twentieth-Century Ethnography, Literature, and Art* (Cambridge: Harvard University Press, 1988), 215-250; Susan M. Pearce, *Interpreting Objects and Collections* (London: Routledge, 1994); Graeme Were and J.C. H. King eds., *Extreme Collecting: Challenging Practices for Twenty-First Century Museums* (Oxford: Berghahn, 2012).

support the Museum's wide-ranging efforts in the areas of research, exhibition, publication, education, and commemoration.<sup>451</sup>

The institutions dedication to such material was reaffirmed in their 2005 report entitled *A Strategic Plan for the Second Decade*. The Report directs its collectors to "aggressively rescue the evidence" of the Holocaust in order to effectively "protect and strengthen the core of the living memory" of Nazi atrocities.<sup>452</sup> The theme of authentic evidence emerged in an interview with one museum collector:

[i]t is easy for someone to walk in and say "well you have nothing but reproductions in your exhibitions, so, if you don't have any original evidence of the Holocaust, then how can you prove that the Holocaust happened?" I know it is a huge leap to total denial, but that is one of the reasons why we collect original material. When people are like "Can I just send you the copies?" we are like "No because we can't really put the copies on exhibit."<sup>453</sup>

The curator suggests artefacts play a double role in their installations: they are didactic historical artefacts, and the material means to combat Holocaust denial. To display artefactual reproductions might advance the Museum's mandate to educate the public about Nazi atrocities, however, it would undercut the grounds upon which they battle neo-Nazi and white supremacist interpretations of the past.

Yet a tension in the Museum's mandate emerges as the institution negotiates their commitment to documenting and authenticating the past whilst engaging in contemporary anti-genocidal programming in the present. I read these two competing notions of history

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<sup>451</sup> "Scope and Nature of the Museum's Collections," United States Holocaust Memorial Museum, accessed March 20, 2017, <https://www.ushmm.org/collections/the-museums-collections/about/scope-and-nature-of-the-collections>

<sup>452</sup> "Mission Statement," United States Holocaust Memorial Museum, accessed January 9, 2017, <https://www.ushmm.org/information/about-the-museum/mission-and-history>; *A Strategic Plan for a Second Decade*, USHMM, (Washington DC, USHMM, 2003), 4.

<sup>453</sup> Interview with Holocaust Museum staff, December 2015, Washington DC.

through Benjamin's allegorical evocation of Paul Klee's painting "Angelus Novus." In his ninth thesis, "On the Concept of History," Benjamin writes:

[t]here is a picture by Klee called Angelus Novus. It shows an angel about to move away from something he stares at. His eyes are wide, his mouth is open, his wings are spread. This is how the angel of history must look. His face is turned toward the past. Where a chain of events appears before *us*, *he* sees one single catastrophe, which keeps piling wreckage upon wreckage and hurls it at his feet. The angel would like to stay, awaken the dead, and make whole what has been smashed. But a storm is blowing from paradise and has got caught in his wings; it is so strong that the angel can no longer close them. This storm drives him irresistibly into the future, to which his back is turned, while the pile of debris before him grows toward the sky. What we call progress is *this* storm.<sup>454</sup>

Like "Angelus Novus," the Museum's mandate and practice is both forward and backward looking. The Museum's Committee on Conscious and the Simon-Skjodt Center for the Prevention of Genocide endeavor to change a projected course of history through political, legal, and military interventions aimed to curtail the escalation of wide-spread human rights abuses. As such, they are future facing, and thus, view history as a teleological sequence of progressive moments. Yet the Museum's Exhibitions Department, along with the Jack, Joseph, and Morton Mandel Center for Advanced Holocaust Studies, are firmly focused on the preservation and fixing of the past to the point of calcification.

This tension is illuminated in two temporary installations, "From Memory to Action" and "What is Justice?". The 1979 President's Commission on the Holocaust recommended the establishment of a Committee on Consciousness that would operate in tandem with the Museum's historical documentation, exhibition, and education focus. According to the Report:

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<sup>454</sup> Benjamin, "Concept of History," 392.

The Commission recommends that a Committee on Conscience composed of distinguished moral leaders in America to be appointed. This Committee would receive reports of genocide (actual or potential) anywhere in the world. In the event of an outbreak, it would have access to the President, the Congress, and the public in order to alert the national conscience, influence policy makers, and stimulate worldwide action to bring such acts to a halt.<sup>455</sup>

The authority of the Committee on Conscience flows from its standing under the United States Holocaust Memorial Council, however, the operationalization of its mandate is executed by the Museum's Simon-Skjodt Center for the Prevention of Genocide. The Center endeavors to achieve the Committee on Conscience's mandate by: building a global network of activist and non-government organizations that will work together and pressure global policy makers to take-up genocide prevention measures; developing risk indicators and assessments that would avert genocide by tracking early warning signs; investing in research projects centered on understanding the causes of genocide, and; spreading information about contemporary cases of genocide through museum programming and exhibitions.<sup>456</sup>

In an effort to establish the Museum's so-called "constituency of conscience," the Committee on Conscience directed the development of the interactive exhibition "From Memory to Action Meeting the Challenge of Genocide," which opened in April 2009. The interactive installation opens with "when we say "never again," what do we mean?" — a quote from Holocaust survivor and Chairman of the President's Commission on the Holocaust, Elie Wiesel. Following this provocation, visitors are confronted with three case

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<sup>455</sup> President Commission on the Holocaust, "Report to the President," September 27, 1979, 13.

<sup>456</sup> "Simon-Skjodt Center for the Prevention of Genocide," United States Holocaust Memorial Museum, accessed August 27, 2017, <https://www.ushmm.org/confront-genocide/about>

studies: Rwanda, Srebrenica in Bosnia-Herzegovina, and Darfur, Sudan — along with a “tool kit” which inform visitors of the array of possible responses an individual or state could pursue in each situation. For instance, under the title “There is more than one way to respond,” visitors are told that they can alarm the international community of human crises, while states can deliver humanitarian aid, engage in military intervention, or establish international criminal tribunals. Finally, visitors are invited to complete a pledge card entitled “TAKE ACTION!” and answer the following question: “What will you do to help meet the challenge of Genocide today?” By presenting “From Memory to Action” immediately after the permanent exhibition, visitors are encouraged to activate the past and view themselves as moral agents agitating for contemporary political, and social change in the face of mass injustice.



**Figure 2.0:** TAKE ACTION! pledge card display in United States Holocaust Memorial Museum exhibition “From Memory to Action.” Photo Credit: United States Holocaust Memorial Museum

“From Memory to Action” is future facing, and committed to progressive notions of history as expressed through their championed slogan “never again.” The presentation of photographs of individuals mauled by machete cuts, and detailed descriptions of other forms of violence experienced by civilians in Rwanda, Bosnia, and Sudan, affectively drives visitors to engage the installation’s interactive faculties and “take action” by agitating for the implementation of one of the state-based mechanisms on offer. In doing so, visitors are told that they too can participate in changing the course of history for those who are at risk of experiencing genocidal acts or egregious human-rights violations. The pledge cards operate as a record of their ostensible commitments.

While also concerned with post-war state responses to mass violence, “What is Justice?” is backwards looking. Operating with attention to the Museum’s mission to document an authentic history of the Holocaust, this installation presents a static view of the past as articulated by the truth claims posited at the IMT and subsequent trials. As such, these curious installations, curated decades after the establishment of the permanent exhibition, in a way, extends it and illuminates the backwards *and* future facing orientation of the Museum.

Despite the competing objectives that underpin both installations, they are both spatially situated after the permanent exhibition, and thus, participate in the construction of the Museum’s permanent exhibition. While the objectives that underpin both are rendered distinct by the museum *via-a-vis* its mandate, they both emerge as extensions of the narrative distilled in the permanent exhibition as they both offer an ending that brings violence to a close through political or legal intervention. In “From Memory to Action”

visitors are asked to heed Wiesel's call of "never again" by responsabilizing themselves as moral subjects who will lobby their governments and state representatives to take appropriate action to stifle the escalation of wide-spread violence. As such, visitors are encouraged to imagine which legal or political instruments will bring violence to a close and inaugurate political transformation abroad. "What is Justice?" can also be read as an extended final chapter to the narrative presented in the permanent exhibition. It answers the question of "what next?" after the surrender of the German Army by showing how international legal orders intervened and "set the record straight" on the violent history of the Nazi Party for decades to come. As such, the spatial placement of both exhibits participates in the construction of a linear and seamless narrative— they serve as the moral ending of a broader story of human catastrophe.

In the following section, I show how museum curators treat the IMT's archive in "What is Justice?" as a settled, definitive accounting of Nazi violence. Their turn to documents collected as evidence by Allied prosecutors and written affidavits as the basis for historical truth could be read as a museological fulfillment of IMT prosecutor Robert Jackson's strategy to "establish incredible events by credible evidence."<sup>457</sup> Curators treat the IMT archive as a memorial site—it orients law's treatment of past violence as stable and enduring.

## Law's Archive at the Museum

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<sup>457</sup> IMT, *Vol. 2*, 98-99.

In “What is Justice?” and “The Killers,” the Holocaust Museum’s curators entrust the trial medium to interpret and produce an authoritative record of historical violence. These installations frame mass atrocity trials as critical sites that affirm collective memory. The exhibition represents the adversarial nature of trial proceedings as that which appropriately tests various historical interpretations of the past to establish a legitimate and final historical record of Nazi violence. Allowing the figure of the perpetrator of violence to fade into the background, both installations place a premium on the IMT prosecution team’s collection and presentation of evidence of atrocity. First, museum curators render the trial medium as a ritualistic site that “authenticates” historical facts and therefore exalt the evidence submitted to the IMT as a privileged resource to reconstruct history. Second, “What is Justice?” represents the IMT as not only a reservoir of historical facts, but also as a public event that labored towards establishing a collective memory of Nazi violence by cultivating opportunities for the public and media to be “witnesses to history.” Lastly, curators re-affirm the post-WWII trials as sites to produce a historical record in “The Killers” by re-capitulating trial evidence as the basis for general historical fact.

### *Representing the trial-as-historian*

The Museum’s collection renders criminal evidence as especially important artefacts. Online programming exalts evidence tendered at the IMT as particularly powerful for combating Holocaust denial due to its ostensible incontestability. According to the Museum’s website,

[t]he American prosecutors at Nuremberg decided the best evidence against Nazi war criminals was the record left by the Nazi German state itself... Allied armies captured millions of documents during the conquest of Germany in 1945. Allied prosecutors submitted some three-thousand tons of records at the Nuremberg trial... the documents, photographs, film, and perpetrator and survivor testimony at postwar trials provided an inescapable and undeniable documentation of the Holocaust.<sup>458</sup>

Here, the museum frames IMT exhibits as immune to interpretative contestation, figuring IMT evidence as more authentic than material artefacts that did not withstand legal scrutiny and translation. According to one curator, the proof of crimes presented at the IMT is the foundation upon which a history of the Holocaust was created:

I really wanted to challenge the idea that trials, especially a trial like Nuremberg or the events that it was reviewing, could actually provide any closure... nothing could bring closure for something as cataclysmic as World War II. I really wanted to make people see that justice was not served, and that justice couldn't be served, but that maybe there were other purposes for it, for trials in general. Because what could you really do that could absolve.... nothing... the bulk of what we know about the Holocaust, the crimes and atrocities, came out of the trials because of the evidence they gathered to present. And I never put two and two together... We need to tell people that this history came from the trial.<sup>459</sup>

The curator affirms the IMT's account of the past as undeniable, and enduring. As such, IMT evidence is groomed by the museum to attend to the double bottom line of teaching history and refuting the denial of Nazi atrocities.

This view is underpinned by a logic that posits the trial medium as a ritualistic site that authenticates evidentiary truth claims. Socio-legal anthropologists and media studies scholars have turned away from content analysis of the document to show how law's materiality — the report, the affidavit, the meeting minutes, the film — function as

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<sup>458</sup> "Combating Holocaust Denial: Evidence of the Holocaust Presented at Nuremberg," United States Holocaust Memorial Museum, accessed March 13, 2017, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10007271>

<sup>459</sup> Interview with Holocaust Museum staff, December 2015, Washington DC.

transmitters and administrators of the law and its ostensible truth claims.<sup>460</sup> Cornelia Vismann argues that files are “the basis of legal work,” and that “[t]heir validity resides in their truth value and their everyday operations.”<sup>461</sup> The document is law’s recording device—it believes and refers only to what it has written down or accepted as evidence.<sup>462</sup> In criminal law, the validity of a document is decided in the courthouse, and it is there where the force of the document’s projected claim to truth comes alive. There, truth is brokered through the document once subjected to law’s standards of procedure and laws of evidence. When the document arrives at this juncture, Vismann notes:

[h]ere the regime of literalness arises with the question of truth: is what was written down an accurate recording of what was said? Does what is stored correspond to what took place? Is it complete? It becomes necessary to establish criteria for the reliability of written records and to furnish means to authenticate them.<sup>463</sup>

Rules of evidence, even relaxed renditions as was the case at the IMT trial, govern the organization of documents tendered to the court to ensure their relevancy to the

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<sup>460</sup> The study of documents from the perspective of actor-network theory (ANT) emphasizes the ways in which documents are used and translated into different knowledge networks, and the means why which those documents are circulated. The concept of “translation” in ANT seeks to account for how actors transform information so that it complies with a network’s frame of reference. According to Michel Callon and John Law, translation is a process where “different claims, substances or processes are equated with one another: where, in other words, what is in fact unlike is treated as if it were identical.” Michel Callon and John Law, “On Interests and their Transformation: Enrolment and Counter-enrolment,” *Social Studies of Science* 12, no. 4 (1982): 619. Bruno Latour notes that translation occurs when one actor shapes their interest to reflect the interests of another actor, “at once offering new interpretations of these interests and channeling people in different directions.” Bruno Latour, *Science in Action* (Cambridge: Harvard University Press, 1987), 117. What is key here, is that translation is a process comprised of different moments, or movements. For a general overview of ANT, see Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network Theory* (Oxford: Oxford University Press, 2005). For an ANT treatment of administrative law, see Bruno Latour, *The Making of Law: An Ethnography of the Conseil D’Etat* (Cambridge: Polity Press, 2010). Note that Latourian renditions of ANT argue that the distinction between humans and objects is a falsehood and a product of modernity, and that objects in fact have an agency that shapes the world within which we live. See Bruno Latour, *We Have Never Been Modern* (Cambridge: Harvard University Press, 1993).

<sup>461</sup> Vismann, *Files*, 11.

<sup>462</sup> Vismann, *Files*, 56-57.

<sup>463</sup> Vismann, *Files*, 52.

prosecution's case, and to ensure that criminal artefacts are sufficiently connected to the defendant's alleged acts. The document is the site where criminal law attempts to create a totalizing, singular reality and reflection of the past.<sup>464</sup>

The Holocaust Museum embraces the singular reality reflected in the IMT's materials—a reality they subsequently represent in the “What is Justice?” exhibition. First, it was unequivocally stated in the transcript of the media consoles:

[t]he goals of the International Military Tribunal transcended verdict and punishment. The creators of the court were deliberately assembling a public record of the crimes committed by Germans during World War II, including those of the Holocaust. In order to avoid any accusation of reliance on biased personal testimony, prosecutors decided to base their case primarily on documents written by the Germans themselves. Nineteen investigative teams scoured rooms full of records, interviewed hundreds of witnesses, and visited the sites of atrocities to build the case. Evidence presented at the International Military Tribunal and subsequent Nuremberg trials laid the foundation for much of what we know about the Holocaust, including details of the Auschwitz death machinery, the destruction of the Warsaw ghetto, and the original estimate of 6 million murdered Jews. Through these trials the world was made witness to evidence of the massive crime we now call the Holocaust.<sup>465</sup>

This text devalues oral narration as an instrument to document Holocaust experiences, and rationalizes the prosecution's preference for text-based documentary evidence. Further, the text fulfills the curator's intention of teaching museum visitors that the truth about the Holocaust, first and foremost, came from the IMT.

The relationship between the trials, evidence, and historical truth is tied together elsewhere in the exhibition. Photographs of “behind the scenes at the IMT” depict the back corridors of the Palace of Justice overwhelmed with documentary evidence. One of the

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<sup>464</sup> Vismann, *Files*, 57.

<sup>465</sup> “The Nuremberg Trials: What is Justice?” United States Holocaust Memorial Museum, Washington DC, USA.

most prominently displayed images is of US Army staffers organizing stacks of German documents collected throughout allied investigations in November 20, 1945.<sup>466</sup> Occupying the entire wall behind the media stations is a photo of the Tribunal's mimeograph room in 1948. The space, occupied by secretaries to the NMT who are shown knee deep in thousands of papers, suggests the copious number of documents mobilized as evidence in support of the prosecution's case.<sup>467</sup>

The exaltation of specific evidentiary exhibits presented to the IMT as uncontested proof of past events also shapes the museological stagecraft of "What is Justice?". Referring to one of the photos embedded in the media consoles, one curator explains,

... the most important part is how do we know what we know about the Holocaust. And one of the period images shows the number six million. And I was very interested because the number six million emerged publicly at Nuremberg, and now it is such a touchstone for how we talk about the Holocaust... Having this historical record [is important].<sup>468</sup>

In this statement, the curator is referring to IMT document 2738-PS exhibit USA-296 — an affidavit from Adolf Eichmann, Chief of the Gestapo (Jewish Section) and Dr. Wilhelm Hoettl, Deputy Group Leader of the Foreign Section of the Security Police Amt IV, which was presented to the Tribunal by US Prosecutor Robert Jackson on July 24, 1946. Curators do not contextualize how the figure of six million was mobilized in connection to the legal

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<sup>466</sup> Photo Identification: 03549, Collections of the United States Holocaust Museum, accessed January 10, 2017, <http://digitalassets.ushmm.org/photoarchives/detail.aspx?id=1069544&search=03549&index=1>

<sup>467</sup> "View of the mimeograph room in the Palace of Justice," United States Holocaust Memorial Museum, accessed March 12, 2017, [https://www.ushmm.org/wlc/en/media\\_ph.php?ModuleId=0&MediaId=5637](https://www.ushmm.org/wlc/en/media_ph.php?ModuleId=0&MediaId=5637)

<sup>468</sup> Interview with Holocaust Museum staff, December 2015, Washington DC.

argument advanced by the prosecutor. Instead, curators mobilize the figure of six million as authentic evidence of the particular persecution of Jews by Nazi officials.<sup>469</sup>

The ritual of authenticating historical artifacts further emerges in the Museum's presentation of US Signal Corps photographer Ray D'Addario's photo of Courtroom 600 at the Palace of Justice on January 2, 1946. The image shows the IMT, mid-session, during UK Prosecutor Lieutenant Commander Whitney Harris's presentation of exhibit USA-493, and examination of witness and SS Officer, Otto Ohlendorf. The IMT exhibit portrays an organization chart entitled "The Position of Kaltenbrunner and the Gestapo and SD in the German Police System," presented by Prosecutor Harris to prove that Ernst Kaltenbrunner, Chief of the Security Police and SD, occupied a senior command position which oversaw the Gestapo, Kripo and the SD, RSHA, as well as the Reich Ministry of the Interior. By relying on Ohlendorf's testimony that the rationality depicted in the organization chart correctly placed the defendant in a position that controlled such nefarious organizations, Prosecutor Harris aimed to prove that Kaltenbrunner was responsible for the murder and mistreatment of civilians committed by Einstazgruppen A, B, D, and G. The enlarged and prominently displayed photograph of the trial scene entices visitors to witness the IMT's authentication of evidence. It depicts the trial actors involved in the authenticating

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<sup>469</sup> The figure of 6 million has been complicated by historians of the Holocaust. Lucy Dawidowicz's calculates that 5,933,900 European Jews died due to Nazi persecution, while Raul Hilberg suggests that 5.1 million is more accurate. Wolfgang Benz estimates that anywhere between 5.3 to 6.2 million Jews died. See Lucy Dawidowicz, *The War Against the Jews: 1933-1945* (New York: Holt, Rinehart and Winston, 1986), 402-404; Raul Hilberg, *The Destruction of the European Jews: Third Edition* (New Haven: Yale University Press, 2003), 1301-1322; Wolfgang Benz, *Dimension des Völkermords: Die Zahl der Jüdischen Opfer des Nationalsozialismus* (Munich: Deutscher Taschenbuch Verlag, 1991).

process—Prosecutor Harris, witness Ohlendorf, IMT judges—who are keenly focused on the organization chart that serves as the central subject of the image.<sup>470</sup>



**Figure 2.1:** The presentation of evidence about Ernst Kaltenbrunner at the International Military Tribunal trial of war criminals at Nuremberg. Photo Credit: United States Holocaust Memorial Museum, courtesy of National Archives and Records Administration, College Park

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<sup>470</sup> Transcripts of Ohlendorf’s pre-IMT testimony to both British and American military intelligence agents in 1945 states that *Einsatzgruppen* units received orders to enact the “Final Solution” and specifically target Soviet Jews from Hitler before the units were deployed to the east on June 22, 1941. Discrepancies in his testimony and lack of documentary evidence suggests that Ohlendorf lied about the timing of the genocidal directive in order to escape the death penalty. As such, Hilary Earl argues that Ohlendorf’s testimony obfuscated the historical record, especially accounts that seek to determine the annihilation of Soviet Jews in the summer of 1941. Hilary Earl, *The Nuremberg SS-Einsatzgruppen Trial, 1945-1958: Atrocity, Law, and History* (Cambridge: Cambridge University Press, 2009), 180-185. Patrick Desbois’s research illuminates how non-Jewish villagers in Ukraine were enlisted—“requisitioned”—by the *Einsatzgruppen* to participate in the implementation of mass executions. As such, he makes the argument that the killing units operated with considerable autonomy and were afforded administrative discretion over how the mandate to murder Jews was operationalize, challenging Prosecutor Harris’s position that Kaltenbrunner held direct command and control of the mobile units. Patrick Desbois, *The Holocaust by Bullets: A Priest’s Journey to Uncover the Truth behind the Murder of 1.5 Million Jews* (New York: Palgrave Macmillian, 2008), 67, 81-98.

Holocaust Museum curators also retooled a documentary film screened at the IMT for museological purposes. Document 2430-PS, exhibit USA-79, *Nazi Concentration Camp*, is a forty-eight-minute-long documentary narrated by allied military photographers. The footage, which was originally commissioned by the US Army Office of Strategic Affairs in 1945, depicts scenes from various liberated labor camps in western Europe. It was introduced to the Tribunal by US Prosecutor Dodd on November 29, 1945 as evidence that the camp system was used by the Nazi government to retain power, ameliorate opposition, and curtail freedom as part of their broader conspiracy to wage an aggressive war.<sup>471</sup> In the trial, the film was controversially rendered self-authenticating and elevated as a “privileged witness who could swear the truth of its own images.”<sup>472</sup> The judicial standards that would typically require prosecutors to link the content depicted in the film to one or more of the defendants were overlooked by the presumed greater cause of making visible WWII’s human catastrophe.<sup>473</sup>

An edited version of *Nazi Concentration Camp* is displayed in “What is Justice?” in a manner that fashions the trial as a space generative of historical accounts. The film, which occupies one corner of the gallery, opens with a reading of the IMT indictments, followed by the first paragraph of US Prosecutor Robert Jackson’s opening statement which outlines Robert Jackson’s strategy to “establish incredible events by credible evidence.”<sup>474</sup> It then cuts to Prosecutor Dodd’s introduction of Document 2430-PS, exhibit USA-79, *Nazi*

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<sup>471</sup> IMT, Vol. 1, 431-432.

<sup>472</sup> Lawrence Douglas, “Film as Witness: The Evidence of Nazi Concentration Camps before the Nuremberg Tribunal,” *Yale Law Journal* 105, no. 2 (1995): 449-481.

<sup>473</sup> See Douglas, “Film and Witness,” 449-481.

<sup>474</sup> IMT, Vol. 2, 98-99. This quote was foreshadowed in the introduction of this section.

*Concentration Camp*, and various scenes from the Nordhausen, Mauthausen, and Buchenwald concentration camps. The film then transitions to US Prosecutor Colonel Robert Storey's explanation of how the US military captured, assembled, processed and authenticated documents that the prosecution team is presenting to the tribunal:

As the United States Army advanced into German territory, there were attached to each Army and subordinate organization specialized military personnel whose duties were to capture and preserve enemy information in the form of documents, records, reports and other files. The Germans kept accurate and voluminous records. They were found in Army headquarters, government buildings and elsewhere.<sup>475</sup>

The short film concludes with a series of clips of US prosecutor examinations of defendants. In centering Prosecutor Dodd's presentation of *Nazi Concentration Camp* and its content, while also illuminating the systematic organization of trial evidence, curators attempt to affirm the Tribunal as an authenticating apparatus predominantly concerned with reconstructing a history of violence.

By figuring IMT evidence into the exhibition as historical truth, curators tell museum guests that that are bearing witness to history. In doing so, they invite visitors to see evidence as the basis for historical truth, and to accept law's singular vision of the past. In their description of the installation's conceptual development during an interview, one curator explains:

[t]he idea that the world was taking notice and recognizing that crimes had been committed [...] So few perpetrators were ever tried, and the ones who were tried, their sentences were generally commuted or dismissed. It is a travesty. The only way I could personally look at it without becoming very angry was to look at it in terms of what it did for public knowledge, the record and for an understanding of the events in question.<sup>476</sup>

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<sup>475</sup> IMT, Vol. 2, 156-157.

<sup>476</sup> Interview with Holocaust Museum staff, December 2015, Washington DC.

Curators seek to represent the media's and general public's attendance at the IMT in order to cement a connection between the creation of a historical record through the trial medium and the establishment of a collective memory of Nazi violence. To this end, several artifacts are tooled to represent the figure of the journalist and members of the public as "witnesses to history."

The IBM's simultaneous translation headsets, which were donated to the Holocaust Museum in 1996 by IBM and worn by the defendants themselves, were also mobilized in "What is Justice?" to demonstrate the public nature of the proceedings.<sup>477</sup> According to one curator, "the simultaneous translation headphones, as much as they are just a cool object, were also about how information was transmitted to the people... there were a lot of translators."<sup>478</sup> Here, the presentation of twelve IBM simultaneous translation headsets were programmed to bolster a narrative about the Tribunal's diligent effort to ensure the trial proceedings were multi-lingual, and signal the idea that the history rendered in trial was broadly disseminated in the public sphere. In doing so, the installation renders the technology as a tool for the manifestation and advanced of a collective memory of Nazi violence.

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<sup>477</sup> Holocaust Museum began negotiations with IBM over the donation of the defendant's headphones in 2005, the same year that the museum was to host a book signing for Edwin Black's new publication *IBM and the Holocaust: The Strategic Alliance between Nazi Germany and America's most Powerful Corporation*. Interestingly, the agreement to carry the book and host Black fell through after the donation was complete. Interview with Holocaust Museum staff, December 2015, Washington DC. It is also worth mentioning that the museum does not indict IBM for their complicity in Nazi war crimes. Ironically, see Edwin Black, *IBM and the Holocaust: The Strategic Alliance Between Nazi Germany and America's most Powerful Corporation* (New York: Crown Publishers, 2001).

<sup>478</sup> Interview with Holocaust Museum staff, December 2015, Washington DC.

Holocaust Museum guests are also figured as “witnesses to history” by visiting the “What is Justice?” installation, reinforcing that to witness trial proceedings is to witness historical truth. One way in which curators invite visitors to take-up this subjective position is through experiential learning techniques that involve visitor interaction with material objects. Here, material culture is used by curators as a tool that animates, contextualizes an exhibition’s narrative for their guests.<sup>479</sup> Moving away from traditional didactic approaches to convey content to passive guests, champions of experiential or discovery learning underwrite

[...] the idea that learning is an active process, that learners undergo changes as they learn, that they interact with the material to be learned more fundamentally than only absorbing it, that they somehow change the way their mind works as they learn.<sup>480</sup>

Curators use experiential learning techniques in “What is Justice?” as a means to orient their visitors in the time of the IMT trial. For instance, an IMT “visitor pass” — complete with seat number, trial session, and date — can be collected by museum guests before entering the exhibit.<sup>481</sup> Just as members of the public were afforded a pass to “witness the history of Nazi crimes” at the IMT, the Holocaust Museum distributes passes for its visitors to “witness the history of Holocaust” through IMT evidence.

Curator’s affirm the trial-as-historian through a variety of visuals in “The Killers.” For instance, trial footage featured on the four monitors focuses on the presentation of

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<sup>479</sup> See Andrew Barry, “On Interactivity: Consumers, Citizens and Culture,” in *The Politics of Display: Museums, Science, Culture*, ed. Sharon Macdonald (London: Routledge, 1998), 85-102; Andrea Witcomb, “Interactivity: Thinking Beyond,” in *A Companion to Museum Studies*, ed. Sharon Macdonald (Malden: Blackwell Publishing, 2006), 353-361.

<sup>480</sup> George E. Hein, *Learning in the Museum* (London: Routledge, 1998), 30.

<sup>481</sup> “The Nuremberg Trials: What is Justice?” United States Holocaust Memorial Museum (pamphlet).

criminal artifacts. Further, US prosecutor Thomas Dodd is shown describing an account of the Mauthausen concentration camp, which is documented by Judge Advocate General of the US Third Army. Dodd's account transitions to a later trial session where evidence of war crimes is proved through the exhibit of a human head shrunken, stuffed and preserved at Buchenwald concentration camp. Later, British Prosecutor Sir Hartley Shawcross is shown reciting an affidavit produced by an eyewitness to SS executions performed in Ukraine:

Men women and children of all ages had to undress upon the orders of an SS man who carried a riding crop or dog whip... At that moment the SS man at the pit shouted something to his comrade. The latter counted off about 20 persons and instructed them to go behind the earth mound... I walked around the mound and found myself confronted by a tremendous grave. People were closely wedged together and lying on top of each other so that only their heads were visible. Nearly all had blood running over their shoulder from their heads.<sup>482</sup>

Several other depictions of evidence of war crimes and crimes against humanity are patched into the reel. A frieze comprised of photographs depicting atrocities is staged above the trial monitors, such as an SS soldier with German troops kicking a man to death during the "cleansing" of Macva region of Serbia in September 1941; executions by the firing squad of fifty-one residents from Bochia, Romania on December 18, 1939; Himmler visiting a Soviet POW camp in 1945; German soldiers taunting a woman who they have stripped naked; and Einsatzgruppen soldiers with a collection of dead bodies.<sup>483</sup>

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<sup>482</sup> Accession no. 1998-038.4 Box 1. Series Title: Exhibitions Department segment briefs relating to the Permanent Exhibition 1989 -1990, File 2.08 The Killers Monitors Trials Shot List.

<sup>483</sup> The frieze also includes the following photos: German guard kicking individuals onto a deportation truck in Krakow, Poland; SS General Juergen Stroop in the Warsaw Ghetto with a family that was discovered hiding in a cellar on May 8, 1943; Professor August Hirt working on a corps at Strasbourg University Institute of Anatomy for the purpose of building a collection of skulls for research in 1943; a mass shooting of individuals into a pit in Poland; 364 Jewish individuals enroute to their execution by firing squad which was carried out by the Fourth Police Battalion in Ostrow Mazowiecki, Poland in 1939; Jews murdered by firing squad in

In this section I set out to establish that the Holocaust Museum figures post-WWII trials as reservoirs of historical knowledge about Nazi violence. I argue that the Museum renders the trial medium as a ritualistic site that “authenticates” historical facts, which later serve as the historical basis for much of the Museum’s “What is Justice?” installation. Second, “What is Justice?” represents the IMT as not only a reservoir of historical facts, but also as a public event that labored towards establishing a collective memory of Nazi violence. As such, the exhibition represents the Tribunal as a site where the public and media could “witness history.” Lastly, “The Killers” represents the trial medium as a legitimate arbiter and authenticator of history. Yet by relegating Nazi violence to the past as opposed to something that continues in the present, the Museum reiterates transitional Justice theory’s rhetoric of ends which configures the past as something that can be broken with, and overcome.

### *Against law’s history*

Critical legal theorists critique trial-as-historian postulations by showing how criminal law is a knowledge shaping, thus history stifling, apparatus.<sup>484</sup> Costas Douzinas argues that law’s impoverished interpretation of the past is a result of liberal law’s

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Gielniow Poland, 1943; a Yugoslavian man being stomped to death by Austrians circa 1941; the public hanging of Masha Bruskina on October 26, 1941 in Minsk, USSR; Czechoslovakian border guards trimming the bearded of a Jewish man at the Polish-Czech border before deportation in May 1942; USHMM Collection, Photo Identification Numbers: 51647, 73174; 5461; 2019; 34151B; 50076; 72111; 33201; 73457; 73733; 77488B; 80942; 34152.

<sup>484</sup> Mawani, “Law’s Archive,” 337-365; Kirsten Campbell, “The Laws of Memory: The ICTY, The Archive, and Transitional Justice,” *Social & Legal Studies* 22, no. 2 (2012): 247-269; Costas Douzinas, “History Trials: Can Law Decide History?” *Annual Review of Law and Social Science* 8, no. 1 (2012): 273-289; Emiliios Christodoulidis and Scott Veitch, “Reflections on Law and Memory,” in *Law and Collective Memories*, ed. Susanne Karstedt (London: Hart Publishing, 2009), 63-65.

configuration of the legal subject. Law engineers legal personhood—a construction that allows a person to give rise to legal claims in court, the entity who authors an act—as free, autonomous, and rational.<sup>485</sup> Constructing the subject in this way permits a rationality that connects subject, act, and outcome in order to prove intention, which serves as the basis to impute legal responsibility.<sup>486</sup> Liberal law imagines its subject as morally accountable for its choices and thus as someone who acts freely with an awareness of the ostensible consequences of their decisions.<sup>487</sup> To defend its construction of legal personhood and ascribe responsibility, liberal law “disregards... motives as well as context of action, unwilled consequences, or the ever present interventions of contingency in order to support claims of free will.”<sup>488</sup>

Configuring legal subjectivity in this way, according to Douzinas, has profound consequences for how criminal law represents the past. Here, the logic of criminal law cannot help but wield an impoverished view of history because it cannot help but concern itself with individual responsibility and reduce culpability to a symbolic few, and without parlance to context. As such, criminal law aligns itself with “intentionalist” arguments wielded by German historians, like Doris Bergen, Saul Friedländer, Jeffrey Herf, and Lucy Dawidowicz, who focus on documenting the intention of the Nazi Party to alienate the Jews of Europe, and over-determine Adolf Hitler’s acute leadership role in fulfilling the

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<sup>485</sup> Douzinas, “History Trials,” 283. Douzinas argues that the legal personhood is imagined as free and autonomous by liberal legal philosophy whilst the empirical self is subjugated by power’s domination. See Costas Douzinas, *The End of Human Rights: Critical Theory at the Turn of the Century* (Oxford: Hart Publishing, 2000), 229-263.

<sup>486</sup> Douzinas, “History Trials,” 283.

<sup>487</sup> Douzinas, “History Trials,” 283.

<sup>488</sup> Douzinas, “History Trials,” 283.

task.<sup>489</sup> By proving legal culpability by way of intention forecloses the possibility of producing a legal record that takes notice of a broader context where colonial, economic, and structural factors are at play, including the law itself, in perpetuating wide-spread human catastrophe.<sup>490</sup>

Emilios Christodoulidis and Scott Veitch argue that law reconstructs a vision of the past in a manner correlative to the legal framing of the question posed. In the case of criminal law, that would mean fashioning a sequence of events that determines individual culpability.<sup>491</sup> The question orients the trajectory of law's interrogation of facts, constituting the past while simultaneously concealing it, revealing a slice of history while foreclosing on other potential historical narratives. This logic, they argue, is the effect of criminal law's fidelity to its own epistemological system:

[...] that which is to be accounted for in law demands not the truth of the event but the truth of its accounting — not “what really happened?” but rather “is this believable?”; not “are these facts verifiable?” but rather “were these acts as remembered associated with a political objective?”

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<sup>489</sup> The intentionalist v. functionalist debate [*Historikerstreit*] dominated German history in the 1980s. The “functionalist/structuralist” school suggests the Holocaust was a product of fragmented administrative processes, uncoordinated security forces, and the contingency of racial persecution—they are more concerned with how extermination happened. For contemporary and classical intentionalist arguments, see Doris Bergen, *War & Genocide: A Concise History of the Holocaust* (Lanham: Rowman & Littlefield, 2009); Saul Friedländer, *The Years of Extermination: Nazi Genocide and the Jews: 1939-1945* (New York: Harper Collins Publishers, 2007); Jeffrey Herf, *The Jewish Enemy: Nazi Propaganda during World War II and the Holocaust* (Cambridge: The Belknap Press of Harvard University Press, 2006); Lucy Dawidowicz, *The War Against the Jews, 1933-1945* (New York: Bantam Books, 1975); Ian Kershaw, *The Nazi Dictatorship: Problems and Perspectives of Interpretation* (London: Edward Arnold, 1985); For foundation work from the functionalist school, see Christopher Browning, *The Origins of the Final Solution: The Evolution of Nazi Jewish Policy, 1939-March 1942* (Lincoln: University of Nebraska Press, 2004); Raul Hilberg, *The Destruction of the European Jews*, 3<sup>rd</sup> edition (New Haven, Yale University Press, 2003); Martin Broszat, *The Hitler State: The Foundation and Development of the Internal Structure of the Third Reich* (New York: Berg Publishing, 1987).

<sup>490</sup> Scott Veitch argues that law is complicit in producing and maintain wide-spread atrocities yet transfers its responsibility onto legal subjects. Law de-responsibilizes systems and people complicit in violence by legitimizing and obfuscating irresponsibility. See Scott Veitch, *Law and Irresponsibility: On the Legitimation of Human Suffering* (London: Routledge-Cavendish, 2007).

<sup>491</sup> Emilios Christodoulidis and Scott Veitch, “Reflections on Law and Memory,” in *Law and Collective Memories*, ed. Susanne Karstedt (London: Hart Publishing, 2009), 63-65.

Full disclosure signifies answers to the latter questions, not a revelation of the truth of the event; the latter remains, from the point of view of legal adjudication, unnecessary.<sup>492</sup>

What is summoned in trial is inscribed into the record at the cost of what might otherwise have been.<sup>493</sup>

Further, criminal law can only take notice of forms of violence already defined in law's vernacular. Underpinning this attitude is a foundational principle in international criminal law: no crime without preexisting law [*nullum crimen nulla poena sine lege*].<sup>494</sup> To table a claim of harm under the law first requires law's recognition of the harm. Because law can only recognize and remedy harms it has codified and prohibited, it cannot and does not grapple with all political, or social wrongs. Speaking to the exclusion of rape as a distinct act of violence in the context of war, Kirsten Campbell explains that

[t]he legal recognition of a crime is itself contingent on the political and social definition of the wrong as a legal wrong... a legal wrong does not exist prior to social or political recognition. Justiciability of the wrong is conditional on its legal recognition.<sup>495</sup>

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<sup>492</sup> Christodoulidis and Veitch, "Law and Memory," 74.

<sup>493</sup> Christodoulidis and Veitch, "Law and Memory," 64. Christodoulidis further argues that political arguments advanced by witness are policed and translated into legal idioms. He turns to the 1975 trial of *Rote Armee Fraktion* (Red Army Faction, or RAF) members by judges of the court ameliorated the political truths advanced by the group's members. Judicial recasting of political narratives into law's vernacular depoliticizes courtroom resistance and forecloses the opportunity for other, politically oriented, narratives to surface within the trial medium. See Emiliios Christodoulidis, "The Objection that Cannot be Heard: Communication and Legitimacy in the Courtroom," in *The Trial on Trial Volume 1: Truth and Due Process*, (eds) Anthony Duff et. Al. (Oxford: Hart Publishing, 2004), 179-202.

<sup>494</sup> For more on this principle as it applies to the Nuremberg trials, see Susan Twist, "Rethinking Retrospective Criminality in the Context of War Crimes Trials," *Liverpool Law Review* 27 (2006): 31-66; Devin O. Pendas, "Retroactive Law and Proactive Justice: Debating Crimes against Humanity in Germany 1945-1950," *Central European History* 43, no. 3 (2010): 428-463.

<sup>495</sup> Kirsten Campbell, "Legal Memories: Sexual Assault, Memory, and International Humanitarian Law," *Signs* 28, no. 1 (2002): 154.

As such, particular experiences of violence remain outside law's order as legal claims must fit into pre-determined categories of violence that stand-in to represent the totality of violent acts adjudicated.

Hannah Arendt is concerned with how the delineation between law and politics collapses when trials are transformed into a platform for the production of historical truth. In her polarizing monograph, *Eichmann in Jerusalem: A Report of the Banality of Evil*, she takes specific aim at how Attorney General Gideon Hausner, with the encouragement of Israeli Prime Minister Ben Gurion, organized his case against Eichmann so that the state may establish a historical record of violence as opposed to his individual culpability.<sup>496</sup> In particular, the state's creation of a legal record of anti-Semitic Nazi violence was geared towards educating a new generation of Israelis about the crimes experienced by their foremothers and forefathers, marshalling an Israeli consciousness that would inform the cultivation of a national identity.<sup>497</sup> In doing so, the trial was subordinated to political and didactic ends and thus obscured who was individually complicit in the production of Nazi violence.<sup>498</sup> And while honoring Carl Jasper's—a friend and mentor—point that the political stakes of Nazi violence explode the limits of law, she nevertheless argues that the criminal trial, while impoverished in the face of mass atrocity, is the only tool we have to pass judgement:

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<sup>496</sup> Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Penguin Books, 2006,) 6.

<sup>497</sup> Arendt, *Eichmann in Jerusalem*, 8-11. See also Leora Bilsky, *Transformative Justice: Israeli Identity on Trial* (Ann Arbor: The University of Michigan Press, 2004).

<sup>498</sup> Arendt, *Eichmann in Jerusalem*, 18.

It seems to me that we have no tools to hand except legal ones with which we have to judge and pass sentence on something that cannot be adequately represented either in legal terms or in political terms.<sup>499</sup>

While she acknowledges the inability of legal justice to right moral and political wrongs, Arendt nevertheless cautions against re-tooling the trial as a site that works towards anything beyond determining individual responsibility and dispensing sanction.

Douzinas, Christodoulidis, Veitch, and Campbell raise important points about how criminal law is a knowledge disciplining apparatus, and thus, a structurally impoverished system for historical investigation and interpretation. Law's construction of legal personhood, its fundamental orientation towards individual culpability, and the formatting of violence into law's categories are understood here to harness law's ability to effectively represent the past. However, my critique of law's interpretation of the past begins with a critique of fixed and determined accounts of history that the apparatus of law cannot help but produce. As such, I turn to the problem of the archive as the projected foundation for law's claims to historical truth.

### **Mythical foundations of the archive**

The archive is produced, interpreted, amended, and destroyed in order to found and preserve a singular interpretation of the past. For Derrida, the notion of the archive is at once a place from which law's authority is derived, and a place of beginnings. It is simultaneously the site of commencement and commandment.<sup>500</sup> He describes the

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<sup>499</sup> Hannah Arendt and Karl Jaspers, *Hannah Arendt and Karl Jaspers: Correspondence 1926-1969*, ed. Lotte Kohler and Hans Saner, trans. Robert Kimber and Rita Kimber (New York: Harcourt Brace, 1992), 417.

<sup>500</sup> Derrida, *Archive Fever*, 1.

multifunction of the archive by tracking its etymology. *Arkhe* in the ontological sense refers to the place of commencement, a place of origin, while the nomological sense of the term means commandment.<sup>501</sup>

Correlative structures of authority police that which enters the archive. These institutions operate as custodians that “gather and order signs which generate a corpus in a system in which all the elements articulate the unified, ideal configuration.”<sup>502</sup> They have archonic power to accumulate, order, discard, and consign materials, to govern what belongs, what is required, what is necessary.<sup>503</sup> They guard the archive and police its access. Such custodians are bestowed with the authority to interpret the archive, and render documents as authentic, or proper.<sup>504</sup>

The consignment and interpretation of archival materials does not take place abstractly; it occurs at a physical site, a location, where the materials dwell. Archives speak from where they are domiciled and memorialized, from an external place.<sup>505</sup> It is the location of self-reference where authenticity is distilled into the material from which its authority hails.<sup>506</sup> Derrida describes human actor’s desperate hunt for authenticity as an “archive fever” [*le mal d’archive*]: “a compulsive, repetitive, and nostalgic desire for the archive, an irrepressible desire to return to the origin, a homesickness, a nostalgia for the

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<sup>501</sup> By “ontological,” Derrida is referring to the physical, and historical location of the archive. By “nomological,” Derrida is referring to the power of the archive, its ability to command. Derrida, *Archive Fever*, 2.

<sup>502</sup> Derrida, *Archive Fever*, 3.

<sup>503</sup> Derrida, *Archive Fever*, 2-3.

<sup>504</sup> Derrida, *Archive Fever*, 2-3, 10.

<sup>505</sup> Derrida, *Archive Fever*, 3-4, 7, 45

<sup>506</sup> Derrida, *Archive Fever*, 19-20.

return to the most archaic place of absolute commencement.”<sup>507</sup> This fever is a response to the threat of memory’s destruction — a repressive “death drive,” in the Freudian sense, that ameliorates memory, and incites amnesia.<sup>508</sup>

The hunt for the original is infinite because events are singular and exist only in the unique instant when the substrate creates a trace. In the postscript, Derrida evokes Wilhem Jensen’s story *Gradiva: A Pompeiian Fancy* (plus the printer and fax machine in other chapters) to illustrate this important point.<sup>509</sup> In the story, an archeologist travels to Pompeii filled with desire for a more authentic impression, a more archaic relief than the one he has of Gradiva’s footstep which was etched into the hardened ground of the ancient city. He dreams of Gradiva coming back to life, literally [*im wörtlichen Sinne*], and living the singular unique moment when her foot pressed into the ground, at the precise hour and exact day she produced the trace of that exact footstep.<sup>510</sup> For Derrida this moment,

is the condition of singularity, the idiom, the secret, testimony. It is the condition for the uniqueness of the printer-printed, of the impression and the imprint, of the pressure and its trace in the unique instant where they are not yet distinguished the one from the other, forming in an instant a single body of Gradiva’s step, of her gait, of her pace, and of the ground that carries them... No longer distinguishing between themselves, this pressure and this imprint differ henceforth from all other impressions, from all other imprints, and from all other archives.<sup>511</sup>

There is no primary basis upon which signs are gathered, to which materials are consigned, through which authority is derived. The impulse to rescue authentic originals is in vain as

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<sup>507</sup> Derrida, *Archive Fever*, 19.

<sup>508</sup> Derrida, *Archive Fever*, 10-11. Derrida borrows Freud’s concept of the death or destruction drive in order to point to the internal contradiction of the archive. Here, the archive destroys (death drive), just as much as it preserves (to posit and maintain its authority and reflection of the past).

<sup>509</sup> See Wilhelm Jensen, *Gradiva: A Pompeiian Fancy*, trans. Helen M. Downey (New York: Moffat, Yard, and Company, 1918)

<sup>510</sup> Derrida, *Archive Fever*, 98-99.

<sup>511</sup> Derrida, *Archive Fever*, 99; emphasis his.

the singular, unique moment that produced the trace is forever out of reach; thus, the order of the archive cannot be assured.<sup>512</sup> This opening renders the archive infinitely open to what is to come, leaving its configuration vulnerable to perpetual interruption. Here, the “very order of knowledge... is suspended.”<sup>513</sup> The archive, then, is eternally oriented towards the future, as opposed to the past, ameliorating the possibility of determined, finite, and singular accounts.<sup>514</sup>

Law and the museum derive their power to reflect what was—to speak the law—from their respective archives.<sup>515</sup> Both institutions discard, accumulate, and preserve evidence to found their claim to truth, to history.<sup>516</sup> Law and museum both strive for singularity by coordinating the materials they gather into an order to present a unified, fixed world. The definitive judgements proclaimed by law and museum, what they posit, founds the authority and force of both institutions, and their demands for obedience to their claims.<sup>517</sup> Yet law’s and the museum’s authority begins to decay at the moment of its positing.<sup>518</sup> As law seeks to defend itself from other positings, the mythic violence of its

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<sup>512</sup> Derrida, *Archive Fever*, 5.

<sup>513</sup> Derrida, *Archive Fever*, 52. Derrida quotes historian Yosef Hayim Yerushalmi to demonstrate the archives dependency on the order of knowledge in a future unknown. In a letter to Freud, Yerushalmi writes, “Professor Freud, at this point I find it futile to ask whether, genetically or structurally, psychoanalysis is really a Jewish science; that we shall know, if it is at all knowable, only when much future work has been done. Much will depend, of course, on how the very terms Jewish and science are to be defined.” Derrida, *Archive Fever*, 37; emphasis his, cited from Yosef Hayim Yerushalmi and Sigmund Freud, *Freud’s Moses: Judaism Terminable and Interminable* (New Haven: Yale University Press, 1991), 100.

<sup>514</sup> Derrida, *Archive Fever*, 19, 33-34, 51

<sup>515</sup> Derrida, *Archive Fever*, 2, 3, 5, 11. Derrida refers to the museum as a place, “there ... where men and gods command” through-out the book. Derrida, *Archive Fever*, 1.

<sup>516</sup> Derrida, *Archive Fever*, 2, 7, 20; Mawani, “Law’s Archive,” 341.

<sup>517</sup> Derrida, *Archive Fever*, 7. Drawing on Benjamin’s concept of violence, or force [*Gewalt*], Derrida describes such positing’s as archival violence. Derrida, *Archive Fever*, 7. See Walter Benjamin, “Critique of Violence,” in *Walter Benjamin Selected Writings, Volume 1: 1913-1926*, eds. Marcus Bullock and Michael W. Jennings (Cambridge: The Belknap Press of Harvard University Press, 2002).

<sup>518</sup> The distinction Benjamin makes between law positing and law preserving violence is dissolved by Derrida in “Force of Law: The Mythical Foundation of Authority,” in *Deconstruction and the Possibility of Justice*, (eds)

origin is revealed.<sup>519</sup> Benjamin writes,

[a] gaze directed only at what is close at hand can at most perceive a dialectical rising and falling in the law making and law-preserving forms of violence. The law governing their oscillation rests on the circumstances that all law-preserving violence, in its durations, indirectly weakens the lawmaking violence it represents.<sup>520</sup>

As a trace, law (and the museum) is perpetually caught in battle with itself to maintain the legitimacy of its command because the foundation for its authority may be called into question by the history records it seeks to protect.<sup>521</sup>

What evidence enters the archive of international criminal tribunals is managed through the law of evidence and judicial reason. Rules of evidence govern the proof of the presence of facts that can be tendered to an international or hybrid criminal tribunal.<sup>522</sup>

The application of evidentiary regulations effectively governs that which assists in the establishment of criminal guilt or innocence, and thus, it informs the possibility of criminal law's archival content. Article 19 of the Charter of the IMT that governs the submission of evidence is uniquely relaxed when compared to contemporary tribunal rules:

The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence which it deems to have probative value.<sup>523</sup>

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Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson, trans. Mary Quaintance (New York: Routledge, 1992) 3-67.

<sup>519</sup> Benjamin, "Critique of Violence," 240.

<sup>520</sup> Benjamin, "Critique of Violence," 251.

<sup>521</sup> Mawani, "Law's Archive," 351.

<sup>522</sup> The rules of procedure and evidence that govern submissions to the International Criminal Court are outlined in Rules 63-75, and 111-116 of the *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First Session, New York, 3-10 September 2002* (ICC-ASP/1/3 and Corr. 1), part II.A. Article 15 of the Statute of the International Criminal Tribunal for Former Yugoslavia (ICTY) directs the presiding judges to determine the rules of procedure and evidence which were established in Rules 66-70, 89-98 of the *Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991: Rules of Procedure and Evidence, 11 February, 1994* (ICTY-IT/32).

<sup>523</sup> IMT, Vol. 1, 15.

While the latitude afforded in article 19 permitted the submission of unprecedented forms of evidence, like documentary film, the Tribunal's ruling ultimately operates akin to the *archeon*. Judges decide what evidence proves the existence of legal facts that serve as the basis for the determination of legal guilt. The meaning rendered onto evidentiary submissions is stabilized through judicial reasoning, and remains fixed over-time in order to provide for the future demands of legal precedence.

There is an important distinction between how the museum as *archeon* constitutes and configures its collection and law as *archeon* organizes archival truth. Collection curators decide what artefacts may serve the mandate of their institution. At the Holocaust Museum, this means that the practice of collection is guided by the need to secure and preserve evidence of the Holocaust, and related materials that assist in the implementation of the Museum's broader didactic mission to teach the public about the consequences of racism, ableism, and prejudice based on gender orientation, identity, and expression. Artefacts are thus procured and contextualized to meet the political mission that lies at the core the Museum's existence, and thus, there are institutional parameters that govern the possibly of meaning rendered by the institution.<sup>524</sup> Yet the procurement of artefacts, and their initial accession and stratification into the Museum's archival logic does not fix and stabilize the meaning of the object to the extent that judicial rulings do.

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<sup>524</sup> Phillips and Steiner argue that "authority lies not in the property of the object itself, but in the very process of collection, which inscribes, at the moment of acquisition, the character and qualities that are associated with the object in both individual and collective memories." Ruth Phillips and Christopher Steiner, eds., "Art, Authenticity, and the Baggage of Cultural Encounter," in *Unpacking Culture: Art and Commodity in Colonial and Postcolonial Worlds* (Berkeley: University of California Press, 1999), 19. Further, Sharon Macdonald identifies the museum's re-contextualization of objects as that which stabilizes the meaning of, and exalts, objects collected. See Sharon Macdonald, ed. "Collecting Practices," 82.

Museological play with artefactual meaning has occupied scholars that focus on material and visual approaches to history. Elizabeth Edwards argues that museum archives are far from fixed and calcified spaces. Rather,

within the archive and the museum there is a dense multidimensional fluidity of the discursive practices... meanings come in and out of focus, double back on themselves, and adhere silently.<sup>525</sup>

Beyond the indexical meaning attributed to an object when procured, the meaning of the object shifts when displayed as part of an exhibition's narrative, and may shift further when re-deployed in a different narrative projected in another installation. Moving beyond text-based contextualization, the play of artefactual meaning emerges again when positioned in exhibits animated by museum tour guides. While I acknowledge that museum archives provide opportunities for an artefact's meaning to be fluid within the institution, it is not without limitation, and any play of meaning that may occur exists within the parameters of the museum's mission.

While law and museum may produce their own archives, they may also share the same documents. Here, the document passes from one institution to the next, or in Derrida's example, it is the transformation of Freud's house into a museum.<sup>526</sup> Yet the meaning of the artefact may transform when re-configured under a new archival stratum. This sharing – the dual claims to truth operating upon the same document – is a critical moment upon which the absence of an original is exposed. This exposure is what illuminates the mythical foundations upon which both law's and the museum's archive is

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<sup>525</sup> Elizabeth Edwards, *Raw Histories: Photographs, Anthropology, and Museums* (New York: Berg, 2001), 4.

<sup>526</sup> Derrida, *Archive Fever*, 2-3, 20. *Archive Fever* was given as a lecture by Derrida on June 5, 1994, at the Freud Museum in London, which was formally the house where Freud resided. See "About the Museum," Freud Museum London, accessed March 15, 2017, <https://www.freud.org.uk/about/>

based. Derrida's notion of the archive renders it as a site that simultaneously posits and deposes orders of knowledge, as a collection that maintains traditional orderings, and welcomes revolutionary re-orderings.<sup>527</sup>

### *Interrupting bounded pasts*

The Holocaust Museum's appropriation and re-presentation of IMT evidence under its own archival scheme interrupts the law's and the Museum's unfounded ordering of the past. "What is Justice?" re-presents the trial's criminal artefacts as authentic evidence of Jewish persecution, a positing that competes with the IMT's determination of each exhibition as evidence of war crimes and the crime of conspiracy.<sup>528</sup> The figure of six million

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<sup>527</sup> Derrida, *Archive Fever*, 7. Carolyn Steedman complicates Derrida's orientation of the *archon*, or magistrate, as that who wields the power to control and organize an archive, by way of re-focusing the concept of "fever" as something that has less to do with the drive to found and produce archives, and more to do with the phenomenal experience of *entering* the archive. Carolyn Steedman, *Dust: The Archive and Cultural History* (New Brunswick: Rutgers University Press, 2002), 2-3, 10. Here, the historian who enters the archive emerges as an archon in their own right, de-centering the authority of documents in order to illuminate that authority is derived through the historian's movement into and through the archive: "The fiction is that the authority from the documents themselves, as well as the historian's obeisance to the limits they impose on any account that employs them. But it really comes from having been there... so that then, and only then, you can present yourself as moved and dictated to by those sources, telling a story the way it has to be told." Carolyn Steedman, "Something She Called a Fever: Michelet, Derrida, and Dust," *The American Historical Review* 106, no. 4 (2001): 1176. Holding constant Derrida's conceptualization of material-as-trace, Anjali Arondekar theorizes that which comprises the archive as traces of "recalcitrant events" as opposed to documentary evidence that establishes truth. Here, files and objects can be used to cohere and disrupt the strata of knowledge disciplined by an archival configuration. Anjali Arondekar, *For the Record: On Sexuality and the Colonial Archive in India* (London: Duke University Press, 2009), 3. As such, this methodology fashions the archive as a space for "fact reading" as opposed to "fact-finding," by "juxtaposing the archive's fiction effects (the archive as a system of representation) alongside its truth effects (the archive as material with "real" consequences)—not as incommensurate, but as agonistically co-constitutive of each other." Arondekar, *For the Record*, 4.

<sup>528</sup> Article 6(c) of the IMT charter defines crimes against humanity as follows: "the murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated." As articulated in the judgment, the prosecutors failed to show that the crimes committed against civilian populations before 1939 were in execution of, or in connection with, war crimes

deaths, the Nazi state security organization chart, and the presentation of an edited version of *Nazi Concentration Camps* all take on a representative value in “What is Justice?” that differs from its representative value at the IMT. According to IMT document listings, Exhibit USA-296 is described as follows:

Affidavit by SS Sturmbannführer Dr. Wilhelm Höttl of the RSHA, 28 November 1945, concerning his conversation with SS Obersturmbannführer Eichmann, also of the RSHA, in August 1944; four million Jews were murdered in extermination camps, two million more in other ways, mostly Einsatz groups.<sup>529</sup>

This exhibit was mobilized in trial to establish the figure of six million as it relates to Count One (G): war crimes and crimes against humanity committed in the course of executing the conspiracy for which the conspirators are responsible.<sup>530</sup> The legal question was whether the defendants engaged in the formulation of a common plan to commit or commission such crimes. Although Major William Walsh, Assistant Trial Counsel for the US, illuminated the race-specific nature of Nazi atrocities, Exhibit USA-296 was tooled into a legal idiom to prove the common plan of conspiracy to commit war crimes, crimes against humanity and launch an aggressive war as opposed to the existence of crimes against humanity, or war crimes themselves.

Exhibit USA-493 was introduced to the Tribunal to show the German Police force’s chain of command in 1943, and was produced by Nazi Otto Ohlendorf, who was head of a mobile killing squad, during a pre-trial interrogation. He cooperated with Allied

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or crimes against peace, thus resulting in a decision that the pre-war atrocities committed against the Jews did not fall within the scope of the tribunal’s jurisdiction.

<sup>529</sup> International Military Tribunal, Trial of the Major War Criminals before the International Military Tribunal, Volume 24 (Nuremberg, IMT, 1947), 122.

<sup>530</sup> International Military Tribunal, Trial of the Major War Criminals before the International Military Tribunal, Volume 3 (Nuremberg, IMT, 1947), 517.

prosecutors at the IMT trial because he thought prosecutors would recognize his intelligence and offer him employment.<sup>531</sup> In contrast, “What is Justice?” displays the chart as historical evidence recovered from the morass of incriminating documents left behind by the Nazi administration. Here, again, the Holocaust Museum’s curators re-signify the document in contrast with the court’s ascription, programming it as a representation of the security groups organized to specifically target Jews.

Film-based Exhibit USA-79, entitled Nazi Concentration Camp, was also presented as evidence to explain the concept of the concentration camp to the Tribunal, as the term figured into the broader discourse of the US prosecution team’s conspiracy case. Although the original trial narration of the nearly hour-long film only uttered the word “Jew” once, curators suggest that the suffering depicted on the film by curators is evidence of the amelioration of Jews specifically.

The Museum’s inadvertent re-orientation of the IMT’s evidence under its own ideal configuration illuminates the mythic foundation of both the Museum’s and the IMT’s authoritative account of Nazi violence. By positing a new order of knowledge and whilst valorizing law’s interpretation of the past, the “authenticity” projected onto these three exhibits begins to decay. This double move—upholding law as an authenticating apparatus yet rendering trial evidence to represent something outside of what was adjudicated—is likely lost on museum visitors. Curators do not indicate how the IMT interpreted these materials, nor do they suggest that the Museum’s interpretation of it is more authoritative.

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<sup>531</sup> Hilary Earl, *The Nuremberg SS-Einsatzgruppen Trial, 1945-1958: Atrocity, Law, and History* (Cambridge: Cambridge University Press, 2010), 66. Ohlendorf was tried, found guilty and hanged in a subsequent trial.

However, this inadvertent problematization of trial evidence, without mediation or intention, insinuates the infinite openness and indeterminability of historical accounts, and interrupts the rhetoric of ends advanced in transitional justice theory that links trials, the formation of a historical record, and democratic transition together. As such, the exposure of the mythical foundations of both archives, subverts relegations of violence as something that is of the past.

### **Representing Responsibility**

Curatorial anxiety over how to represent responsibility for Nazi atrocities is as old as the museum itself. In the late 1980s, the Holocaust Museum was contacted by the Durkee family regarding a donation of artefacts gathered by Herbert C. Durkee, a deceased escort guard from the 6850<sup>th</sup> Internal Security Detachment of the US Military, while stationed at the International Military Tribunal (IMT) between August 12, 1945 and January 15, 1946. A handkerchief initialed by Hermann Göring that was gifted to him in appreciation for his assistance in the management of Göring's opioid addiction while imprisoned, 81 signatures of Nazi prisoners, along with photos of Durkee and various defendants, compose the collection.<sup>532</sup> Museum staff member and administer of the donation, Alice Greenwald, noted in an internal communication that the deeded gift

... presents the perpetrators both as truly human beings (what's more immediately human than a signature?), and as criminal defendants. It

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<sup>532</sup> Accession no. 1998-038.1 ST Exhibitions Department Raye Farris Record Relating to the Segment Development of the Permanent Exhibition 1990 to 1994, File 2.08 The Killers Text Labels, USHMM Institutional Archives, Washington DC.

allows us to present them as people first, and as individuals who had to take responsibility for their actions.<sup>533</sup>

These materials, however, never made their way into “The Killers.” What is more, the Durkee Collection has never been listed in the Museum’s public artefact collection catalogue.

Greenwald’s communication and the subsequent sequestering of these artefacts are emblematic of the Holocaust Museum’s general anxiety over how to represent responsibility for the Holocaust (and an American guard who befriended one of the most despised Nazi defendants at the IMT). It anticipates the institution’s struggle to craft “The Killers” segment less than a year after the Durkee collection was acquired, and provides context for why the temporary exhibition “What is Justice?” troubles notions of legal culpability in its visual and textual displays. However, curatorial apprehension regarding this theme does not manifest over whether the museum should include installations on the thematic topic of responsibility. Rather, the apprehension arises over the challenge of how to represent responsibility. Is law the best reference point to engage the topic of culpability? And if so, how does representing culpability along the contours of law’s logic release museum visitors from seeing themselves as complicit in racism, ableism, and heteronormativity? And what about bystanders — are they not also responsible? These questions, among others, are worked out in contradictory ways in “The Killers” and “What is Justice?”.

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<sup>533</sup> Accession no. 1998-038.1 ST Exhibitions Department Raye Farris Record Relating to the Segment Development of the Permanent Exhibition 1990 to 1994, File 2.08 The Killers Text Labels, USHMM Institutional Archives, Washington DC.

I argue the Museum's behind-the-scene troubling of the concept of individual responsibility, illuminates the problem of conceiving responsibility as determinable, and of the past. However, they resolve this tension by questioning *where* the frontiers of legal responsibility should land. Irrespective of this deliberation, they still project responsibility as that which of the past as opposed to representing responsibility as something that is open-ended, and on-going. Leaving the concept of responsibility open-ended might do better at opening up questions of culpability and responsibility than critiquing the IMT's determinations that ultimately suggest a determinable frontier. Further, by defying the rhetoric of ends that places violence and responsibility in the past, curators might allow us to see how the impulse to close down a case or narrative—to *posit*—is a violence in and of itself because it stops the need for on-going reflection.

*Representing law's misattribution of responsibility*

The Museum's first attempt to represent responsibility for the Holocaust began three years before its opening, yet ended abruptly three months later. In the fall of 1990 Museum researcher, Linda Hunt, was directed to assist in the development of the permanent exhibition's final segment by considering the question of who was responsible for the Holocaust. In particular, she was required to compile a list of twenty mass murders, a list of so-called "medium" killers, and produce a summative history of the IMT trial, Krasnodar trial, Bergen-Belsen trial, and Majdanek trial.<sup>534</sup> Months after receiving the task,

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<sup>534</sup> Accession no. 998-038.4 Box St 1 Exhibitions Department segment briefs relating to the Permanent Exhibition 1989 -1990, File 2.08 The Killers

Hunt refused to turn in a list to the Museum's Research Director, Joan Ringelheim, that attended to the assignment's mandate. Her resignation note states,

[a]fter weeks of agonizing, rewriting, refiguring, revising over the assignment to designate a "list" of top murders, I found this morning I could not turn the list in. I find the whole idea of it morally repugnant and had problems with it from the beginning. I understand they [curators] need names to guide them. I do not want to be the one to choose... "The Killers" provide the answer to the question "why?". What's bothersome is that this question isn't answered all the way through the museum. To me, those most responsible reside in Berlin, not the killing centers, but they are not the only ones legally guilty. Could the Holocaust have occurred in the enormity it did if the little guy standing on the sidelines had not gone along with it in silence? These are just a few of the reasons why I can't complete the assignment.<sup>535</sup>

Ringelheim forwarded Hunt's letter to Museum's founding Director Jeshajahu "*Shaike*" Weinberg, and argued that Hunt should remain on the project but instead produce a list of those responsible based on the following questions: "those without whom the Holocaust would neither have been conceived or initiated (the "Top 20"), and "those without whom the Holocaust could not have been carried out (this list could be in the hundreds.)"<sup>536</sup> This alternative approach never materialized, and the conceptual development of "The Killers" was put on hold, only to be approached again a year later in the fall of 1991, without Hunt.

Despite their apparent disagreement, Ringelheim's and Hunt's conception of responsibility accord with one another. Both researchers touch on different constructions and degrees of responsibility. They both uphold a conception of culpability that dovetails

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<sup>535</sup> Accession no. 1998-038.4 Box 1. Series Title: Exhibitions Department segment briefs relating to the Permanent Exhibition 1989 -1990, File 2.08 The Killers

<sup>536</sup> Accession no. 1998-038.4 Box 1. Series Title: Exhibitions Department segment briefs relating to the Permanent Exhibition 1989 -1990, File 2.08 The Killers

with the IMT's by placing the most pronounced degree of responsibility on "those residing in Berlin" and "the Top 20." Hunt rhetorically indicts extermination camp workers as legally culpable, and infers that bystanders, broadly construed, may also bare responsibility. Her view coincides with Ringelheim's suggestion that individuals without whom the Holocaust could not have been executed are also responsible for their actions. Although Hunt's resignation signals an anxiety over how far to extend the reach of legal culpability, both she and Ringelheim ultimately imply a fixed and enduring notion of responsibility.

Alive to Hunt's resignation and the false start of the first attempt to produce "The Killers," staff historian David Luebke proposed a new approach through an internal communication addressed to the new research and curation team in November 1991. He contextualized his suggested curatorial strategy as to how the Museum might represent responsibility as follows:

I would like to propose some criteria for our selection of personalities to display in our exhibit on "The Killers." As we all know, this is a difficult and contentious problem, touching as it does on the question of responsibility for the Holocaust. There are many, equally plausible ways to answer it, but it seems to me that for the sake of conceptual integrity, we should decide on one among them. It is easiest to begin with a criterion of selection that is beyond our control: wall space. The limited availability of wall space recommends a relatively narrow definition of culpability in the Holocaust.<sup>537</sup>

Unlike Hunt, Luebke refers to the structural conditions of the space as that which will ultimately dictate the Museum's answer to the question of responsibility, skirting the question that Hunt was so uncomfortable answering. Using the installation's limited real-

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<sup>537</sup> Accession no. 1998-038.1 ST Exhibitions Department Raye Farris Record Relating to the Segment Development of the Permanent Exhibition 1990 to 1994, File 2.08 The Killers Text Labels, USHMM Institutional Archives, Washington DC.

estate as an excuse, and in opposition to Ringelhiem's suggestion that the curatorial team include individuals without whom the Holocaust could not have been carried out, he proposed the following:

[o]perating from sharp definitions of both the Holocaust and culpability, we can divide the killers into three groups: decision-makers, facilitators, and executioners. The first category includes people who [...] participated in Hitler's decision to destroy all European Jews. The second category ("facilitators") includes persons who performed functions that were indispensable to the machinery of genocide, but who were not immediately involved in the murder. The third category of "executioners" includes those who were in direct command of mobile killing units or extermination centers.<sup>538</sup>

Luebke identified five decision makers (Adolf Hitler, Hermann Göring, Heinrich Himmler, Reinhard Heydrich, and Heinrich Müller), thirty facilitators and thirty-four executioners — a list that accords with the IMT's and NMT's indictments of who bears responsibility for Nazi atrocities. On November 12, 1991, Ringelheim, challenged Luebke's recommendation of personalities for "The Killers" segment:

[t]his segment (whose title is strong but misleading) should not conceptualize guilt and responsibility too widely... However, this is not to say that David's idea of culpability is wide enough. I think that there might be a consideration of a definition of guilt which goes beyond the more or less "legal" construction...I have no problem with those included on David's list at this point; my queries concern the reflexive limitations they impose. If the function of the segment is, in some way, an attempt to get museum visitors to be thoughtful about a system as well as about individuals who made it possible to designate certain people as less than human... then I think we need to at least hint at bystanders, collaborators, and a morally culpable set of perpetrators who might never be included in an adequate set of trials... It is important to try and get the museum visitor to see themselves in these perpetrators.<sup>539</sup>

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<sup>538</sup> Accession no. 1998-038.1 Box 15. Series Title: Exhibitions Department Raye Farris records relating to the segment development of the PE 1990 to 1994 (White Space Conflict), File 2.08 The Killers design

<sup>539</sup> Accession no. 1998-038.1 Box 15. Series Title: Exhibitions Department Raye Farris records relating to the segment development of the PE 1990 to 1994 (White Space Conflict), File 2.08 The Killers design

Drawing on Ringelheim's contribution, the final display reflects the curatorial team's decision to complicate the legal definition of culpability and galvanize the conditions for museum visitors to see themselves as complicit.

The two text panels that flank a set of four monitors displaying various trial proceedings call into question criminal law's frontier of responsibility. The opening panel, titled "The Killers," reads "Perpetrators of the Holocaust come from all walks of life and all levels of society. Few thought of themselves as criminals, but most were aware of the result of their actions." The second and final text panel entitled "The Guilt of the Bystanders" presents a scope of responsibility that goes beyond the logic of law. According to the permanent exhibition's narrative catalogue, this panel suggests "most individuals, governments, and nations stood by while millions of people were killed... Most were in a position to observe events, even if small in scope, that formed part of the larger catastrophe of the Holocaust, and few came to the aid of victims."<sup>540</sup>

Yet "The Killer's" view of responsibility, despite curatorial efforts to problematize the concept, ultimately sunders to a definitive account of culpability. Trial footage dominates the limited space in the exhibit, suggesting that law's determinations are legitimate, necessary, and enduring despite gestures towards broader views of responsibility that operate beyond law's parameters. Further, the installation's presentation indicts those who may be morally or politically culpable as bystanders in a manner that is conclusive and permanent, as opposed to infinite and ongoing.

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<sup>540</sup> *Permanent Exhibition Narrative*, ed. United States Holocaust Memorial Museum (USHMM: Washington DC, n.d), 14.

The temporary installation “What is Justice?” also engages the critical cut of law’s determinations, yet it too advances stable notions of accountability. The media embedded in the computer consoles in the installation explain that the scale of the crimes committed were beyond the reach of the law, and that criminal sanctions could never right the wrongs committed by the National Socialist Party and others. For instance, visitors are provided the following response to the question “Who was held legally responsible for the Holocaust?”:

[a] union leader. A police chief. A newspaper editor. These people were among the defendants charged with crimes in the aftermath of World War II... The range of Nazi crimes was vast and legal efforts to punish them often yielded only limited results... The Nuremberg defendants were symbolic; the individuals held legally accountable for the Holocaust were only a token number, a fraction of those involved in perpetrating Nazi crimes. And what to do with those crimes for which no witnesses survived?

This response, although didactic, flags the breadth of individuals complicit in the crimes adjudicated by the IMT above, widening the social imagination as to who the figure of the Nazi is. Further, it insinuates that the IMT’s efforts were insufficient in so far as the prosecution failed to apprehend and prosecute the majority of alleged perpetrators, and that law itself is a bad tool for which to address the extent of social harms. However, it ultimately suggests that those responsible are of the past by denying the relationship between Nazi violence then and myriad manifestations of white supremacy today.

Representations of responsibility located beyond the reach of the trial in “The Killers” and “What is Justice?” advance a rhetoric of ends that imagines legal culpability as something that is definitive. In doing so, it forecloses the opportunity to imagine

responsibility as infinitely ongoing, as a political attitude that brings with it the notion that political transition is itself an infinite and ongoing project.

## **Conclusion**

In the previous chapter I illuminate how the museum represents a bounded future that configures city dwellers and museum visitors as part of a community that has achieved, through criminal trial, a society constituted by a durable commitment to human rights. However, this phantasmagoria is interrupted by the presence of neo-Nazi activity in Courtroom 600, and institutional racism that directs Nuremberg police investigations. The prosecution of neo-Nazi's in the Court's space, and the disruption of the City's human rights award ceremonies, call attention to the on-going presence of Nazism.

This bounded future is paired with a bounded concept of a past that can be returned to by way of criminal trials. "What is Justice?" exalts the IMT's rendering of history by placing a premium on the trial's ostensible authenticating capabilities. Yet I also show how, in their effort to valorize law's interpretation of the past, the Museum's curators inadvertently call into question both the Museum's and trial's representations of Nazi violence. By displaying trial evidence as artefacts that represent Jewish persecution as opposed to war crimes and crimes against humanity, the infinite opening of Law's and the Museum's archive is expose. This exposure allows us to consider violence that is not sequestered to a past that has been broken from, but as a past that, in varying ways, continues in the present. As such, museums emerge as a chance site to interrupt the ends-oriented phantasmagorias prevalent in transitional justice theory. Yet other aspects of the

exhibition maintain bounded and definitive projections of legal and extra-legal responsibility. “What is Justice?” and “The Killers” stabilize representations of culpability, which foreclose the possibility of imagining responsibility as a notion that is re-negotiated and construed infinitely through-out time. As such, it re-affirms the transitional justice theory’s rhetoric of ends by *managing* notions of what history is true, and governing who is responsible for that history.

In the next chapter I show how the Jewish Museum Berlin wishes to represent a domestic trial as a bounded, transformational moment in the Federal Democratic Republic. Yet curators inadvertently call into question their very own postulations through the exhibit’s layout, principles of de-contextualization, and their use of ambient sound. The disorientation of curators’ positioning of the trial as a critical moment in a definitive period of transition is further complicated by the Museum’s architectural force.

## Chapter Four: Bounded Transition

A last association with Benjamin. He knew the two Scholem brothers—those two Berliners. One of them became Gershom Scholem, the Zionist who tried unsuccessfully to attract Benjamin to Israel, to Palestine. The other, a Communist, went with Benjamin to Moscow when Benjamin was asking himself whether or not he should become a member of the Communist Party. Benjamin was emblematically always divided between the Scholem brothers... I do not know what Benjamin—divided as he was between these Marxist-Russian and Jewish-Messianic poles—I do not know, but I wonder, what he would have thought about your project, remembering that he died during the War, on a border, committing suicide in a very strange situation on a border.

- Jacques Derrida, Responding to Daniel Libeskind<sup>541</sup>

I stayed in Neukölln, a neighborhood in the south-east of Berlin. My excursion to the Jewish Museum Berlin, located in the adjacent neighborhood of Kreuzberg, was about 30 minutes long. Before arriving at my destination, I wandered through streets lined with Turkish delicacies, flats, and well-used parks whose grass was beaten into the earth. I traveled along the Landwehr Canal which delivered me to the gentrified district where the Museum was situated. In a way, this route was insulated from official representations of Germany's past. If I approached the Museum from the north-west, I would have traversed through the city's memorial district, constituted by the Topography of Terror, the Memorial to the Murdered Jews of Europe, Wall Museum, and Checkpoint Charlie, among others, that dominate Berlin's urban core. I could not help but meditate on how avoiding

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<sup>541</sup> Jacques Derrida, "Response to Daniel Libeskind," *Research in Phenomenology* 22 (1992): 94. See Daniel Libeskind, "Between the Lines: The Jewish Museum, Berlin," *Research in Phenomenology* 22 (1992): 82-87.

this part of the city's memoryscape shaped my thinking before and after my field-trips. Yet regardless of the direction from which I approached the Jewish Museum, I always arrived at a building whose entrance is concealed.

I illuminate my (privileged) *flânerie* to foreshadow the two major themes that are replicated inside the Museum itself. Berlin's spatiality, shaped by the canal and the absence of human-made monuments in this case, governed what I saw, what came to mind. Indeed, different possibilities arise as we tread new paths through a city in the hunt for our destinations.<sup>542</sup> The Museum's spatial construction could be understood in similar terms. While its outer walls bound the possibilities of movement to the interior of the structure itself, the Jewish Museum's architecture breaks from traditional designs, like James Ingo Freed's, that over-determine the order of movement amongst its galleries. Instead, it offers visitors options. Its fragmented walls denaturalize the exhibition's order, offering visitors several alternative routes to its installations. Museum guests are continually confronted with new travel options, which like my own journey to the Museum, create new possibilities for thinking.

In this chapter I explore how the Museum inadvertently creates new possibilities for thinking about the relationship between trials and political transformation, and how the Museum's architecture participates in the rupturing of narrative continuity through artful design elements that invite an engagement "with" the past. I analyze the Jewish Museum Berlin's representation of one post-war German trial displayed in its two-part

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<sup>542</sup> Henri Lefebvre argues that space participates in the maintenance of bourgeois class hegemony, and thus, is active in the production of social-relations. Henri Lefebvre, *The Production of Space*, trans. Donald Nicholson-Smith (Cambridge: Basil Blackwell, 1991), 11.

installation “On Trial: Auschwitz/Majdanek [*Vor Gericht: Auschwitz/ Majdanek*]” (“On Trial” going forward). The installation, which opened in 2013, features forty-four oil portraits of Düsseldorf Majdanek trial (1975-1981) participants painted by Minka Hauschild—a German artist who turned to painting in order to deal with her own family’s Nazi past.<sup>543</sup> As opposed to the United States Holocaust Museum’s longstanding temporary exhibition, “What is Justice?” that calcifies evidence of Nazi violence, curators focus on the moment of the *trial* itself. In the installation, curators tell visitors that the Majdanek trial was a transformative moment for West Germans because it was through the trial that its political community came to learn about the Nazi persecution of German-Jews. According to the Museum, the portraits indicate that the trial’s presentation of the past provoked personal transformation within Germans. Further, curators suggest that the Hauschild Collection is a historical example of the trial’s impact on West Germany’s cultural and artistic life.

I argue that the Jewish Museum Berlin envisions the Düsseldorf Majdanek trial as central to West Germany’s political transition away from Nazi fascism and towards peace, and democratic rule.<sup>544</sup> In doing so, it figures the political community’s transition as a period of transformation that will stop once the country has sufficiently grappled with its difficult past. However, such insinuations are up-set by the museological stagecraft choices employed by curators. The Museum’s decontextualization of the subject depicted in each artistic rendering disorients visitors as opposed to affirming the trial’s impact on social and

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<sup>543</sup> “On Trial” also includes a video installation of the media’s reporting of the Frankfurt Auschwitz trial (1963 - 1965) media reports.

<sup>544</sup> The Frankfurt Auschwitz Trial is similarly figured as a cathartic moment in West Germany’s transition away from state fascism and towards a democratic order.

cultural life. Daniel Libeskind's architectural design "Between the Lines" emphasizes this disorientation. The museum's spatiality forces the display of the Hauschild collection out of chronological order, placing it before the Frankfurt Auschwitz trial, which took place between 1963-1965. Further, the ambient sound from the Auschwitz trial installation is clear and audible in the gallery space where the Portraits are situated. This provokes visitors to engage "with" the past as opposed to permitting them to have an experience "of" the past. The confusion over what is depicted by the collection, where the installation is positioned in sequence to other historical events, and sound, unsettle the Museum's rhetoric of ends that seeks to affirm the trial's place in West Germany's political transformation.

To mount this argument, I turn to Benjamin's methodology of critical constellations and allegory as a recuperative political device. Appropriating principles of juxtaposition and montage from the Surrealist movement, Benjamin's theory of time short-circuits past moments to the present in order to form a constellation that subverts modernity's dominating phantasmagorias.<sup>545</sup> Benjamin's conception of allegory operates along similar lines. Departing from German Romanticism's approach to allegory as that which functions *as* a symbol of meaning, Benjamin recuperates allegory as that which *opposes* signification.<sup>546</sup> Here, allegorical intervention operates outside the means/ends schema as

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<sup>545</sup> Walter Benjamin, "Concept of History," in *Walter Benjamin, Selected Writings Volume 4: 1938-1940*, eds. Howard Eiland and Michael W. Jennings, trans. Edmund Jephcott and others (Cambridge: The Belknap Press of Harvard University Press, 2003), 390 [V thesis], 395 [XIV thesis], 397 [A28 thesis], Benjamin, "Central Park," 183.

<sup>546</sup> Benjamin writes, "'allegory is so opposed to that which is concerned with the discovery of truth that it reveals more clearly than anything else the identity of the pure curiosity which is aimed at mere knowledge with the profound isolation of man.'" Walter Benjamin, *The Origin of German Tragic Drama*, trans. John Osborne (New York: Verso, 2009), 229.

its disruptions occur outside the sphere of human intention.<sup>547</sup> As such, allegorical “ways of seeing” can strike and render hollow the rhetoric of ends so prevalent in transitional justice discourse. The final section of this chapter illuminates the Majdanek Trial Portraits as allegory, and “Between the Lines,” as the structural expression of Benjamin’s methodology of critical constellations.

The spatial, sonic, and visual interruptions of chronological time, and law’s imagined role in political life after periods of mass atrocity as represented at the Jewish Museum Berlin, contributes to critical transitional justice scholarship concerned with conceiving political transformation as that which is triggered and exhausted by the trial process. Berber Bevernage draws on French philosopher Vladimir Jankélévitch’s distinction between “irreversible” and “irrevocable” time in order to describe how trials are conceived as that which occupies the period of time between violence and democracy.<sup>548</sup> Irrevocable time maintains that the past persists in the present which shortens or breaks with notions of historical distance. Irreversible time is unidirectional—it produces a sense of historical distance between past and present, and suggests a focus on the matters of the present moment to ground ethical life. During “the time of transition,” trials and truth commissions initially approach history as irrevocable—as something that cannot be recovered completely but as something that makes demands on the present that state based

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<sup>547</sup> As described in Chapter One, “the language of God,” the language that exists outside the sphere of communication, dovetails with Benjamin’s critique of the German Romantic approach to allegory as symbol, or, a device that communicates knowledge. The Romantic notion of allegory, then, operates within the means/ends schema Benjamin’s methodology sets forth to depose.

<sup>548</sup> Berber Bevernage, *History, Memory, and State-Sponsored Violence: Time and Justice* (New York: Routledge, 2011), 170-171. For Vladimir Jankélévitch’s distinction between “irreversible” and “irrevocable” time, see Vladimir Jankélévitch, *L’irréversible et la Nostalgie* (Paris: Flammarion, 1974); Aaron T. Looney, *Vladimir Jankélévitch: The Time of Forgiveness* (New York: Fordham University Press, 2015), 77-89.

institutions strive to attend to. The completion of a trial brings with it an abandonment of irrevocable notions of time. Here, the production and affirmation of law's universalizing record of violence manipulates time to create a historical distance between the past and present—an irreversible conceptualization of history.<sup>549</sup> Yet Bevernage holds, following Derrida's notion of mourning and spectrally, that the irrevocable past persists in the present, and thus, instances of violence in past-presents are never broken from or overcome.<sup>550</sup> Catherine Turner argues that transitional justice may be better off eschewing endeavours to seek out a unitary truth about what was through transitional justice mechanism, and instead affirm irreconcilable positions to keep open the possibility of new ways to understand and grapple with mass atrocity.<sup>551</sup>

Architectural productions of space can provide the aesthetic means that disrupt rhetoric launched by some transitional justice theorists that conceive political transition as an exhaustible project. Critical museum studies scholarship has signaled the myriad ways in which museum architecture interrupts or challenge the projection of chronological time represented in exhibited stories. For instance, Giebelhausen illuminates how the symbolic connotation of materials used to form the museum's interior can intervene in representations of temporal periods found in temporary or permanent exhibitions.<sup>552</sup> Others, like Paul Basu, argue that labyrinth-like architectural expressions disrupt linear narrative formations by promoting circuitous museum browsing, complicated by detours,

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<sup>549</sup> Bevernage, *Time and Justice*, 2-11.

<sup>550</sup> Bevernage, *Time and Justice*, 170-171.

<sup>551</sup> Catherine Turner, *The Impossibility of Transitional Justice* (New York: Routledge, 2017), 58-59.

<sup>552</sup> Michaela Giebelhausen, "In the Museum's Ruins: Staging the Passage of Time," in *Museum Making: Narratives, Architectures, Exhibitions*, eds. Suzanne Macleod, Laura Hourston Hanks, and Jonathan Hale (New York: Routledge, 2012), 242-244.

random dead-ends, and diversions that fragment stories and challenge their progression.<sup>553</sup> Further, designing each gallery used to advance a permanent exhibition's story in a manner whereby each space is aesthetically out of joint with the next enacts a spatial disruption that can also frustrate the naturalization of chronological time.<sup>554</sup> Putting Benjamin to work, this chapter contributes the polemic advanced by Bevernage and Turner, and museum studies literature that takes notice of how a museum's spatiality contends with—and subverts—museological expositions of chronological time.

What follows unfolds in three parts. In part one I illuminate the historical context within which the Düsseldorf Majdanek trial took place. I sketch the history of violence wielded at Camp Majdanek, as well as the anti-authoritarian movement that emerged in the 1960s that demanded the state account for the crimes of their foremothers, and forefathers. I examine the cultural mediations of the trial, including the "On Trial" installation at the Jewish Museum Berlin. I describe how the Hauschild paintings were deployed—not once, but twice—to show the trial's importance in the state's political transformation. In part two I describe Benjamin's concept of critical constellations, and allegory. I put these critical concepts to work in part three, where I show how the exhibit's lay-out, sound, and space can be brought together to subvert the narratives curators launch in "On Trial." As such, it disrupts transitional justice theory's rhetoric of ends by calling into question when transformation ostensibly begins and ends.

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<sup>553</sup> Paul Basu, "The Labyrinthine Aesthetics in Contemporary Museum Design," in *Exhibition Experiments*, eds. Sharon Macdonald and Paul Basu (Malden: Blackwell Publishing, 2007), 50.

<sup>554</sup> Michaela Giebelhausen, "The Architecture *Is* the Museum," in *New Museum Theory and Practice: An Introduction*, eds. Janet Marstine (Malden: Blackwell Publishing, 2006), 58.

## Fodder for Memory

The Düsseldorf Majdanek trial prosecuted former guards of the nefarious Lubin-based camp decades after its closure. Besides the Frankfurt Auschwitz trial (1963-1965), the Majdanek proceedings were one of the few efforts by West German courts to bring accountability to Nazi perpetrators in the domestic court system. The government's eventual commitment to determine culpability for the crimes committed within the camp system, some historians suggest, stems from the anti-authoritarian political movements at the time. More colloquially referred to as the 1968 generation, this movement demanded that the West German government acknowledge and take responsibility for the crimes committed by the previous generation.<sup>555</sup> So too did they set out to illuminate how the state's security apparatus maintained fascist tactics and tendencies that so deeply defined the governing sensibility of the Nazi Party. In this section, I briefly explore how this movement challenges notions that Nazi violence is a thing of the past by calling attention to the immediate violence wielded by state institutions. However, these calls for accountability and the inauguration of a communist order maintains the means/ends logic that I critique in Chapter One. While I am sympathetic to the anti-imperialist, anti-capitalist message propagated by the 1968 generation, their calls to action were

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<sup>555</sup> Susanne Karstedt, "The Lives and Times of Sentenced Nazi War Criminals: Re-negotiating Guilt and Innocence in Post-Nuremberg Germany 1950-1975," in *Transitional Justice: Images and Memories*, eds. Chrisje Brants, Antoine Hol, and Dina Siegel (New York: Routledge, 2016), 40; Timothy Scott Brown, *West Germany and the Global Sixties: The Anti-Authoritarian Revolt, 1962-1978* (Cambridge: Cambridge University Press, 2013), 5.

dependant on a projection that a more peaceful future is possible by awakening the consciousness of the Federal Republic's political subjects, and beyond.

Minka Hauschild's Majdanek Trial Portraits position the Düsseldorf-based prosecutions, *and* art, as means to overcome the past in order to inaugurate a brighter future. Here, means/ends relations are constructed in three instances. First, Hauschild claims her creative renderings allow her to "return" to and grapple with her family's own Nazi past.<sup>556</sup> Second, the collection's debut at the "Images of Germany: Art from a Divided Country [*DeutschLANDbilder: Kunst aus einem geteilten Land*]" exhibition at the Martin Gropius-Bau explicitly programed the collection as an example of how West Germans attended to their difficult histories. Third, the Jewish Museum Berlin's presentation of the Portraits in its installation "On Trial: Auschwitz/Majdanek" similarly suggests that the trial was the way in which Germans came to know their past. As such, activist narratives, along with the production and exhibition of the Majdanek Trial Portraits project the problematic rhetoric of ends that places violence in the past, and peaceful co-existence in the future.

### *The Düsseldorf Majdanek, and anti-authoritarianism in West Germany*

The Majdanek concentration and extermination camp was situated on the outskirts of Lubin, Poland. In 1941, SS Chief Heinrich Himmler ordered SS General Odilo Globocnik to oversee the camp's construction through the exploitative use of thousands of Soviet prisoners of war. During this time, "Operation Reinhard" was organized to: ensure the

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<sup>556</sup> Sophie Arts, "Freeze Frames: Melancholy Paintings Evoke Holocaust Trial," *Spiegel Online*, July 12, 2013, <http://www.spiegel.de/international/berlin-paintings-evoke-famous-1970s-nazi-trial-a-910248.html>;

murder of all Jews residing in German occupied Poland; exploit the labor of those interned for the benefit of the German war effort, and; obtain immediately accessible valuables and appropriate the property and immovable assets of those interned.<sup>557</sup> Camp Majdanek was established to implement these provisions. It functioned as an extermination center in the early years of 1942, but was re-focused as a forced labor camp until the cessation of operations in 1944 due to Red Army encroachment. Although originally conceived to hold 250, 000 prisoners, at the height of its operation the camp detained 25, 000 Jews, Soviet prisoners of war, as well as Polish and Soviet civilians. Many camp guards were transferred from Reich-based camps to Majdanek for disciplinary reasons, with the camp serving as a place where the German administration could place “unpopular or undisciplined colleagues.”<sup>558</sup>

The frequency, scale, and intensity of violence marked the Lubin-based camp as poorly managed and chaotic. Approximately nineteen SS guards were responsible for seven-thousand inmates—a high ratio when compared to other camps like Ravensbrück, where one guard was often responsible for twenty to twenty-five prisoners.<sup>559</sup> Living conditions in Majdanek were particularly poor for inmates. Epidemics would often spread beyond prisoners and infect camp guards, promoting a culture of physical distance between inmates and SS officers. With a large volume of prisoners to manage, but a desire

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<sup>557</sup> Peter Black, “Foot Soldiers of the Final Solution: The Trawniki Training Camp and Operation Reinhard,” *Holocaust and Genocide Studies* 25, no. 1 (2011): 3.

<sup>558</sup> Bogdan Musial, *Deutsche Zivilverwaltung Und Judenverfolgung Im Generalgouvernement: Eine Fallstudie Zum Distrikt Lublin 1939-1944* (Wiesbaden: Harrassowitz, 1999), 81.

<sup>559</sup> Elissa Mailander Koslov, “Going East: Colonial Experiences and Practices of Violence among Female and Male Majdanek Camp Guards (1941-44),” *Journal of Genocide Research* 10, no. 4 (2008): 567; Elissa Mailander Koslov, *Female SS Guards and Workday Violence: The Majdanek Concentration Camp, 1942-1944* (East Lansing: Michigan State University Press, 2015), 142-145.

to keep physical contact to a minimum, guards resorted to aggressive tactics of intimidation—sticks, whips and kicking—in order to coerce inmates. This culture of daily violence was punctuated by acute moments of murder on a large scale. On November 3, 1943, for example, eighteen-thousand prisoners were fatally shot by Reserve Police Battalion 101 at the camp as part of the “Harvest Festival [*Aktion Erntefest*].”<sup>560</sup>

Immediately after the liberation of the camp by the Red Army in late 1944, six guards, including Hermann Vogel, were indicted, convicted, and sentenced to public execution by a Soviet-Polish special tribunal in Lubin. Between 1946 and 1948, approximately 95 Madanek guards were charged with crimes against humanity and war crimes and tried in several other cities across Poland. At the time, West German efforts to investigate and prosecute Majdanek guards were lackluster.

In the 1960s, a new generation of Germans began questioning the crimes committed in the 1930s and 1940s by the previous generation. Cultural historian Tim Brown explains that the late 1960s was defined by a discourse that oscillated between the past and present, between the horrors of Nazism, and the anti-authoritarian resistance at the time. He argues that,

[p]ast-present interactions supplied the basis for the influence of national (or international) history on the anti-authoritarian revolt, whether that entailed demanding a fuller accounting for the crimes of Nazism, mining history for democratic or radical first principles, or repurposing ideological and radical-tactical source material for use in the present.<sup>561</sup>

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<sup>560</sup> Christopher R. Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (New York: Penguin Books, 1998), 138.

<sup>561</sup> Timothy Brown, “1968 in West Germany: The Anti-Authoritarian Revolt,” *The Sixties: A Journal of History, Politics and Culture* 7, no. 2 (2014): 103.

The West German New Left movement opposed state-led oppression and the new frontiers of consumer capitalism. They positioned themselves as allies to the “Third World” anti-colonial movement, anti-imperialist collectives, as well as transnational oppositions to the American led invasion in Vietnam.<sup>562</sup>

The student movement was particularly active in mobilizing against the fascist tactics deployed by the West German government.<sup>563</sup> Their organized and militant opposition grew through-out the 1960s. In 1963, Rudi Dutschke from The Socialist German Student Union [*Sozialistischer Deutscher Studentbund*], and Dieter Kunzelmann from Kommune I, joined together to establish the New Left anti-authoritarian group, Subversive Action [*Subversive Aktion*].<sup>564</sup> Through direct action tactics, the militant collective believed that the emancipation of social consciousness was the only way to liberate society from ideological systems, such as capitalism and religion, that operate in service of the state’s authoritarianism.<sup>565</sup> Crucial, here, was the consistent couching of political action and tactics into theoretical frameworks, especially those articulated by Wright Mills and Herbert Marcuse.<sup>566</sup> *Eros and Civilization* (1955) and *One-Dimensional Man* (1964) by Marcuse, for instance, were championed by Dutschke as critical frameworks that

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<sup>562</sup> See Detlef Siegfried, *Time is on my Side: Konsum und Politik in der westdeutschen Jugendkultur der 60er Jahre* (Göttingen: Wallstein, 2006).

<sup>563</sup> The “Schwabing Riots” of June 1962 is a notable mobilization by students who took to the streets to protest the authoritarian tactics used by the West German police and government. Brown, “Anti-Authoritarian Revolt,” 99.

<sup>564</sup> Brown, *Global Sixties*, 22-23.

<sup>565</sup> Brown, *Global Sixties*, 46.

<sup>566</sup> John Bokina, “Marcuse Revisited: An Introduction,” in *Marcuse: From the New Left to the Next Left*, eds. John Bokina and Timothy J. Lukes (Lawrence: University Press of Kansas, 1994), 1.

organizers outside the student movement should appropriate to justify political action in the name of cultivating critical consciousness.<sup>567</sup>

The Red Army Faction (RAF)—a radical segment of the New left—formed in 1966 in response to a coalition between the center-right Christian Democrats and the Center-left Social Democrats, the government’s refusal to acknowledge its Nazi past, the state’s resistance to de-Nazify public office, and in protest of legislation that would suspend civil rights due to state security concerns.<sup>568</sup> RAF members Ulrike Meinhof, Andreas Baader, Gudrun Ensslin, Jan-Carl Raspe and Holger Meins, otherwise referred to as the “Baader-Meinhof Group,” expressed their anti-imperialist, anti-authoritarian sentiments by bombing American Military operations in the Federal Republic, Springer media, offices of judges perceived as fascist, and police stations in 1972.<sup>569</sup>

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<sup>567</sup> John Abromeit, “The Limits of Praxis: The Social-Psychological Foundations of Theodor Adorno’s and Herbert Marcuse’s Interpretations of the 1960s Protest Movements,” in *Challenging the World, Challenging Oneself: Political Protest and the Collective Identities in West Germany and the US in the 1960s and 1970s*, eds. Belinda Davis, Wilfried Mausbach, Martin Klimke, and Carla MacDougall (New York: Berghahn Books, 2012), 18-19; John Abromeit and W. Mark Cobb eds., *Herbert Marcuse: A Critical Reader* (New York: Routledge, 2005), 2-3.

<sup>568</sup> Leith Passmore, “International Law as an Extralegal Defense Strategy in West Germany’s Stammheim Terror Trial,” *Law, Culture and the Humanities* 9, no. 2 (2011): 376. The coalition between the SPD and CDU also triggered the emergence of the extra-parliamentary opposition [*Ausserparlamentarische Opposition*] (APO) which abandoned party politics as a meaningful platform to advance political demands. Chiefly organized and led by the student movement, the APO organized to advance political agendas that promoted the freedom of assembly and public declarations of opinion. Jeremy Varon, *Bringing the War Home: The Weather Underground, the Red Army Faction, and the Revolutionary Violence of the Sixties and Seventies* (Berkeley: University of California Press, 2004), 31. See Karl A. Otto, *Vom Ostermarsch zur APO: Geschichte der ausserparlamentarischen Opposition in der Bundesrepublik, 1960-70* (Frankfurt: Campus, 1977); Philipp Gassert and Pavel A. Richter, *1968 in West Germany: A Guide to Sources and Literature of the Extra-Parliamentarian Opposition* (Washington: German Historical Institute, 1998); Kurt L. Shell, “Extraparliamentary Opposition in Postwar Germany,” *Comparative Politics* 2, no. 4 (1970): 653-680.

<sup>569</sup> Jeremy Varon, *Bringing the War Home: The Weather Underground, the Red Army Faction, and the Revolutionary Violence of the Sixties and Seventies* (Berkeley: University of California Press, 2004), 209-211. For Ulrike Meinhof’s most famous call for escalating tactics of resistance which anticipates the group’s counter-violence against imperialism, see Ulrike Marie Meinhof, “Vom Protest zum Widerstand,” *konkret*, May 1968, 5.

I recite this history in order to illuminate the political environment within which the Düsseldorf Majdanek pre-trial investigations emerged. Here, anti-authoritarian revolt resulted in a militant resistance by the New Left against the continuation of fascism that did not end with the IMT trial, but remained prevalent in judicial, political and security structures.<sup>570</sup> At this point, the West German government had refused to investigate the atrocities committed by SS guards in the Majdanek camp.<sup>571</sup>

The Düsseldorf Majdanek trial investigations began in the early 1970s due to the political pressure enacted in the mid-to-late 1960s. Initially, fifteen former employees of Majdanek were indicted for murder and accomplice to murder under the German Penal Code [*Strafgesetzbuch*] (StGB).<sup>572</sup> § 211 and 212 of the StGB provides two types of murder charges: *Mord* and *Totschlag*. § 211(2) defines murder [*Mord*] under specific aggravating circumstances:

A murderer is anyone who kills a human being out of lust in order to satisfy their sexual desire, out of greed or other base motives, maliciously or treacherously or by means dangerous to the public at large or in order to enable or conceal another crime.<sup>573</sup>

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<sup>570</sup> In “Shadow of the Summit Westward,” Meinhof lays the foundation for her continual position that communism was the solution to the legacy of Nazi fascism that still gripped political and social life in the FDR, and elsewhere. See Ulrike Meinhof, “Gipfelschatten westwärts,” *konkret*, March 1960. Leith Passmore, *Ulrike Meinhof and the Red Army Faction: Performing Terrorism* (New York: Palgrave Macmillan, 2011), 12.

<sup>571</sup> The Polish Special Tribunal prosecuted Majdanek camp guards in 1944, and again between 1946 and 1948. Although the Düsseldorf proceedings are sometimes referred to as the “third” Majdanek, it is the first by the Federal Republic.

<sup>572</sup> Sabine Horn, “‘Jetzt aber zu einem Thema, das uns in dieser Woche alle beschäftigt’: Die westdeutsche Fernsehberichterstattung über den Frankfurter Auschwitz-Prozess (1963-1965) und den Düsseldorfer Majdanek-Prozess (1975-1981)—ein Vergleich,” 1999. *Zeitschrift für Sozialgeschichte des 20 und 21 Jahrhunderts* 17 (2002): 21.

<sup>573</sup> StGB §211

§ 212(1) defines the charge of murder [*Totschlag*] as “whoever kills a person without being a murderer under § 211.”<sup>574</sup> However, the statute of limitations prevented the prosecution team, populated by Dieter Ambach, Dr. Rudolf Pick and Wolfgang Weber, from charging defendants under § 212(1). As such, indictments for murder were based on the criteria set-forth in § 211(2), which forced the prosecution to prove that all murders committed by the defendants were motivated by a “sadistic desire” present in each of them.<sup>575</sup> The psychological disposition of each defendant was also important in proving whether a defendant was either an accomplice [*Gehilfe*], or a perpetrator [*Täterschaft*] to murder [*Mord*]. Here, prosecutors had to discriminate between an act that was carried out by the individual’s own will or whether they subordinated themselves to the will of someone else. Put another way, whether an individual committed the offense based on a sense of duty, or because they personally adopted the criminal motives of others.<sup>576</sup>

On November 26, 1975, the trial, presided over by Justice Günter Bogen, opened in Düsseldorf’s District Court. Nine defendants, represented by counsellors Hans Birkelbach, Ludwig Bock, Hans Mundorf and Jürgen Hohl, occupied the dock for the entire duration of the trial.<sup>577</sup> The following list identifies each defendant, their position in the

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<sup>574</sup> StGB § 211, 212

<sup>575</sup> This issue was also present in the 1963-1965 Frankfurt Auschwitz Trial, which Devin Pendas argued produced a narrative about the sadistic nature of that trial’s defendants. See Devin Pendas, “‘I didn’t know what Auschwitz Was’: The Frankfurt Auschwitz Trial and the German Press, 1963-1965,” *Yale Journal of Law & Humanities* 12 (2000): 408.

<sup>576</sup> Pendas, “I didn’t know,” 112.

<sup>577</sup> Ludwig Bock was disqualified due to a conflict of interest and replaced by Jürgen Hohl mid-trial. Defendant Hermine Braunsteiner-Ryan secured Hans Mundorf specifically for her case. Hans Birkelback was former counsel to defendants at the IMT trial, and subsequent trials at the Nuremberg Military Tribunal. The initial indictment of fifteen individuals dropped to nine before the end of the trial. Defendant Alice Orolwski died in 1976, and defendant Wilhelm Reinartz was released due to illness. After establishing their innocent, camp guards Rosy Süß, Charlotte Mayer and Hermine Böttcher were acquitted and released in 1979.

Lubin-based camp, and their charge. As opposed to the IMT trial of only high-ranking Nazi officials, the Düsseldorf Majdanek trial prosecuted lower-level guards:

Name	Position	Charge
Hermine Braunsteiner-Ryan	Camp Deputy	Murder [ <i>Mord</i> ], Accomplice to murder [ <i>Gehilfe</i> ]
Thomas Ellwanger	SS, Camp Guard	Accomplice to murder [ <i>Gehilfe</i> ]
Hermann Hackmann	Camp Guard	Accomplice to murder [ <i>Gehilfe</i> ]
Hildegard Lächert	Camp Guard	Accomplice to murder [ <i>Gehilfe</i> ]
Emil Laurich	Camp Guard	Accomplice to murder [ <i>Gehilfe</i> ]
Fritz Heinrich Petrick	Camp Commandant Staff	Accomplice to murder [ <i>Gehilfe</i> ]
Heinz Villain	SS, Field Commandant	Accomplice to murder [ <i>Gehilfe</i> ]
Arnold Strippel	SS, Camp Director	Accomplice to murder [ <i>Gehilfe</i> ]
Heinrich Goffmann	SS, Field Commandant	Accomplice to murder [ <i>Gehilfe</i> ]

A myriad of factors prohibited the dissemination of the trial’s proceedings. On December 9, 1974, the First Act to Reform Criminal Proceedings Law (StVRG § 273 Abs. 2 StPO) was passed and established a total restriction to the documentation of witness testimony at the Regional [*Landgerichte*] and Higher Regional Courts [*Oberlandesgerichte*].<sup>578</sup> As such, the transcription of testimony presented by the Düsseldorf Majdanek trial’s three-hundred and forty witnesses, two-hundred and fifteen of whom were former camp inmates, was prohibited. Further, defense counsellors

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<sup>578</sup> Werner Leitner, “Das Protokoll im Strafverfahren Eine wechselvolle Geschichte,” in *Festschrift für Rainer Hamm zum 65. Geburtstag am 24 Februar 2008*, ed. Regina Michalke et al (Berlin: De Gruyter Recht, 2008), 415.

successfully objected to the production of audio recordings of trial proceedings by the court, including the filming of the trial by members of the press, which was typical at the time.<sup>579</sup> What is more, the trial of the Baader-Meinhof Group, which began in July of 1975, captivated national media as they transformed the courtroom into a stage to proclaim their political project and challenge the authority of the judiciary. As such, the press gallery in the Düsseldorf District court was chronically empty.<sup>580</sup>

The Majdanek trial was the longest criminal trial in the history of the Federal Republic, producing 474 trial sessions between November 26, 1975 and June 30, 1981, the date Justice Günter Bogen delivered the judgement.<sup>581</sup> Hermine Braunsteiner-Ryan was convicted of 1,181 counts of murder and 705 counts of accomplice to murder, and received a penalty of life imprisonment; Thomas Ellwanger was convicted and sentenced to three-years imprisonment; Hermann Hackmann was found guilty and received a ten-year prison sentence; Hildegard Lächert was convicted received a twelve-year prison sentence; Emil Laurich was convicted and sentenced to eight-years imprisonment, and; Fritz Heinrich Petrick was found guilty and sentenced to four-years imprisonment.

Although conducted decades apart, the IMT and Düsseldorf Majdanek trials were both established in response to the widespread violence that gripped Europe in the 1930s and 1940s. At the IMT, it was the allied states that called for criminal prosecutions of the

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<sup>579</sup> Elissa Mailänder and Patricia Szobar, *Female SS Guards and Workday Violence* (East Lansing: Michigan State University Press, 2015), 14.

<sup>580</sup> Rebecca Wittmann, "Tainted Law: The West German Judiciary and the Prosecution of Nazi War Criminals," in *Atrocities on Trial: Historical Perspectives on the Politics of Prosecuting War Crimes* eds. Patricia Heberer et al. (Lincoln: University of Nebraska Press, 2008): 223.

<sup>581</sup> One strategy employed by Hans Birkelbach and Jürgen Hohl, with some success, was to delay the end of the proceedings through repeated requests to questions more witnesses and to retain expert witnesses in order to have their clients rendered unfit to stand trial due to illness or age.

upper echelon of military, and administrative organizations devoted to Nazi ideology. Decades later, Germany's "1968-generation" called national and international attention to the legacy of fascism that maintained a stronghold in the state's administration. I read the 1968er's and the RAF's agitations as public efforts to continually engage with the past in the present. From this view, the IMT is figured as a device that did not and could not fulfill the indeterminable and on-going idea of justice for Nazi crimes. Further and in accordance with these groups, the immediate post-war trials did not "break" with a past marked by state oppression, control, and domination as fascist tactics were deployed by the state decades after the end of the war.

What emerged in the late 1960s was a public discourse that interrupted the time of transitional justice, which figured West Germany as transitioned, as a country that had achieved the ends of democracy, peace, and reconciliation. By flagging the authoritarian tactics of the state's security apparatus, 1968ers and RAF members positioned West Germany as a society that had not broken with its past. However, these political movements articulated a future oriented narrative that positioned the dismantling of the current state, the eradication of capitalist orders, the establishment of communism, and criminal prosecutions as the means to achieve better social, and political conditions. As such, they replicate transitional justice theory's rhetoric of ends by arguing that violence can be overcome and relegated to the past, and that a finite political transformation will deliver West Germany to a better, fairer life.<sup>582</sup> As the pre-trial investigations into the

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<sup>582</sup> The idea that the good life emerges as an achievement of socio-political revolution is dovetails with leftist notions of time described by Reinhart Koselleck. Koselleck tracks the shifts in semantic meaning of historico-philosophical concepts of revolution, movement, and civil war shifted since the 1789 French revolution. He

Majdanek camp murders occurred on the heels of their demands, the Düsseldorf-based trial could be framed as an answer to the calls of the 1968ers that would labor towards a more democratic and peaceful political order. Popular cultural reflections on the Düsseldorf Majdanek trial in West Germany were not focused on depicting the camp's violence. Rather, they considered the trial medium as "the time of transition," as an event that took place within a finite moment. I consider two central examples of such expressions now.

### *Cultural Mediations*

The creation and exhibition of the Majdanek Trial Portraits construes the Düsseldorf-based trial and correlative cultural mediations as the means to confront the past and move forward towards a more peaceful future. Hauschild's paintings were inspired by the most widely disseminated mediation of the trial—a documentary crafted by German filmmaker Eberhard Fechner. Over an eight-year period Fechner conducted one-hundred and five interviews with seventy trial participants, including the judge, investigators, prosecutors, defense counselors, witnesses, former prisoners, defendants, and former SS guards at Majdanek.<sup>583</sup> These interviews, which began part-way through the

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shows since then, contemporary evocations of revolution are no longer premised on a hard distinction between political and social revolution. Rather, like Marx, political revolution is imbricated in the social emancipation of all people which triggers the radical transformation of social structures. The achievement of socio-political revolution functions, here, on a temporal and spatial register: revolution implies transformation of the world (beyond a singular state), and revolution is a permanent state until socio-political objectives are achieved. Reinhart Koselleck, *Futures Past: On the Semantics of Historical Time*, trans. Keith Tribe (New York: Columbia University Press, 2004), 52.

<sup>583</sup> "The Trial: An Account of the Majdanek Trial in Düsseldorf," The National Center for Jewish Film, accessed August 9, 2016, <http://www.jewishfilm.org/Catalogue/films/trial.htm>; "Der Prozess," *absolut Medien*,

proceedings, provided a form for participants to reflect on the trial as it was unfolding. This on-going format allowed Fechner to chart each participant's evolving view on the trial, and document testimony without the imposition of law's regulatory and vernacular frameworks. The final product, entitled "The Trial: An Account of the Majdanek Trial in Düsseldorf" [*Der Prozess—Eine Darstellung des Majdanek-Verfahrens in Düsseldorf*], ("The Trial" going forward) condensed the five-year trial into a four-and-a-half-hour documentary which was sliced into a three-part series for television broadcast in 1984.<sup>584</sup> Fechner's reconstruction emerged as a "counter" trial which represented the prosecution outside the trial medium. Due to the absence of trial transcripts and media reports, legal historians have rendered "The Trial" as the most authoritative account of the proceedings.<sup>585</sup>

Fechner's documentary was the basis for subsequent mediations of the proceedings. For instance, Düsseldorf-based artist Minka Hauschild came to learn about the Majdanek camp through Fechner's cinematic depiction. Her fascination with the interviewed participants propelled her to photograph them as they appeared on her television screen. These still-frames later served as the source material for the forty-four oil-based portraits that Hauschild crafted between 1995-1996. In an interview, Hauschild

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accessed March 20, 2017, <https://www.absolutmedien.de/film/2001/DER+PROZESS+28Eberhard+Fechner> 29

<sup>584</sup> The TV series was organized into the following segments: "Part One: Charge" (attracted .72 million viewers); "Part Two: Evidence" (enticed 1.04 million), and; "Part Three: Judgements" (pulled in 1.02 million spectators). Gerhard Mauz "Wo blieben diese Menschen?" *Der Spiegel*, July 1, 1991, <http://www.spiegel.de/spiegel/print/d-13490597.html>

<sup>585</sup> See Mark Wolfgram, "Didactic War Crimes Trials and External Legal Culture: The Cases of the Nuremberg, Frankfurt Auschwitz, and Majdanek Trials in West Germany," *Global Change, Peace & Security* 26, no. 3 (2014): 281-97; Horne, "Westdeutsche Fernsehberichterstattung."

explains that she turned to painting as a means to grapple with her mother's membership in the League of German Girls [*Bund Deutscher Mädel*], the female branch of the Hitler Youth [*Hitler-Jugend*], and her father's employment in the Storm Detachment [*Sturmabteilung*], the paramilitary wing of the Nazi Party.<sup>586</sup> Her artist statement explains that her motivation for producing the collection was "rooted in a curiosity for humanity."<sup>587</sup> She elaborates in an interview that,

[p]ainting was a form of self-scrutiny for me and an exploration on how human nature works—what are we made of and how can we perpetually work on transforming the *unwholesome into the wholesome* [emphasis mine].<sup>588</sup>

For Hauschild, the collection was the means with which she began to work through her family's past. Like the trial medium, painting is conceived as a device for transformation. The artist turned to painting in order to deal with and overcome her family's Nazi past. This grappling, she claims, transformed her from an "unwholesome" into a "wholesome" person. By taking responsibly through her art, she imagines herself as free to move on.

Yet the Majdanek Trial Portraits were programed to reflect a different, less personal and more public form of grappling when they made their debut in 1996. At that time, curator Eckhart Gillen invited the Jewish Museum Department of the Berlin Museum to contribute to the 47<sup>th</sup> Berlin Arts Festival [*Berliner Festspiele*] at the Martin-Gropius-Bau entitled, "Images of Germany: Art from a Divided Country [*DeutschLANDbilder: Kunst aus*

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<sup>586</sup> Sophie Arts, "Freeze Frames: Melancholy Paintings Evoke Holocaust Trial," *Spiegel Online*, July 12, 2013, <http://www.spiegel.de/international/berlin-paintings-evoked-famous-1970s-nazi-trial-a-910248.html>; emphasis mine.

<sup>587</sup> "Prozess Portraits," Minka Hauschild, accessed March 15, 2016, <http://www.minka-hauschild.de/kunst/majdanek-portraits/>

<sup>588</sup> Arts, "Freeze Frames."

*einem geteilten Land*].”<sup>589</sup> Jewish Museum Department director, Amnon Barzel, accepted the invitation and solicited works from three different artists—Joshua Neustein (1940), Penny Hes-Yassour (1950), and Minka Hauschild (1956)—to display how different generations approached Germany’s Nazi past.<sup>590</sup> Representing the oldest generation, Neustein’s installation “*Aschenbach*” featured a lowered crystal chandelier that hovered over a map of Berlin crafted from ash. In line with the IMT’s prosecution rationale, his installation symbolically gestured towards the state’s seat of power, as the place where high-ranking Nazi officials dispensed their orders. Hes-Yassour’s installation “Mental Maps—Involuntary Memory” re-created an aerial view of a concentration camp, demonstrating how ideas of responsibility shifted away from Nazi superiors, and towards small agents in the Nazi genocide machinery by the second post-war generation.

While the collection was the self-proclaimed means with which Hauschild grappled with the past she personally inherited, the curation and display of the Majdanek Trial Portraits in “Art from a Divided Country” suggests that the Düsseldorf Majdanek prosecutions was the device through which the post-1968 generation grappled with Nazi atrocities more generally. Hauschild’s creative reflection on the Majdanek trial signals a new generation that returned to the past through legal means which places criminal law firmly at the center of West Germany’s political transformation.

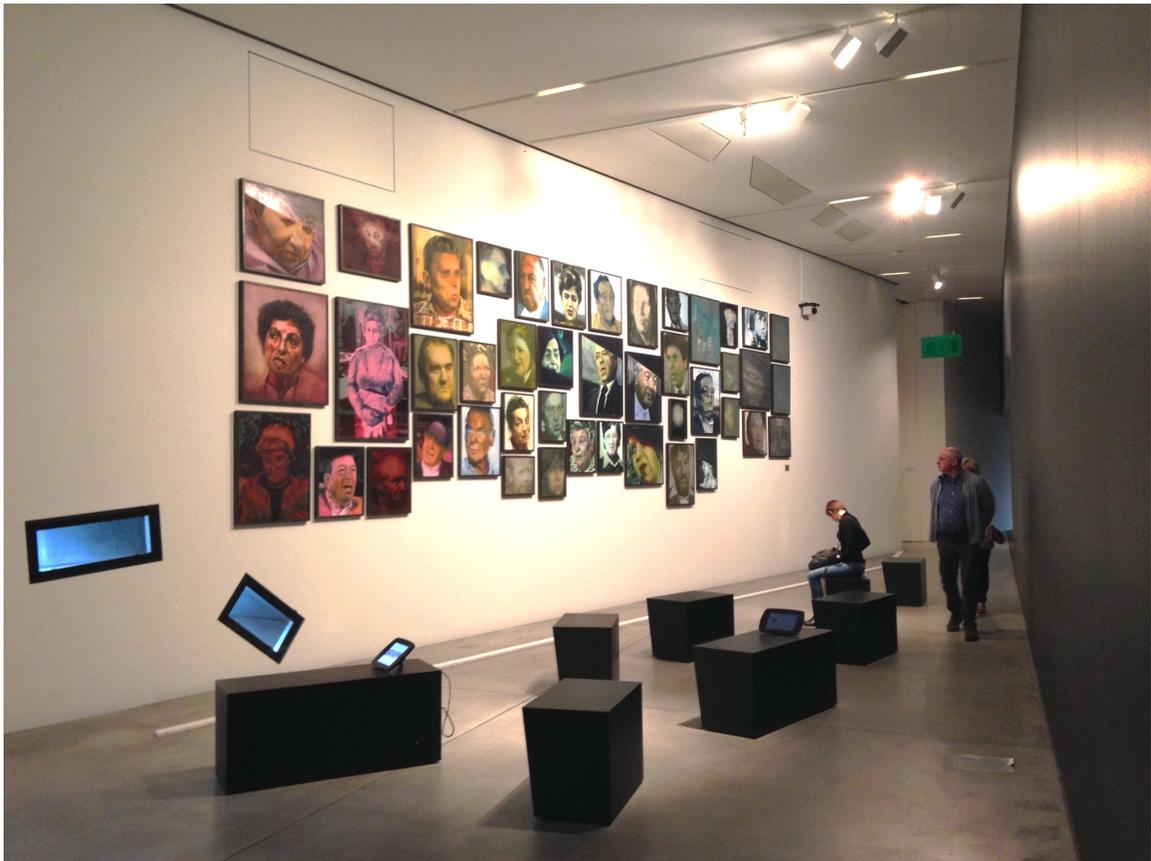
The paintings were privately stored by Hauschild in Berlin for five years after “Art from a Divided Country” retired. In 2002, Deutsch Telekom AG purchased the collection

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<sup>589</sup> Interview with Jewish Museum Curator, April 2015, Berlin, Germany.

<sup>590</sup> See Eckhart Gillen (eds.) *deutschLANDbilder: Kunst aus einem geteilten Land* (Berlin: Dumont, 1997), 522-529. Minka Hauschild’s portraits were hung side-by-side around a circular rotunda in Martin-Gropius-Bau.

from Hauschild, and initiated the Jewish Museum's acquisition of the paintings.<sup>591</sup> The Portraits remained in the Museum's archives until 2013, when curators re-focused the final chapter of the permanent exhibition. Here, the Majdanek Trial Portraits made a second debut seventeen years later to re-affirm criminal law's relationship with political transformation.



**Figure 3.0:** "Majdanek Trial Portraits" at the Jewish Museum Berlin. Photo Credit: Tiffany MacLellan

According to the Museum's website, the final chapter of the permanent exhibition is "devoted to Jewish life today and to the memories of German Jews and their childhoods and youths spent in Germany after 1945," and it is under this narrative umbrella that the

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<sup>591</sup> Interview with Jewish Museum Berlin curator, April 2015, Berlin, Germany.

“On Trial: Auschwitz/ Majdanek” installation is situated.<sup>592</sup> Part One, “Düsseldorf Majdanek Trial (1975-1981),” displays the Majdanek Trial Portraits. Upon entering the room visitors encounter the Hauschild collection hung in a Saint Petersburg salon-style arrangement, which facilitates comparisons between each subject. The forty-four paintings differ in size, yet the up-close framing of each subject unites the collection.

Although the installation’s introduction is minimal, the introductory text that adorns one wall in the installation reveals much. Here, visitors are informed that,

[t]he public debate about the murder of European Jews began in the courtroom... the court proceedings also served as a means of researching and documenting events that had taken place in the camp [...] The “Majdanek Trial Portraits” were created twenty years after the trial began. They are indicative of the reverberations that the court proceedings triggered in the media and the arts.<sup>593</sup>

Two key themes emerge from this introduction. Like “Art from a Divided Country,” “On Trial” figures the Düsseldorf proceedings as a crucial instrument that accounts for and masters difficult pasts. Further, The Majdanek Trial Portraits are introduced as historical evidence of how the trial was a pivotal moment in post-war German-Jewish life. This point is reiterated in an interview with one curator:

[...]the Auschwitz trial and Majdanek trial were turning points in the memorialization of the Nazi crimes in Germany [...] the Holocaust is remembered in Germany because of these trials and the whole juridical prosecution of the crimes. They influenced and are essential for our view of the Holocaust. Understanding the Holocaust was not an intellectual process or a cultural process. It was a legal process.<sup>594</sup>

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<sup>592</sup> “A Journey Through Two Millennia of German Jewish History,” Jewish Museum Berlin, accessed March 23, 2016, <https://www.jmberlin.de/en/permanent-exhibition>

<sup>593</sup> The museum’s blog further constitutes the collection as historical evidence of artistic reactions to the trial. In the words of one curator, “Minka Hauschild’s painting cycle reflects the long reverberation that the trial had in the media, society at large, and in the arts.” See Monika Flores, “A Lasting Disturbance,” *Blogerim: From the corridors of the Jewish Museum Berlin* (blog), Jewish Museum Berlin, March 7, 2016, <http://www.jmberlin.de/blog-en/2013/08/a-lasting-disturbance/#more-1297>

<sup>594</sup> Interview with Jewish Museum Berlin curator, April 2015, Berlin, Germany.

Another curator adds that the installation was not only about the trial itself, but also about the “whole process of memorialization” that occurs in the trial, and through the paintings.<sup>595</sup> Here, the trial is exalted as a crucial doorway to the past for West Germans. By narrating a story about the critical importance of the trial’s representation of violence, curators figure violence as something that is bounded in the past as opposed to something that perseveres in the present.

In this section I briefly describe how narratives in the anti-authoritarian movement of the 1960s in West Germany illuminated the on-going presence of fascism within state institutions, which de-stabilizes claims that violence is a thing of the past. However, I also indicate how their demands for Nazi accountability simultaneously deployed a rhetoric of ends which posited that the future would be better if only the state prosecuted former fascists, and ejected current one’s from Federal office. I further illuminate how the production and display of the Majdanek Trial Portraits also reiterates a rhetoric of ends. As opposed to suggesting that peace and democracy is a product of prosecutions, the collection figures the trial medium as that which permits a collective’s necessary return to past. Yet the totalities imbued in future-oriented political rhetoric breakdown at the Jewish Museum Berlin. As such, I turn to Benjamin’s methodology of critical constellations before I explain how the Portraits hold within them a critical function that interrupts transitional justice theory’s teleological projections.

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<sup>595</sup> Interview with Jewish Museum Berlin curator, April 2015, Berlin, Germany.

## Killing Time & Aesthetic Subversions

In Chapter One I describe Benjamin's acerbic critique of historicism's methodological fashioning of time that links together various moments into a seamless teleology. In doing so, Benjamin argues, historicism figures past events as a reaction to that which precedes it, or as the overcoming of an earlier period.<sup>596</sup> The chronological ordering of events, then, imagines time as an empty vessel that can be filled with a coherent narrative about the past, which sets the course of history and naturalizes what is (said) to come.<sup>597</sup> In this section, I describe Benjamin's subversion of historical time as manifest in his methodology of critical constellations. I further explain Benjamin's notion of allegory—an aesthetic form that draws on principles of critical constellations in order to subvert a politics premised on means/ends relations. I put these two methodologies to work in the final section of this paper to show how the spatial layout of "On Trial," and the Jewish Museum Berlin's architectural design interrupt discursive projections of both the past and present that pervade the exhibition's narrative.

### *Benjamin's critical constellations*

Benjamin's methodology of critical constellations appropriates motifs from the Surrealist movement.<sup>598</sup> Their "anti-art" aesthetic practice set-forth to capture and expose

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<sup>596</sup> Benjamin, "Collector and Historian," 261.

<sup>597</sup> Walter Benjamin, "Central Park," in *Walter Benjamin, Selected Writings Volume 4 1938-1940*, eds. Howard Eiland and Michael W. Jennings, trans. Edmund Jephcott and others (Cambridge: The Belknap Press of Harvard University Press, 2003), 164. This imagery is also evoked in his sixth thesis. Benjamin, "Concept of History," 391.

<sup>598</sup> Despite Benjamin's appreciation of Surrealism's focus on dialectical images, fragmentation and montage, he ultimately argued that Surrealism as a movement failed to effectively advance social critique and disrupt dominant systems of authority. See Walter Benjamin, "Surrealism: The Last Snapshot of the European Intelligentsia," in *Walter Benjamin, Selected Writings: Volume 2, Part 1: 1927-1930*, eds. Michael W. Jennings,

the difference between real and “surreal” worlds. Drawing on tenets of psychoanalysis, Surrealists aimed to release their subconscious and shatter logics of order by freely associating and juxtaposing fragments (images, text) that ostensibly belong to contrasting experiential categories.<sup>599</sup> The “profane illuminations” created through their resulting montages were imagined by the movement as political acts that resisted rationalism and bourgeois sensibilities.<sup>600</sup> For instance, André Breton’s autobiographical prose, *Nadja*, interrupts the notion of the present, unified subject, as configured in Jean-Jacques Rousseau’s autobiography *Confessions*, by representing a figure that haunts itself, and thus, decenters themselves.<sup>601</sup> This haunting takes place in a representation of Paris where its everyday, mundane urban objects are represented as erotic, grotesque, and sensational. Treating all materials as texts that may be read together, the story is presented through a myriad of texts, photos, and illustrations. Central, here, is the idea that a montage can be formed by tying any and all kinds of material together. The method of juxtaposing contrasting fragments *via* montage in order to subvert mean/sends projections

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Howard Eiland and Gary Smith, trans. Rodney Livingstone and others (Cambridge: The Belknap Press of Harvard University Press, 2005), 207-221; Walter Benjamin, “Dream Kitsch,” in *Walter Benjamin, Selected Writings: Volume 2, Part 1, 1927-1930*, eds. Michael W. Jennings, Howard Eiland and Gary Smith, trans. Rodney Livingstone and others (Cambridge: The Belknap Press of Harvard University Press, 2005), 3-5.

<sup>599</sup> André Breton, “Manifesto of Surrealism (1924),” in *Manifestoes of Surrealism*, trans. Richard Seaver and Helen R. Lane (Ann Arbor: University of Michigan Press, 1972), 9.

<sup>600</sup> For André Breton’s casting of the movement’s aesthetic political project, see André Breton, “Political Position of Surrealism,” in *Manifestoes of Surrealism*, trans. Richard Seaver and Helen R. Lane (Ann Arbor: University of Michigan Press, 1972), 205-232.

<sup>601</sup> For instance, the central character deliberates, ““Who goes there? Is it you, Nadja?... I cannot hear you. Who goes there? Is it only me? Is it myself?” André Breton, *Nadja*, trans. Richard Howard (New York: Grove Press, 1960), 144. Margaret Cohen argues that Jacques Derrida’s notion of *différance* is insinuated in Breton’s concept of identity: “Breton makes clear that there is no prior moment of self-presence from which the haunting self falls off and that this self consequently cannot be thought outside of temporal mediation.” Margaret Cohen, *Profane Illumination: Walter Benjamin and the Paris of Surrealist Revolution* (Berkeley: University of California Press, 1993), 63, 67.

informed Benjamin's historical materialist methodology of critical constellations.

Constellations interrupt historicism's view of linear time. Rather than stabilizing modes of historical inquiry that function on depoliticized notions of time and progress, Benjamin's materialist historiography short-circuits a fragment of the past to an isolated, unique present moment.<sup>602</sup> His methodology calls for the lifting, or blasting, of fragments out of the linear continuum of time, and the tethering of them to the present to form a constellation unique to the moment.<sup>603</sup> Benjamin refers to the recognition of such constellations as they "flash up" in a given moment as the fulfillment of "now-time [*Jetztzeit*]" or "messianic time."<sup>604</sup>

The political project that underpins the actualization of critical constellations operates as a system of pure means. It is a chance disruption, within a moment, that upsets the phantasmagoria of sequential continuity.<sup>605</sup> The play between past and present within critical constellations strikes at both the ordering of the past, and the correlative naturalization of a projected future. By suspending past fragments from their projected historical context, the past is wrestled away from the phantasmagoria of time that is working to overpower it.<sup>606</sup> Fighting against contextualization, by decentering the

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<sup>602</sup> Benjamin, "Concept of History," 397 [A28]; Walter Benjamin, *Arcades Project*, trans. Howard Eiland (Cambridge: The Belknap Press of Harvard University Press, 2002), 588. In *Arcades*, Benjamin refers to this as the "telescoping of the past into the present."

<sup>603</sup> In his XVII thesis, Benjamin writes, "Thinking involves not only the movement of thoughts, but their *arrest* as well. Where thinking suddenly comes to a stop in a constellation saturated with tensions, it gives that constellation a shock, by which thinking is crystalized as a monad. The historical materialist approaches a historical object only where it confronts him as a monad. In this structure, he recognizes the sign of a messianic arrest of happening, or (to put it differently), a revolutionary chance in the fight for the oppressed past." Benjamin, "Concept of History," 396 [XVII thesis], emphasis mine.

<sup>604</sup> Benjamin, "Concept of History," 390 [V thesis], 395 [XIV thesis], 397 [A28 thesis], Benjamin, "Central Park," 183.

<sup>605</sup> Benjamin, *Arcades Project*, 463 [N3,1].

<sup>606</sup> Benjamin, "Concept of History," 391 [VI thesis].

projected order and meaning of bygone events, provides an opening to critically contemplate the past from the position of the present.<sup>607</sup> Here, the present's citation of a past moment inaugurates an experience *with* the past as opposed to an experience *of* the past.<sup>608</sup> As such, the localized, unique moment within which constellations are formed is a recuperative political moment of pure means that displaces projected meanings, or phantasmagorias. Here the "flashing up" of a critical constellation illuminates the infinite reflexivity in the present *with* the past.

Benjamin embraced constellations as a methodology in his own work. He names his approach to, and in, the *Arcades Project* as such: "the first stop along this path will be to carry the montage principle over into history," and "method of this project: literary montage. I needn't say anything. Merely show [zeigen]."<sup>609</sup> The collection of decontextualized fragments of texts, or citations, loosely organized under different chapters, or "themes," can be reconfigured, and juxtaposed with other fragments that generate chance illuminations of the phantasmagorias of progress that befell Paris in the nineteenth century.<sup>610</sup> Further, "One Way Street" could be read as a montage of reflections and observations, which are banal on their own but generate a chance critical illumination

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<sup>607</sup> Martel, *Textual Conspiracies*, 10.

<sup>608</sup> Benjamin, "Concept of History," 396 [XVI thesis]; Howard Caygill, "Walter Benjamin's Concept of Cultural History," in *The Cambridge Companion to Walter Benjamin*, ed. David Ferris (Cambridge: Cambridge University Press, 2004), 90; emphasis mine.

<sup>609</sup> Benjamin, *Arcades Project*, 461 [N2,6], 460 [N1a,8].

<sup>610</sup> *Arcades Project* was a collection of papers shuttled out of Europe in a suitcase, which Benjamin may have later contextualized, ordered, and rendered into a fluid narrative. However, these quotes leave this point open to debate. Yet Susan Buck-Morss transformed *Arcades Project* into a fluid narrative in *Dialectics of Seeing*. However, she illuminates that *Arcades Project* "makes us historical detectives against our will, forcing us to become actively involved in the reconstruction of the work... he allows us the experience of feeling we are discovering the political meaning of these phenomena on our own." Susan Buck-Morss, "Preface," in *The Dialectics of Seeing: Walter Benjamin and the Arcades Project* (Cambridge: The MIT Press, 1990), x.

when juxtaposed with one another. In Benjamin's words, the book "presents something heterogeneous, or rather polar."<sup>611</sup> Both *Arcades Project* and *One-Way Street* subvert the naturalization of chronological narrative forms, and therefore provide conditions for the infinite re-organization and juxtaposition of texts that might produce, by chance and without intention, profane illuminations within themselves.

### *Benjamin's allegory*

Allegories can be formed by drawing together time and aesthetics to strike at means/ends phantasmagorical projections. Departing from the literary tradition of German Romanticism's approach to allegory as that which functions as a symbol of meaning, Benjamin recuperates allegory as that which *opposes* signification.<sup>612</sup> As such, an allegorical intervention operates outside the means/ends schema as its disruption occurs outside the sphere of human intention.<sup>613</sup> Instead, allegorical "ways of seeing" strike at and expose phantasmagorical projections. On this, Benjamin writes,

[t]his is the core of the allegorical way of seeing, of the baroque, secular account of history as the Passion of the world, a world that is meaningful only in the stations of decay. The greater the significance, the greater the subjection to death, because death digs most deeply the jagged line of demarcation between physical being and significance.<sup>614</sup>

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<sup>611</sup> Walter Benjamin, Gershom Scholem, and Theodor Adorno, *The Correspondence of Walter Benjamin, 1910-1940*, eds. Gershom Scholem and Theodor Adorno, trans. Manfred Jacobson and Evelyn Jacobson (Chicago: Chicago University Press, 1994), 309. Benjamin continues: "certain lightning bolts may perhaps emerge from this tension as too harsh, and certain explosions as too blustering."

<sup>612</sup> Benjamin writes, "'allegory is so opposed to that which is concerned with the discovery of truth that it reveals more clearly than anything else the identity of the pure curiosity which is aimed at mere knowledge with the profound isolation of man.'" Benjamin, *German Tragic Drama*, 229.

<sup>613</sup> As described in Chapter One, "the language of God," the language that exists outside the sphere of communication, dovetails with Benjamin's critique of the German Romantic approach to allegory as symbol, or, a device that communicates knowledge. The Romantic notion of allegory, then, operates within the means/ends schema Benjamin's methodology sets forth to depose.

<sup>614</sup> Benjamin, *German Tragic Drama*, 166.

Crucial here, is Benjamin's postulation that the more robust, the more imposing a phantasmagorical projection is, the more vulnerable it becomes to the destructive force of allegory. The more assertive, unequivocal, and omnipresent the rhetoric of ends, for instance, the more chances there are to depose of it. Here, allegory provides "the dark background against which the bright worlds of the symbol might stand out" in order to expose the non-existence of what it represents.<sup>615</sup> Seeking out allegory's inadvertent critical effects is of central importance to Benjamin's recuperative approach to aesthetics. For Benjamin, allegory provides a methodology upon which to subvert oppressive phantasmagorical projections of progressive time, ways of being, and systems of authority.

Projections of political power cannot escape allegorical critique. In *The Origin of German Tragic Drama* [*Ursprung des deutschen Trauerspiels*], he illustrates how allegory strikes at the phantasmagorical illusion of sovereignty, among other concepts.<sup>616</sup> At the time, critics rendered German Baroque dramas, or *Trauerspiels*, as unworthy of scholarly analysis due to their careless composition.<sup>617</sup> Faithful to Romanticism's aesthetic sensibility which privileged symbolic communicability, they condemned *Trauerspiels* for ostensibly failing to portray the sovereign in line with the popular understanding of the sovereign in the period, that is, as a figure that sacrifices themselves through the act of decision in the

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<sup>615</sup> Benjamin, *German Tragic Drama*, 161, 233.

<sup>616</sup> The German *Trauerspiel* translates into "mourning play," which is a type of modernist tragedy unique to the Baroque period. See John Osborne, "Translator's Note," in *The Origin of German Tragic Drama*, trans. John Osborne (New York: Verso, 2009). *German Tragic Drama* was one of the rare books published during Benjamin's lifetime, and the work submitted to achieve Habitation in order to lecture in German universities.

<sup>617</sup> Benjamin, *German Tragic Drama*, 75.

best interest of the people.<sup>618</sup> Further, German writers were criticized for failing to compose theater in a manner that sufficiently built suspense through-out the performance.<sup>619</sup>

Yet, as Benjamin argues, *Trauerspiels* are critical sites of allegorical representation that subvert the image of the sovereign as a figure who bears the burden of decision-making to restore order in the name of the people.<sup>620</sup> Both Daniel Casper von Lohenstein's drama *Sophonisbe*, and Andreas Gryphius's play *Catharina von Georgien*, represent sovereigns—fashioned in purple and regal symbols—as arbitrary, hesitant, and impulsive.<sup>621</sup> In doing so, “the prince, who is responsible for making the decision to proclaim the state of emergency, reveals, at the first opportunity, that he is almost incapable of making a decision.”<sup>622</sup> This hesitation, intentionally scripted to summon

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<sup>618</sup> Benjamin, *German Tragic Drama*, 72, 74. Benjamin writes, “[t]he enduring fascination of the downfall of the tyrant is rooted in the conflict between the impotence and depravity of his person, on the one hand, and, on the other, the extent to which the age was convinced of the sacrosanct power of his role... Just as Christ, the King, suffered in the name of mankind, so, in the eyes of the writers of the baroque, does royalty in general.” Benjamin, *German Tragic Drama*, 72-73.

<sup>619</sup> Benjamin, *German Tragic Drama*, 50, 74-75.

<sup>620</sup> Benjamin, *German Tragic Drama*, 75. Benjamin writes, “The antithesis between the power of the ruler and his capacity to rule led to a feature peculiar to the *Trauerspiel* which is, however, only apparently a generic feature and which can be illuminated only against the background of the theory of sovereignty.” Benjamin, *German Tragic Drama*, 71.

<sup>621</sup> Benjamin writes, “What is conspicuous about them is not so much the sovereignty evident in the stoic turns of phrase, as the sheer arbitrariness of a constantly shifting emotional storm in which figures of Lohenstein especially sway about like torn and flapping banners... their actions are no determined by thought, but by changing physical impulses.” Benjamin, *German Tragic Drama*, 71. Benjamin refers to the follows script from Lohenstein's work to demonstrate Masinissa's, King of Numidia, indecision: “... go without another word. But no, stay! I die, I tremble, I am struck with horror. Yet go! There is no time for doubt. Wait! Be gone! [*Disalces geh, und wirff mir mehr kein Wort nicht ein. Jedoch, halt Ich vergeh, ich zitter, ich erstarre Geh immer Es ist nicht mehr Zeit zu zweiffeln. Harre Verzieh Ach Schau, wie mir Aug*].” He quotes the following from Gryphius's script, “Do not show yourself again until the work is done. Alas, what terrors weigh upon my tortured heart! Away! Be gone! But no! Stay. Come back! Yes, go! It must be done at last [*Lass dich nicht eher schauen. Als nach volbrachtem werk Ach was beklämmt vor grauen. Die abgekränckte Brust Verzeuch Geh hin Ach nein Halt inn Komm her Ja geh Es muss doch endlich seyn*].” Benjamin, *German Tragic Drama*, 71.

<sup>622</sup> Benjamin, *German Tragic Drama*, 71.

suspense in the audience as expected by the cannon, *unintentionally* exposes the hollow projections of princely power by fashioning a montage between the image of the indecisive sovereign, and the “sacrosanct power of his role” unique to the historical moment.<sup>623</sup> This radical exposure does not distill a “truth” in the wake of allegorical destruction, but rather, it fragments and hollows-out sovereign authority in a manner outside the means/ends political schema.<sup>624</sup>

Allegory also opposes the phantasmagorical illusion of progressive time. Although Benjamin argues that history itself is a phantasmagoria in *Arcades Project*, his most famous allegorical representation of time is figured into his essay “On the Concept of History” (1940).<sup>625</sup> There, he evokes Paul Klee’s painting *Angelus Novus*. A wide-eyed angel is depicted as caught in a brutal storm; its wings are pinned back, preventing it from turning towards the future. For Benjamin, the allegorical representation figured through *Angelus Novus* strikes at linear notions of historical time. We cannot see what the angel sees, and as such, what appears to us like a linear chain of events, the angel sees as “one single catastrophe that keeps piling wreckage upon wreckage.”<sup>626</sup>

While the paintings reaffirm the teleology that underpins narratives in transitional justice theory, they can be brought into constellation with the exhibition’s space to perform a critical function. I argue that the layout of “On Trial” frustrates museum-based representations of the Düsseldorf Majdanek Trials as an important gateway within which

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<sup>623</sup> Benjamin, *German Tragic Drama*, 72.

<sup>624</sup> James R. Martel, *Divine Violence: Walter Benjamin and the Eschatology of Sovereignty* (New York: Routledge, 2012), 59.

<sup>625</sup> Benjamin, “Paris (1939),” 26. See also Buck-Morss, *Dialectics of Seeing*, 56, 107; Benjamin, “Concept of History.”

<sup>626</sup> Benjamin, “Concept of History,” 393.

West Germans grappled with and over-came their past. Curatorial choices that decontextualize the paintings and infuse the gallery space with an ambient narrative about *another* trial, inadvertently creates a confusing and disorienting space that dims the Museum’s representation of the trial. Further, Daniel Libeskind’s architectural design, “Between the Lines,” intermittently interrupts the permanent exhibition’s chronology. By placing the Museum’s discursive positioning of the Majdanek Trial Portraits in constellation with the installation’s layout and architecture, I show how the totalities projected in transitional justice theory breakdown at the site of the museum as it can allow visitors to encounter chance engagement “with” the past.

#### *Subversive museological stagecraft*

The decontextualization of the subjects depicted in the Majdanek Trial Portraits work against the installation’s figuration of the trial as a gateway to a bounded past. I argue that curators inadvertently undermine their simple yet direct discursive framing of the collection—which positions the trial as a prism within which political communities can return to the past— by employing a “less is more” curatorial approach. In an interview, one museum staff member mentioned their dislike for heavy contextualization through text and objects:

[w]hen the museum opened, we had these typical historical exhibitions that bore the hell out of me. It is like a flea market. A selection of pieces of, pieces of, pieces of! [...] If you do contemporary history and walk through historical galleries, you will see again this flea market of historical exhibits.<sup>627</sup>

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<sup>627</sup> Interview with Jewish Museum Berlin curator, April 2015, Berlin, Germany.

This curator's professional approach to historical exhibition layout does not place a premium on the critical function of decontextualization. Rather, they argue that crowded, information heavy installations do not make stimulating exhibitions and are the result of outdated curatorial techniques.

This "less is more" strategy situates the Majdanek Trial Portraits in a manner that subverts a rhetoric of ends in two ways. First, the name and position in the courtroom of each subject depicted is unclear. The color spectrum and size of each portrait varies, and all paintings exclude identifying emblems that may signal to a visitor who is who.<sup>628</sup> The curatorial choice to move away from "flea market" displays, inadvertently presents the collection in a manner that obfuscates who was rendered culpable for murder, who rendered judgement, and who experienced the violence of camp Majdanek. By contextualizing the collection to show visitors the importance of didactic history trials as stated on the installation's wall, but curating an exhibit that does not "show" this history, the Portraits function as a Benjaminian allegory. It disturbs projections of the trial as a medium within which political communities can return to the past. Further, the opaque presentation of the subjects depicted leaves open who is to be transformed by the Majdanek proceedings.

Second, the historical events depicted in "On Trial" are not displayed in chronological order. Here, the presentation of the Düsseldorf Majdanek trial (1975-1981) *vis-à-vis* the

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<sup>628</sup> Indeed, the names of the trial participants depicted are listed on iPads stationed in the gallery space as opposed to on the wall beside each portrait. I observed that museum visitors do not sit and consume the iPads' demystifying data. Instead, visitors frequently walk through the space quickly, or stand and stare at the paintings without engaging the technology's content. This is likely because "On Trial" is situated at the very end of the lengthy permanent exhibition.

Majdanek Trial Portraits is shown before the Frankfurt Auschwitz trial, which took place nearly a decade earlier between 1963 and 1965. One curator explained that,

[t]he Majdanek Trial Portraits are displayed first because the collection was to be hung together. We did not have the wall space to do so in the other rooms in this chapter of the exhibition. Preservation concerns also made the other space unsuitable.<sup>629</sup>

This reversal of order is not by itself disorienting, but becomes so when put in constellation with other factors. For instance, the Frankfurt Auschwitz trial installation projects a film which includes ambient sound in the room adjacent to the room that presents Hauschild's artworks. According to one curator, open-air sound was used instead of headphones because "people have problems with hygiene," and because, "ambient sound helps to draw attention" to the installation.<sup>630</sup> However, the decision to permit the film's sound to project into the empty cement room has inadvertent effects. When visitors enter "On Trial," they see the paintings but hear the voices of individuals discussing the Frankfurt Auschwitz trial. Placing the trials "out of order" and simultaneously superimposing them through sound, creates a confusing environment that further resists the Museum's narrative that the trial was a clear, important, and critical device for West Germany's political transformation.

The allegorical rupture made possible with these paintings is further enforced by the Jewish Museum Berlin's architectural expression of time as discontinuous and fragmented. As such, I now turn quickly to Daniel Libeskind's design "Between the Lines" as another device that creates critical montages that strike at ends-oriented narratives.

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<sup>629</sup> Interview with Jewish Museum Berlin curator, April 2015, Berlin, Germany.

<sup>630</sup> Interview with Jewish Museum Berlin curator, April 2015, Berlin, Germany.

### *Disruptive architecture*

The story of how Daniel Libeskind's architectural design entitled "Between the Lines" became the home to the autonomous Jewish Museum Berlin begins decades before the structure was built. After the erection of the Berlin Wall in 1962, the municipality founded the "Berlin Museum," with a mandate to present a cultural history of the city, which was later domiciled in a former Prussian Supreme Courthouse in the West Berlin district of Kreuzberg in 1969. At the same time, West Berlin's Jewish community advocate Heinz Galnski demanded that the city re-build the Jewish Museum destroyed by various anti-Semitic campaigns spearheaded by the Nazi Party in the late 1930s.<sup>631</sup> However, he called for the rehabilitation of the Jewish Museum to occur alongside but *within* Berlin's newly minted public history museum. As such, the institution's Directors, Jewish community members, and Berlin Senators proposed that the Berlin Museum expand their programming to include a specific history of Jewish life in Berlin, and establish an autonomous Jewish Department in 1975.

Rolf Bothe, who became the Berlin Museum's Director in 1981, and the Jewish Department's lead curator Vera Bendt, championed the "integrative approach" that would extend autonomy to the Jewish Department so that they may establish a Jewish Museum

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<sup>631</sup> James E. Young, "Daniel Libeskind's Jewish Museum in Berlin: The Uncanny Arts of Memorial Architecture," *Jewish Social Studies* 6, no. 2 (2000): 6. The community run Jewish Museum, located at the Jewish Community's Cultural Center in Berlin (Oranienburger Strasse), was the home of Europe's largest museum on the history of Jewish life between 1933-1938. It was forced to closure as part of the Nazi Party's broader anti-Semitic policies aimed to eradicate Jewish culture from public life. See Robin Ostow, "From Displaying "Jewish Art" to (Re)Building German-Jewish History: The Jewish Museum Berlin," in *Interrogating Race and Racism*, ed. Vijay Agnew (Toronto: University of Toronto Press, 2007), 300-302.

under the Berlin Museum's institutional umbrella.<sup>632</sup> The artefacts donated by the "Society for the Jewish Museum in Berlin" [*Gesellschaft für ein Jüdisches Museum*], which was chaired by Galnski, and the acquisition of cantor Zvi Sofer's private Judaica collection, founded the future Museum's archive, which were displayed in the Berlin Museum in 1984. Here, the reintegration of the history of Berlin's Jews with the city's greater historical narrative was fashioned by Galnski, Bothe, and Bendt as a restorative gesture that represented the indivisibility of Jewish cultural life from the history of the city.<sup>633</sup>

Yet the durability of said "integrative" approach was called into question as the Jewish Department's archive began to grow while exhibition real-estate began to shrink. Installation space at the Berlin Museum was at a premium and could not keep up with the growth of the Department's collection, and so in 1986, the Jewish Department temporarily moved its exhibition to the Martin-Gropius-Bau until a long-term solution was found.<sup>634</sup> With funding from the Berlin Senate, the "Jewish Museum Department" (operating under the purview of the Berlin Museum, but at arm's length) was established and empowered to find a permanent, separate building for the Jewish collection. In December 1988, an international architectural design competition, "Extension of the Berlin Museum with a Jewish Museum Department [*Realisierungswettbewerb: Erweiterung Berlin Museum mit Abteilung Jüdisches Museum*]," called for design plans that consider Jewish religion, culture, and objects; the history of Jewish life in Germany, including the period between

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<sup>632</sup> Caroline Wiedmer, *The Claims of Memory: Representations of the Holocaust in Contemporary Germany and France* (Ithaca: Cornell University Press, 1999), 126.

<sup>633</sup> Young, "Uncanny Arts," 184.

<sup>634</sup> These artifacts were displayed as the permanent exhibition of the "Jewish Department" on the first two floors of the Martin-Gropius-Bau until 1998. "History of the Origins of the Jewish Museum Berlin," Jewish Museum Berlin.

1933 and 1945, and; important Jewish figures that left an enduring impact on Berlin.<sup>635</sup>

The Berlin Senate Department for Urban Development received a total of 165 submissions, and awarded Daniel Libeskind's design "Between the Lines" the contract in June 1989. Germany achieved political reunification months later, placing the Berlin's public history ambitions on hold until 1995 when all city museums, in the East and West, merged together to form the Berlin City Museum Foundation.

The Jewish Museum Department's new director Ammon Barzel, resisted the "integrative" approach championed in the 1980s, arguing that the future Jewish Museum should represent the history of Berlin from the perspective of the Jewish minority as opposed to the other way around.<sup>636</sup> Barzel resigned in 1997 but his replacement, former US Treasury Secretary Michael Blumenthal, realized Barzel's ambition to establish a financially, culturally, and politically independent Jewish Museum with Libeskind's winning design.

The Museum's architectural blueprint was informed by a series of inspirations. The initial design sprung from a nexus of lines that link together various points in the city where famous Berliners lived.<sup>637</sup> Libeskind's material composition was also informed by and rendered as an answer to Arnold Schönberg's complex unfinished biblical drama "Moses and Aaron." The opera explores the tension between thought and action represented by two brothers: Moses, a prophet who knew the truth of God but could not articulate it, and

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<sup>635</sup> Young, "Uncanny Arts," 8, cited from Rolf Bothe and Vera Bendt, "Ein eigenständiges Jüdisches Museum als Abteilung des Berlin Museums," in *Realisierungswettbewerb: Erweiterung Berlin Museum mit Abteilung Jüdisches Museum* (Berlin: Berlin Museum, 1990), 12.

<sup>636</sup> "History of the Origins of the Jewish Museum Berlin," Jewish Museum Berlin; Rick Atkinson, "The Berlin Squall: For the Jewish Museum, a Stormy Evolution," *The Washington Post*, November 26, 1994.

<sup>637</sup> Libeskind, "Between the Lines," 83.

Aaron, who could not see the truth but could communicate. At the end of Act II the orchestra's music is brought to a halt, and Moses stops singing, and says "O word, thou word, that I lack!" signaling the impossibility of putting truth into words. Here, the operatic mode brought Act II to an abrupt end that Schönberg was unable or unwilling to score his way out of.<sup>638</sup> Libeskind set out to complete Act III, architecturally, with *Between the Lines*:

I became aware that the opera really deals with the Berlin Museum... It is a dialogue between Aaron and Moses, Aaron being the mouthpiece of the people of Israel, and Moses the one who understands that there is nothing to show the people. Aaron wants to communicate to the people, lead them into the promised land, and Moses is unable to convey the revelation of God through any image.<sup>639</sup>

His design aimed to grapple with the same tension explored in the opera, and grapple with "the contradictions of the ordered/disordered, the chosen/unchosen, the welcome/unwelcome, the vocal/silent."<sup>640</sup> To affectively comprehend the scale of the evacuation of Jews in Berlin during the 1930s and early 1940s, Libeskind waded through a catalogue assembled by the Federal Information Office in Bonn that identified names of individuals deported from the city. This archive of names was, according to him, the design's third inspiration.

What resulted is an architectural rupture of form.<sup>641</sup> The titanium-zinc composite

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<sup>638</sup> Libeskind, "Between the Lines," 84. See Joseph Aunder, "Schoenberg as Moses and Aron," *The Opera Quarterly* 23, no. 4 (2007): 373.

<sup>639</sup> Libeskind, "Between the Lines," 83-84.

<sup>640</sup> Daniel Libeskind, "Between the Lines: Extension to the Berlin Museum, with the Jewish Museum," *Assemblage* no. 12 (1990): 48.

<sup>641</sup> Daniel Libeskind graduated with a professional degree in architecture from Cooper Union for the Advancement of Science and Art, New York City, USA in 1970. While there and under the supervision of Peter Eisenman and John Hejduk, Libeskind received training in deconstructivist approaches to design. "Between the Lines" was Libeskind's first commission piece. See "Daniel Libeskind," Studio Libeskind, accessed March 21, 2017, <http://libeskind.com/people/daniel-libeskind/>; Bethan Ryder, "My Foundations: Daniel Libeskind," *The Telegraph*, May 24, 2016, <http://www.telegraph.co.uk/luxury/property-and-architecture/architect-daniel-libeskinds-inspirations/>

façade is punctuated by erratically placed windows and access to the structure is concealed. Visitors must enter the adjacent Baroque Prussian Court House [*Kollegienhaus*], and descend into an underground tunnel to enter the building's interior.<sup>642</sup> There, visitors encounter three axes construed as emblematic of German-Jewish life: the Axis of Exile, the Axis of the Holocaust, and the Axis of Continuity.<sup>643</sup> The building's zig-zag composition is further complicated by an extended concrete shaft that cuts through the entire length of the museum that visitors encounter intermittently. These voids are disconnected from the interior lighting, heating and cooling systems—they are inside the museum but alien from its physically useable space. Unexpected design elements like fragmented slanted walls, and irregularly shaped windows create an environment of uncertainty by withholding structural suggestions as to where to move next.<sup>644</sup> *Between the Lines* evoked popular fascination, leading the museum to open the empty building's doors for two years between the completion of the museum and the installation of the permanent exhibition to 350,000 fee-paying members of the public.<sup>645</sup>

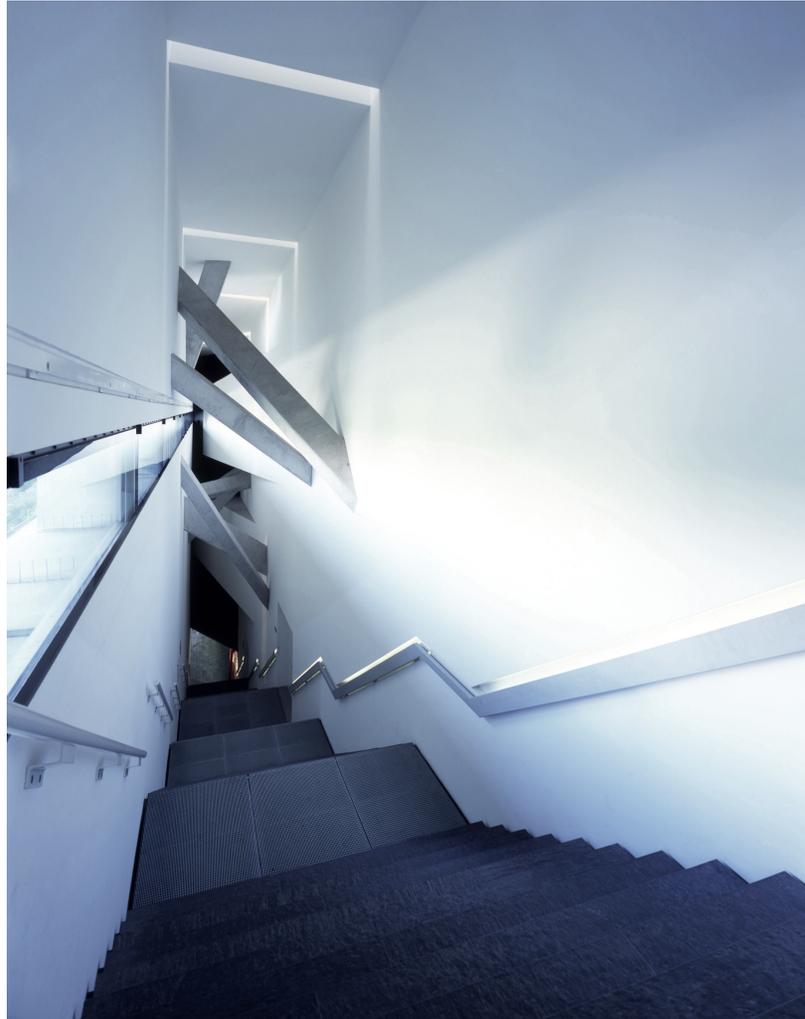
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<sup>642</sup> The courthouse was the former site of the Berlin Museum. For more on the history of the structure, see Andreas Bekiers, "Baugeschichte des Berlin Museums," *Jahrbuch Stiftung Stadtmuseum Berlin* 5 (1999): 52-85; Rudolf Wassermann, "*Kammergericht soll bleiben.*" *Ein Gang durch die Geschichte des berühmtesten deutschen Gerichts (1468-1945)* (Berlin: Berliner Wissenschafts-Verlag, 2004).

<sup>643</sup> "The Libeskind Building," Jewish Museum Berlin, accessed March 21, 2017, <https://www.jmberlin.de/en/libeskind-building>

<sup>644</sup> While these design elements are attributed as typical in Libeskind's general work, the Jewish Museum Berlin was the first public contract the architect secured and fulfilled. As such, the disorientation produced through the aesthetic choices applied in *Between the Lines* were not merely reiterations of his traditional motifs. Rather, he established his style with the Jewish Museum Berlin.

<sup>645</sup> Terry Smith, "Daniel Among the Philosophers: The Jewish Museum Berlin, and Architecture after Auschwitz," *Architectural Theory Review* 10, no. 1 (2005): 119-121. The following refer to the Jewish Museum Berlin as a counter-monument: Esra Akan, "Apology and Triumph: Memory Transference, Erasure, and a Rereading of the Berlin Jewish Museum," *New German Critique* 37, no. 2 (2010): 159-161; Silke Arnold-de Simine, "Memory Museum and Museum Text: Intermediality in Daniel Libeskind's Jewish Museum and W.G. Sebald's *Austerlitz*," *Theory, Culture & Society* 29, no. 1 (2012): 21-25; Amy Sodaro, "Memory, History, and Nostalgia in Berlin's Jewish Museum," *International Journal of Politics, Culture, and Society* 26, no. 1 (2013): 86-87.



**Figure 3.1:** Interior view of the Jewish Museum Berlin, the Sackler Staircase. Photo Credit: Jewish Museum Berlin, courtesy of Jens Ziehe

The Jewish Museum Berlin’s permanent exhibition portrays German-Jewish life through a typical chronological narrative. Entitled “Two Millennia of German Jewish History,” the exhibition claims to present a history of Germany from the perspective of the Jewish “minority.”<sup>646</sup> The exhibition begins on the second floor of the Libeskind building

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<sup>646</sup> “Exhibitions,” Jewish Museum Berlin, accessed February 29, 2015, <https://www.jmberlin.de/en/whats-museum>

with “The World of Ashkenaz, 950-1500” and ends on the first floor with “Present, 1945 to today.” Oscillating between the telling of stories from the vantage of an individual, to the greater Jewish community, the exhibition is punctuated by heavily contextualized “well known historical events.”

“Between the Lines” is an architectural expression of Benjamin’s methodology of critical constellations. The spatial configuration of the Museum’s three “axes,” and the imposition of structural voids, subvert the naturalization of movement “in-time” at the museum. When visitors enter the Museum’s basement in anticipation of the permanent exhibition, they are confronted with three different paths, or axes. The Axis of Exile leads visitors away from the permanent exhibition towards the outside of the building and into “The Garden of Exile” where visitors will find forty-nine concrete pillars (stelae) on slanted ground that creates a feeling of disorientation.<sup>647</sup> Similarly, the Axis of the Holocaust leads visitors to a small dark tower that is only accessible through the basement. Both axes, led visitors to dead-ends—one that exists outside the museum building, and the other leading to a dimly-lit space—which denaturalizes visitor movement “in-time.” The trajectory that leads to both spaces surprises and confuses visitors by spatial imposing a *dis*-order to their museum movement.

The void that punctures all floors and along the entire length of the museum confronts visitors randomly through-out the exhibition, and like the dead-end axes, they too interrupt chronological movement through the museum. According to Libeskind, the

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<sup>647</sup> “The Libeskind Building,” Jewish Museum Berlin, accessed March 21, 2017, <https://www.jmberlin.de/en/libeskind-building>

void renders visible the absence of German-Jewish life in Berlin.<sup>648</sup> I argue that the spatial imposition of the void works against curatorial strategies dependent on contextualization, the naturalization of progressive time, and continuity. First, museum visitors are confronted by inaccessible voids that present themselves as if they were an aspect of an installation. This denial of entry could be read as a disorienting spatial interruption the permanent exhibition. However, some voids are accessible. Here, the void operates not only as an interruption, but a device of de-contextualization. Textual and material efforts to connect the exhibition segments that book-end encounters with the void are challenged by the affective and material conditions of the void's space. Cool air, dim lighting, the five-story high concrete room, the travel time required to move through the impasse distracts and, therefore, dulls the momentum and loosens the grip of the exhibition's chronological narrative.

The geometric configuration of the Museum's interior walls and windows further complicate curatorial ambitions to represent a teleological view of history. Walls are constructed in a myriad of shapes, and slanted ones are rendered unworkable for typical museological stagecraft. These design elements force museum curators to establish installations in the middle of the exhibition space. In other instances, the ceiling is constructed in a manner that slices wall space diagonally, encroaching on rare useable wall surfaces. Further, long, narrow, rectangular windows cut across exterior walls in random patterns, casting natural light unevenly across the outer rooms. The material impact of

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<sup>648</sup> Libeskind, "Between the Lines," 86; Daniel Libeskind, "Between the Lines—Erweiterung des Berlin Museums mit Abteilung Jüdisches Museum," in *Daniel Libeskind: Radix—Matrix* (Munich: Prestel Verlag, 1994), 102.

irregular UV-light castings complicates the placement of artefacts that must be shielded from the sun-rays for preservation purposes.

While museum curators work hard to advance a coherent story about German-Jewish life in Berlin, their representations of progressive time are upset at critical junctures by a myriad of architectural impositions. Dead-ends, spatial voids, and fragmented walls which produce displays out of sequence, do not necessarily inaugurate a totalizing sense of confusion and disorientation. Although more pronounced in some areas of the exhibition than others, such configurations are still critical sites to charge the past with “now time” in order to critically, and infinitely, engage with the present.

The Jewish Museum Berlin attempts to perpetuate the phantasmagoria of progressive time through-out its permanent exhibition. Further, “On Trial” projects the Düsseldorf-based trial as one of the means within which West Germany came to grips with its past. However, the decontextualization of the subjects depicted in the oil renderings, the ambient sound that echoes in the space from another exhibit, and the spatial configuration of the museum structure deposes this discursive framing of the collection.

## **Conclusion**

In this chapter I argue that the bounded time of transition so prevalent in transitional justice theory is re-affirmed in the Jewish Museum Berlin’s exhibition “On Trial.” By figuring the Düsseldorf Majdanek trial as a central moment in West Germany’s transition through the display of Hauschild’s Majdanek Trial Portraits, the Museum anticipates the eventual completion of the state’s political and social transformation.

However, this narrative is upset by its very own spatial, material, and audible devices. The curators approach to minimalism inadvertently decontextualizes the paintings, which de-centers their own narrative that the trial transformed West German society. This confusion is made more pronounced by the spatiality of the exhibit which forces the presentation of the Düsseldorf-based trial out of chronological sequence. Further, the ambient sound from the adjacent exhibition imposes on the gallery space, further complicating the Museum's projections. Here, space enacts a different kind of interrupt that is distinct from what I documented in Nuremberg. As opposed to the oscillating symbolic ascriptions that operate within Courtroom 600 that depose the permanent exhibition's narrative that law triumphed over Nazism once and for all, it is the architectural production of space that emerges with a critical edge at the Jewish Museum. As such, we can see how spatial dynamics can intervene and trouble exhibition-based stories on different registers at the museum.

## Conclusion

Less possible and also less urgent for humankind, however, is to decide when unalloyed violence has been realized in particular cases. For only mythic violence, not divine, will be recognizable as such with certainty, unless it be in comparable effects, because the expiatory power of violence is invisible to men.

— Walter Benjamin<sup>649</sup>

Phase One of the Sierra Leone Peace Museum opened in November 2013. Phase Two and Three were slated to open two years later, but the Peace Museum Project Management Team, which consists of national stakeholders who manage and direct the institution, have failed to secure enough funding to finance this anticipated expansion thus far.<sup>650</sup> Notwithstanding, the current exhibit is still substantial.<sup>651</sup> The first room documents the organized forces that engaged in the country's eleven-year civil war. Representations of these actors are augmented by photographs of individuals whose limbs were amputated by the Revolutionary United Front, and framed notes written by civilians asking for peace in Sierra Leone.<sup>652</sup> Museum visitors are invited to pause and reflect in the Museum's

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<sup>649</sup> Walter Benjamin, "Critique of Violence," in *Walter Benjamin: Selected Writings Volume 1: 1913-1926*, eds. Marcus Bullock and Michael W. Jennings (Cambridge: The Belknap Press of Harvard University Press, 2002), 252.

<sup>650</sup> The Peace Museum Project and Management Team draws its representative from the Human Rights Commission of Sierra Leone, government agencies, the Special Court of Sierra Leone, and the United Nations Integrated Peace Building Office. "Management," Sierra Leone Peace Museum, May 9, 2017, <http://www.slpeacemuseum.org/about-us/management.html>

<sup>651</sup> For a review of the exhibition, see Mneesha Gellman, "Institutionalizing Memory: The Creation of Sierra Leone's First Peace Museum," *Towards Freedom*, March 25, 2014, <https://towardfreedom.com/archives/africa-archives/institutionalizing-memory-the-creation-of-sierra-leone-s-first-peace-museum/>

<sup>652</sup> See Augustine Park, "Making Sense of Amputations in Sierra Leone," *Peace Review: A Journal of Social Justice* 19, no. 4 (2007): 579-587.

Memorial Garden, which features a physical structure that emulates the style of tents that housed those who were internally displaced during the war.<sup>653</sup> Non-confidential fragments of the Special Court for Sierra Leone's and the Truth and Reconciliation Commission's archive are also domiciled at the Museum and are available for public consumption. Once the project receives enough funding to bring the permanent exhibition to completion, I am curious to see what the museum will say about the Special Court and Truth Commission, and how they will say it. I wonder how they will compare their work, and whether in doing do, they reiterate the rhetoric of ends articulated by the former President of Sierra Leone, and the former Justice at the Special Court that I recounted in my Introduction. I wonder what materials might enact chance disruptions of ends-oriented discourses that may be established in installation form, and how potential critical illuminations might suggest that trials and truth commissions failed to deliver on their ostensible promises.

This dissertation took inspiration from the Sierra Leone Peace Museum to chart dominant narratives in transitional justice theory, and their correlative representations in museums. I identify discursive trends used by transitional justice theorists that organize a political community's past, transition, and future. As I argue in Chapter One, this rhetoric of ends figures post-war trials as the means to return to a definitive and encapsulated past, as the central tool that sparks and completes political transformations, and as that which will attain peace, and democratic orders. Transitional justice theorists manage and govern what past matters, what transition is, and what future a political community is destined

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<sup>653</sup> Gellman, "Institutionalizing Memory "Memorial" Sierra Leone Peace Museum, May 9, 2017, <http://www.slpeacemuseum.org/the-memorial.html>

for. Ends-oriented discursive formations enter into the “phantasmagoria of transitional justice” that projects political communities as if they were on a progressive trajectory towards peace and stability whilst foreclosing other possible ways of engaging with the reorganization of political, social, and cultural life, in perpetuity.

The three exhibitions included in this study interrupt this narrative. In pulling a variety of aesthetic materials together into constellation with each installation’s display, we can see how representations of chronological and bounded time fall apart. Indeed, other materials not included in this study could be brought to bear on the museum’s displays, and the ones I highlight in this dissertation are not necessarily stable and fixed, nor do they necessarily appear as critical illuminations to all museum guests. Yet it is the incalculability of aesthetic disruptions that render them as promising tools to combat modernity’s representation of reality.

The imagined relationship between trials, peace, and human rights launched by political and cultural authorities in Nuremberg illuminates how museums are enlisted into broader narratives produced in urban memoryscapes. Memorium Nuremberg Trials works towards establishing the IMT as the grandmother of international criminal law, and international human rights, while also justifying City Council’s steadfast efforts to reformulate Nuremberg’s identity. By representing itself as the “City of Human Rights,” Nuremberg, with the help of Memorium Nuremberg Trials, orients city dwellers as *transitioned*. However, the dual use of Courtroom 600—the museum’s central artefact and a place of local and regional jurisdiction—provides chance opportunities to upset this projection. The trial of neo-Nazi, Daniel Ittner, in Courtroom 600 demonstrates that the

specters of Nazism in Nuremberg are still present. In 2018, the space will be relinquished to Memorium Nuremberg Trials by the State of Bavaria, foreclosing the possibility for chance disruptions to emerge out of the shared use of the space. I am curious to see whether the Museum will restore Courtroom 600 back to its 1945 condition once it secures full control of the space, if curators will establish permanent displays, and, if so, what those displays might entail.

At the United States Holocaust Memorial Museum we can see how the spatiality produced through architecture amplifies phantasmagorical projections that cohere the relationship between criminal trials and the historical truth of the Holocaust. The Museum's political attachment to "authenticity" further strengthens this ideological transposition. The affective and political stakes at the Holocaust Museum are important—the Holocaust *did* occur, and Holocaust denial is indicative of contemporary racist, ableist, and homophobic political ideologies. Yet I take on "What is Justice?" in order to show how its reverence of law's claim to truth may participate in the concealment of singular experiences of violence, and particular ways in which individuals come to grapple with its effects. But, as I illuminated in Chapter Three, we can see how the exhibition's totalizing narrative also breaks-down. The clash of both law's and the museum's archives at the United States Holocaust Museum calls attention to how modernity's turn to historicism is unsettled by its very own logic. However, the production of a phantasmagoria of transitional justice and its aesthetic disruption in "What is Justice?" is only as good as the installation's lifespan. The exhibition's retirement has left me thinking about how short-

term and traveling exhibitions could readily lend themselves to contexts whereby new and diverse aesthetic weapons could be brought to bear on their projections.

The Jewish Museum Berlin's representation of the Düsseldorf Majdanek trial places the trial medium at the center of West Germany's political transformation. The Minka Hausechild collection, along with Daniel Libeskind's artful architecture, shows the critical potential of bringing playful aesthetic materials with us in our engagement with the past. While curators strive to display the trial as an important political and cultural event for West Germans, their narrative struggles to stand up to the competing spatial and sonic elements that diffuse the clarity and momentum of their claims. In 2019, the Jewish Museum Berlin will launch its new permanent exhibition. It is unclear whether "On Trial: Auschwitz/ Majdanek"—a very recent addition—will be included or retired. Here, the installations life span renders museums as a powerful yet unstable frontier for the establishment, maintenance, and disruption of phantasmagorias of transitional justice.

The take-away from my research is that museums can re-inscribe harmful theoretical projects that attempt to order and tame the wild chaos of the world. However, I also show how the museum is a place that can hollow out the imagined power and position trials hold in relation to political transformation. Here, the museum can be a site that simultaneously reaffirms and subverts images of criminal prosecutions as the natural first step towards peace, and democracy. As such, I am not necessarily calling for an outright abandonment of domestic criminal trials *per-se*, but I am pointing out what role museums might play in de-centering the significance of prosecutions and their imagined relationship to understanding the past, structuring the present, and ordering our futures.

But so what? Where might my research findings matter? Well, they could be extended to explore state-based discourses about the significance of Canada's Truth and Reconciliation Commission (TRC). In 2015, Canada's TRC released its final report entitled *Honouring the Truth, Reconciling for the Future*. In the Report, the Commission describes reconciliation as "coming to terms with events of the past in a manner that overcomes conflict and establishes a respectful and healthy relationship among people, going forward."<sup>654</sup> I wonder whether the Commission envisions a bounded colonial past that can be returned to, and mastered. How might the symbolic politics of the TRC be used to ostensibly demonstrate the state's commitment to attending to their fiduciary duties while material conditions for aboriginal communities stay the same? How might state-based narratives place the TRC at the center of a project that seeks to transform political and social relationships in Canada? How does it imagine achieving and maintaining reconciliation between Aboriginal and settler groups in Canada? Where are these imaginations established in settler culture?

My research findings might also be seen in how international organizations, like the World Bank, imagine the positive relationship between law, development, and the production of democratic orders after war. Currently, the World Bank's aid disbursement instruments are outcome based, meaning that monetary support is afforded to states that perform and achieve certain benchmarks of good governance. The *2017 World Bank Development Report on Governance and the Law* renders state attendance to the rule of

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<sup>654</sup> Truth and Reconciliation Commission of Canada, *Executive Summary: Honoring the Truth, Reconciling for the Future* (Ottawa: Library and Archives Canada, 2015), 7.

law as the very basis of sound governing dynamics, and thus, as the means that will permit them to overcome power asymmetries, and minimize violence especially after periods of mass atrocity. The Bank reasons that law—including criminal prosecutions—orders the behavior of individuals, organizes power, and manages political contestation. As such, they argue that financial modes of aid should be used as an incentive to attract developing states into committing to strengthening the rule of law within their jurisdiction. Here, criminal prosecutions after war emerge as exalted emblems that suggest justice has been done, that good governance has arrived.

My project is limited insofar as I do not examine how global neo-liberal institutions propagate a particular form of political transformation whereby states are enticed to establish criminal tribunals by way of economic incentives. Further, I do not supply an analysis of other transitional justice mechanisms, like Canada's TRC. While both sites are beyond the scope of my project, World Bank policy-instruments fashioned to support post-war situations, as well as TRCs established at home (and abroad), could serve as fodder for future projects.

Cumulatively, my research indicates that the deeply engrained rhetoric of ends that informs theories of transitional justice, and institutional policy prerogatives, fail at the museum. Indeed, the museum is a site that compromises its very own projections. However, how might these museum-based interruptions inform transitional justice theory? What new concept of transitional justice might emerge that accounts for the failures recounted in this dissertation? A notion of transitional justice might find better footing by de-centering frameworks that attempt to organize and govern political

transformation. If the field is necessary, I challenge it to conceive of violence as something that cannot be mastered or broken from because it infinitely engages with the present in local, inconsistent, and myriad ways. Further, I challenge end-oriented transitional justice theorists to take seriously the generative possibilities that may arise when political and social difference is affirmed, when open-ended space for local, singular, and fluid engagements with the past is made available. The meaning of the past, present, and future are not fixed, but contingent, and in constant negotiation. To this end, museums might—*inadvertently*—serve as one critical site whereby the commitments of transitional justice theory might be re-imagined.

## APPENDICES

### Appendix A—Ethics Clearance



Carleton University  
Research Ethics Office  
Research Ethics Board  
509C and 511 Tory, 1125 Colonel By Drive  
Ottawa, ON K1S 5B6 Canada  
Tel: 613-520-2517, [ethics@carleton.ca](mailto:ethics@carleton.ca)

#### Ethics Clearance Form – New Clearance

This is to certify that the Carleton University Research Ethics Board has examined the application for ethical clearance. The REB found the research project to meet appropriate ethical standards as outlined in the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Human, 2nd edition*, and the *Carleton University Policies and Procedures for the Ethical Conduct of Research*.

**Date of Clearance:** November 03, 2014

**Researcher:** Tiffany MacLellan (Student Research: Ph.D. Student)

**Department:** Faculty of Public Affairs\Law (Department of)

**University:** Carleton University

**Research Supervisor (if applicable):** Prof. Christiane Wilke

**Project Number:** 102201

**Alternate File Number (if applicable):**

**Project Title:** Museum Exhibitions on War Crime Trials: Developments and Public Engagement

**Clearance Expires:** May 31, 2015

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#### All researchers are governed by the following conditions:

**Annual Status Report:** You are required to submit an Annual Status Report to either renew clearance or close the file. Failure to submit the Annual Status Report will result in the immediate suspension of the project. Funded projects will have accounts suspended until the report is submitted and approved.

**Changes to the project:** Any changes to the project must be submitted to the Carleton University Research Ethics Board for approval. All changes must be approved prior to the continuance of the research.

**Adverse events:** Should a participant suffer adversely from their participation in the project you are required to report the matter to the Carleton University Research Ethics Board. You must submit a written record of the event and indicate what steps you have taken to resolve the situation.

**Suspension or termination of clearance:** Failure to conduct the research in accordance with the principles of the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans, 2nd edition* and the *Carleton University Policies and Procedures for the Ethical Conduct of Research* may result in the suspension or termination of the research project.

A handwritten signature in black ink, appearing to read "Andy Adler".

**Andy Adler**  
Chair, Carleton University Research Ethics Board

A handwritten signature in black ink, appearing to read "Louise Heslop".

**Louise Heslop**  
Vice-Chair, Carleton University Research Ethics Board

## Appendix B—Interview Invitation (e-mail)

Good morning,

I am a doctoral candidate in the Department of Law and Legal Studies at Carleton University. I am working on a research project that is under the supervision of Dr. Christiane Wilke.

I am conducting research on museum exhibitions on legal history in Washington DC as well as in Berlin and Nuremberg in Germany. In particular, I am studying the development of exhibitions on war crime and crimes against humanity trials, and the public's interest in them. I am contacting you today because I am hoping that you would be willing to participate in my dissertation research.

From what I understand, you were part of the XXXXX exhibition development process. I would appreciate an opportunity to speak with you about its narrative development, and the exhibitions efforts to engage guests on the topic of genocide prevention.

The interview will be around 60 minutes. Note, however, that this interview will be semi-structured, so I only have themes that I would like to cover with you, not particular questions.

With your permission, this interview will be recorded and transcribed by myself. These recordings will be permanently deleted once they have been transcribed. In the transcription, your name will be given a pseudonym in an effort to keep your response anonymous. The transcript of these interviews will be kept after this research is complete as I may continue with this research once my dissertation is complete.

All research data, including audio-recordings and any notes will be password-protected. Any hard copies of data will be kept in a locked cabinet at Carleton University. Research data will only be accessible by the researcher and the research supervisor.

This project was reviewed by the Carleton University Research Ethics Board, which provided clearance to carry out the research until May, 2015. Should you have questions or concerns related to your involvement in this research, please contact the REB Chair, Professor Andy Adler at [ethics@carleton.ca](mailto:ethics@carleton.ca) or at 613-520-2517.

If you are interested in participating please contact me at the contact information that is available below. If you have any questions about this research project, please feel free to contact myself, my supervisor or the ethics committee chair whose information I have also listed below.

Thank you for your time and I hope to hear back from you regarding participation in this project.

Sincerely,

Tiffany MacLellan  
PhD Candidate  
Department of Law and Legal Studies  
Carleton University  
tiffany.maclellan@carleton.ca  
1.613.867.5879

Dr. Christiane Wilke  
Associate Professor and Graduate Supervisor  
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## Appendix C—Written Consent Form

(Working) Title: Fashioning Law's Memory: Museums, Trials and Public Engagement

Date of ethics clearance: November 3rd, 2015

Ethics Clearance for the Collection of Data Expires: May 31st, 2015

I \_\_\_\_\_, choose to participate in a study on public legal history. This study aims to explain the development of museum exhibitions on war crime and crimes against humanity trials and the public's engagement of them. The researcher for this study is Tiffany MacLellan from the Department of Law and Legal Studies at Carleton University in Ottawa, Canada.

She is working under the supervision of Dr. Christiane Wilke in the Department of Law and Legal Studies at Carleton University.

This study involves one 60 minute interview. With your consent, interviews will be audio-recorded. Once the recording has been transcribed, the audio-recording will be destroyed.

The researcher will take precautions to protect your identity. This will be done by keeping all responses anonymous as you will be assigned a pseudonym attached to your position at the museum. After the interview, you may request that certain responses not be included in the final project.

You have the right to end your participation in the study at any time, for any reason, up until June 1st, 2015. You can withdraw by phoning or emailing the researcher or the research supervisor. If you withdraw from the study, all information you have provided will be immediately destroyed.

All research data, including audio-recordings and any notes will be password-protected. Any hard copies of data will be kept in a locked cabinet at Carleton University. Research data will only be accessible by the researcher and the research supervisor.

Your name will not appear on the interview transcript as you will be given a pseudonym attached to your job title. If you would like to have your job title remain private as well, please check the appropriate box below.

Once the project is completed, all research data will be kept for five years and potentially used for other research projects on this same topic. At the end of five years, all research data will be securely destroyed (electronic data will be erased and hard copies will be shredded).

If you would like a copy of the finished research project, please let the researcher know and she will provide you with an electronic copy. She may use the information you provide in publications, such as books or journal articles, or at conferences.

This project was reviewed by the Carleton University Research Ethics Board, which provided clearance to carry out the research. Should you have questions or concerns related to your involvement in this research, please contact:

REB contact information:  
Professor Andy Adler, Chair  
Professor Louise Heslop, Vice-Chair  
Research Ethics Board  
Carleton University  
1325 Dunton Tower  
1125 Colonel By Drive  
Ottawa, ON K1S 5B6  
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Researcher contact information:  
Tiffany MacLellan  
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Supervisor contact information:  
Dr. Christiane Wilke  
Department of Law & Legal Studies  
Carleton University  
Tel: 1.613.520.2600 x 4168  
Email: christiane.wilke@carleton.ca

Do you agree to be audio-recorded:  Yes  No

Do you agree to have your job title included in this interview:  Yes  No

\_\_\_\_\_

Signature of participant

\_\_\_\_\_

Date

\_\_\_\_\_

Signature of researcher

\_\_\_\_\_

Date

## Appendix D — Oral Consent Script

Hello, my name is Tiffany MacLellan. I am a doctoral candidate in the Department of Law and Legal Studies at Carleton University. I am working on a research project which is under the supervision of Dr. Christiane Wilke.

I am conducting research on museum exhibitions on war crime trials in Washington DC as well as in Berlin, and Nuremberg in Germany. In particular, I am studying the development of exhibitions on war crime trials, and the public's interest in them. I am contacting you today because I am hoping that you would be willing to participate in my dissertation research.

This study involves one [60 minute for museum staff, 20 minute for tour guides] interview that will take place at the museum, or in a mutually convenient, safe location. With your permission, this interview will be recorded and transcribed by myself. These recordings will be permanently deleted once they have been transcribed.

I will take precautions to protect your identity. This will be done by keeping all responses anonymous and allowing you to request that certain responses not be included in the final project. You may withdraw at any time, up to (insert date) by letting me or my research supervisor know. If you choose to withdraw, all the information you provided will be destroyed.

Your name will not appear on the transcripts as you will be given a pseudonym attached to your job title. If you would like to have your job title remain private as well, please check the appropriate box below.

All research data, including audio-recordings and any notes will be password-protected. Any hard copies of data will be kept in a locked cabinet at Carleton University. Research data will only be accessible by myself and my supervisor. Once the project is completed, all research data will be kept for five years and I may use it for other research projects on this same topic. At the end of five years, all research data will be destroyed.

If you would like a copy of the finished research project, please let me know. I will then provide you with an electronic copy. I may use the information you provide me in publications, such as books or journal articles, or at conferences.

This project was reviewed by the Carleton University Research Ethics Board, which provided clearance to carry out the research (clearance expires on May 31<sup>st</sup>, 2015). Should you have questions or concerns related to your involvement in this research, please contact the REB Chair, Professor Andy Adler at [ethics@carleton.ca](mailto:ethics@carleton.ca) or at 613-520-2517.

You can also reach me at [tiffany.maclellan@carleton.ca](mailto:tiffany.maclellan@carleton.ca). My supervisor can be reached at [christiane.wilke@carleton.ca](mailto:christiane.wilke@carleton.ca). Do you have any questions or need clarification?

Do I have your permission to begin: \_\_\_Yes \_\_\_No

Do you agree to be audio-recorded: \_\_\_Yes \_\_\_No

Date: \_\_\_\_\_

Researcher's Signature: \_\_\_\_\_

## Appendix E—Semi-Structured Interview Themes

### Museum staff/ Curators

- academic and career background
- past exhibition development experience
- organizational structure of museum
- description of exhibition topic selection, justification, development and design
- description of how curators, researchers, archivists are assigned to projects
- public consultation processes generally; public consultation process for the exhibition in question
- description of artefact procurement process and challenges for the exhibition in question
- experience with exhibition content after it had opened to the public
- expectations they had for the exhibition
- life working at the museum

### Tour Guides

- academic and professional background
- experience working at the museum
- description of tour training process; description of training for the exhibition in question
- accounts of how they approach visitors and their questions/ comments
- uncomfortable experiences in the exhibition
- challenges experienced while guiding tours in the exhibition

### Museum Visitors

- explanation of why they attended the museum that day
- past museums visited/ museum visitation practices
- impression of the exhibition's narrative
- comments on the exhibition artefacts
- moments of confusion, excitement, boredom

## Appendix F—Semi-Structured Interview Questions

### Curators/museum staff

1. Tell me about the exhibition design and curation process at your museum. Was it always this way? Why did it change? Is there a public consultation process? Can you explain this process to me or is there a manual of this process that I may copy?
2. There are relatively few permanent exhibitions on war crimes trials. Did you view any related exhibitions in other museums on the subject before embarking on designing your own? If so, how is your exhibition different?
3. The trial has been discussed amongst legal historians. What sources did you use to construct the narratives advanced in the exhibition?
4. How does this exhibition compliment the core permanent exhibition?
5. Tell me about your daily routine at the museum. How often do you engage with museum visitors in your day, and in what capacity?
6. Before designing this exhibition, what sort of design challenges did you expect?
7. Are the ideas, photos, and artifacts presented in the exhibitions to be debated and discussed with the visitors while on guided tours? Do you leave visitors with the impression that the history the presented in the exhibition is unsettled? Where? Why?
8. Which parts of the history of these trials did you have the hardest time curating artifacts for? Why do you think this? How did the inability to gather artifacts or photos impact challenge the exhibition's design?
9. Why do you find the use of artifacts and photographs useful? How important do you think these artifacts as assistants to the narrative you've constructed in the exhibition? What principles guided your decision to mediate some artifacts or photos, and not others?
10. What broad themes did you want visitors to take away from the exhibition?
11. How did the themes you selected inform what could or could not be displayed or communicated to museum visitors?
12. On which parts of the exhibition did you expect visitors to enjoy the most? Or be confused by the most? Why?
13. Tell me about the demographic you had in mind when designing the exhibition? How diverse did you imagine visitors would be in their knowledge of these trials?
14. What about the history of these trials, and the context by which they occurred, did you assume they already knew?
15. In what ways do you rely on museum visitors for historical interpretation?
16. How is the exhibition sensitive to the needs, responses, and critiques on visitors?
17. Many explanations exist as to why museums might change the content of their permanent exhibitions over time. What changes have been made to the exhibition on the trial(s) since its establishment? Why were they changed?
18. A broad range of scholarship exists which interrogates why museums are relevant. What do you believe the purpose of this museum is? What do museum research

staff think the purpose of the museum is? Who decides in practice what the purpose of the museum is and how it is fulfilled in exhibitions?

19. Even permanent exhibitions do not last forever. Has there ever been a discussion of removing the exhibition? Does the museum see this exhibition continuing on for the next 10 years? Why? Why not? Why does the museum think the exhibition will still be relevant in 10 years? What is the future of this exhibition?
20. The structure of memorial museums are often a prominent and striking feature of the institution. How does the museum imagine the architecture impacting the experience of museum visitors? Does the architecture play a role in how the exhibition is experienced, in particular? Is the location of the exhibition on the trial easily accessible and naturally part of the larger exhibition?

### Museum tour guides

1. What do you believe the purpose of this museum is?
2. What are the most popular questions you receive from visitors? Which questions have visitors asked that you found to be particularly difficult to answer about the exhibition? Why?
3. Which parts of the exhibition do you find difficult to explain yourself? Why?
4. Do you guide tours in other exhibitions? How does visitors' participation compare in this exhibition on war crimes trials to the other exhibitions?
5. How popular would you say the exhibition on these trials is in comparison to other permanent exhibitions? What would you say attracts visitors to this exhibition?
6. What would you change in this exhibition to make it more interesting or accessible for visitors?
7. What sort of training did you receive on the exhibition for your role as a guide? Do you have those materials? May I have copies of them?

### Museum visitors

1. What was your day like today? What were doing before you arrived at the museum, and what are your plans after your visit here?
2. What was your motivation for visiting the museum? The exhibition?
3. How do you feel about the artifacts presented? Where they previously familiar to you? In what context? Why do you think they were used?
4. What did the exhibition identify as the goals of the trial, and how did the tour guide call attention to these goals?
5. Does the exhibition provide an assessment of whether the trial achieved these goals? Were you invited to debate the goals in the tour, or did the museum panels pose questions, encouraging visitors to draw their own conclusion?
6. Why were these trials held? Did the exhibition provide explanations that you did not expect? Did they omit reasons for the trial that you expected to be in an exhibition on the trial? Did you intend for the exhibition to supply an assessment of whether the trial achieved these intentions?

7. Do you see this exhibition continuing for the next 10 years? Why? Why not? Do you think the exhibition will still be relevant in 10 years?
8. Did you feel as if the exhibition left parts of the history on these trials unsettled? If so, which parts?
9. Which parts of the exhibition do you agree with? Disagree with? Why?
10. Do you feel like the museum encouraged you to respond to the exhibition in any way? Was it clear the means by which you could provide feedback on the exhibition?

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