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Realms of Oblivion: The Vienna Auschwitz Trial

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ON March 10, 1972, a little-known Auschwitz trial came to a rather unremarkable conclusion with the release of Fritz Ertl and Walter Dejaco. Both had served as SS architects in the Central Construction Directorate (ZBL)–Auschwitz. Both were part of a team responsible for designing and building the gas chambers of Birkenau. The District Attorneys’ Office of Vienna had prepared the case against them with great ambition nearly a decade before. Prosecutors originally had in mind something like the Frankfurt Auschwitz Trial in the Federal Republic of Germany, which included more than twenty defendants. Such plans were speedily curtailed. The court had only grudgingly agreed to try three defendants and then readily granted a motion to dismiss charges against one (Hermann Töffler, a construction foreman).¹ That left only two. “The public interest for this monster trial appears to be slight. The benches in the great jury court remain empty,” the *Wiener Zeitung* reported upon the opening of the trial.² Less than two months later, the paper recorded the defendants’ release, and no public debate followed.³

This came toward the end of an undistinguished effort to bring what Harold Marcuse has called “brown-collar criminals” to justice (so named because the

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¹See Karl Marshall, *Völkergeschichte und Verfolgung von Nationalsozialistischen Gewaltverbrechen in Österreich 1945–1972* (Vienna: Bundesministerium für Justiz, 1977): 216–20, whose remarks on the Vienna Auschwitz trial are a bit confusing. I thank Winfried Garscha for his assistance in clarifying Töffler’s case.

²*Wiener Zeitung*, “Baumeister des Todes” (Jan. 19, 1972).

³On the reception of Austrian trials in public opinion and the press, see Sabine Loitfellner, “Die Rezeption von Geschworenengerichtsprozessen wegen NS-Verbrechen in ausgewählten österreichischen Tageszeitungen 1956–1975,” *Justiz und Erinnerung* 6 (Sept. 2002): 3–11. Compare Meinrad Ziegler, “Gedächtnis und Geschichte,” in Meinrad Ziegler and Waltraud Kannonier-Finster, *Österreichisches Gedächtnis. Über Erinnern und Vergessen der NS-Vergangenheit* (Vienna: Böhlau Verlag, 1991), 52–4, and Hellmut Butterweck, *Verurteilt und begnadigt—Österreich und seine NS-Straftäter* (Vienna: Czernin Verlag, 2003).

National Socialists were known as “brown shirts”).⁴ The last Austrian trial concluded in 1975, and quickly thereafter, as Claudia Kuretsidis-Haider notes, a twofold oblivion settled over the entire effort. Not only was there little interest in confronting Austria’s past, but the very repression of this unsavory past also made it requisite to forget the trials of former Nazis. Beyond the politics of memory, Winfried Garscha has proposed an additional motive: national embarrassment. Repeated acquittals in brown-collar trials attracted unwanted international attention. Although the District Court of Vienna tried more former Nazis than any other in Austria, its prosecutors secured only nine convictions in twenty-two cases (almost half of the total of forty-six brought in Austria after 1956). Thus although numerous monographs deal with the central role of the Frankfurt Auschwitz trial, this Vienna Auschwitz trial is almost wholly unknown.⁵

It cannot surprise that National Socialism was the subject of “repressed memory” in Austria in general. The trial is interesting nonetheless because of what was forgotten and how. The nature of the jury and its evaluation of evidence shed light on the relationship between history and memory of the Holocaust more generally.⁶ Historians of memory have noted that Austria had to

⁴Harold Marcuse, *Legacies of Dachau: The Uses and Abuses of a Concentration Camp, 1933–2001* (Cambridge: Cambridge University Press, 2001), 98. He prefers this to “war crimes” because some of the worst atrocities, like genocide, were not part of war at all. Marschall, *Volksgerichtsbarkeit und Verfolgung*, 1, 32; on the Auschwitz trial, 215–20. See also Winfried Garscha and Claudia Kuretsidis-Haider, *Die Nachkriegsjustiz als nicht-bürokratische Form der Entnazifizierung. Österreichische Justizakten im europäischen Vergleich* (Vienna: Dokumentationsarchiv des österreichischen Widerstandes, 1995), 5–67. (Hereafter the Dokumentationsarchiv des österreichischen Widerstandes will be abbreviated as DöW.)

⁵Winfried Garscha, “Eichmann: Eine Irritation, kein Erdbeben. Zu den Auswirkungen des Prozesses von Jerusalem auf das Österreich des Herrn Karl,” in *Israel-Österreich. Von den Anfängen bis zum Eichmann-Prozess 1961*, ed. Moshe Zimmerman and Sabine Falch (Innsbruck: Studienverlag, 2004), 23–34. I thank the author for providing me a draft of this manuscript before its publication. See Garscha and Kuretsidis-Haider, *Die Nachkriegsjustiz*; Loitfellner, “Die Rezeption von Geschworenengerichtsprozessen,” 3; and Bertrand Perz, “Österreich,” in *Verbrechen erinnern. Die Auseinandersetzung mit Holocaust und Völkermord*, ed. Volkhard Knigge, et al. (Munich: C. H. Beck, 2002), 152–3. See also Butterweck, *Verurteilt und begnadigt*, 14. On the Frankfurt Auschwitz Trial the most recent works are Devin Pendas, *The Frankfurt Auschwitz Trial, 1963–1965: Genocide, History, and the Limits of the Law* (Cambridge: Cambridge University Press, 2006) and Rebecca Wittmann, *Beyond Justice: The Auschwitz Trial* (Cambridge, MA: Harvard University Press, 2005).

⁶A more extensive critical discussion of this literature comes at the conclusion of this article. For reviews of recent literature, see Rainer Schulze, “Memory in German History: Fragmented Noises or Meaningful Voices of the Past?,” *Journal of Contemporary History* 39 (2004). Tim Cole, “Scales of Memory, Layers of Memory: Recent Works on Memories of the Second World War and the Holocaust,” *Journal of Contemporary History* 37 (2002): 129–38. Omer Bartov, “Passing into History: Nazism and the Holocaust beyond Memory,” *History & Memory* 9 (1997), Omer Bartov, “Defining Enemies, Making Victims: Germans, Jews, and the Holocaust,” *American Historical Review (AHR)* 103 (1998), and *AHR* commentary 1177–90, esp. of Paul Miller and Vinay Lal. Volkhard Knigge and Norbert Frei, eds., *Verbrechen erinnern. Die Auseinandersetzung mit Holocaust und Völkermord* (Munich: C. H. Beck, 2002). Alon Confino and Peter Fritzsche, eds., *The Work of Memory: New Directions in the Study of German Society and Culture* (New York: Routledge, 2002).

85 grapple with a dual identity—as a willing participant but also as the supposed
86 first victim of National Socialism. The process of making Austrians into
87 victims more or less required that the voice of the Holocaust's real victims be
88 silenced. The Vienna Auschwitz trial of Dejaco and Ertl proved one such case.⁷

89 The trial offers more than a window on the construction and consequences of
90 Austrian memory, however. Influential scholarship has drawn upon it as evidence
91 for the history of Auschwitz and, in so doing, has contributed to the peculiar
92 oblivion the trial itself promoted. The defense developed what might be called
93 the “transformation narrative” of Auschwitz: namely that Auschwitz evolved
94 gradually into a death camp. Ertl and Dejaco testified that the crematoria and
95 gas chambers were, at first, only “normal” morgues and furnaces.⁸ A piecemeal
96 process was necessary to convert them into factories of extermination. Historians
97 currently accept various versions of this transformation narrative as consensus.⁹

98
99 ⁷For a review of literature on Austrian memory, see Heidemarie Uhl, “Das ‘erste Opfer.’ Der
100 österreichische Opfermythos und seine Transformationen in der Zweiten Republik,” *Österreichische*
101 *Zeitschrift für Politikwissenschaft* 30 (2001): 19–34.

102 ⁸This was despite the fact that Auschwitz-Birkenau projected no fewer than 52 cremation fur-
103 naces, whereas in all of Germany only 152 had existed ten years before. Jean-Claude Pressac,
104 *Auschwitz: Technique and Operation of the Gas Chambers* (New York: Beate Klarsfeld Foundation,
105 1989), 241–40, gives estimates of the killing capacity that are purposely low. The estimates of the
106 SS and those of its contractors were significantly higher. By their calculations, a single crematorium
107 could have disposed of the camp's population in a little more than three months. Estimates of capacity
108 of Birkenau compared to Germany are drawn from Bischoff, Sept. 26, 1943, “Fragebogen,” in
109 USHMM, RG-11.001M: 41 (512:1:312) and Magistratsoberbaaurat Friedrich Hellwig, “Vom
110 Bau und Betreib der Krematorien,” *Gesundheits-Ingenieur* 54 (1931): 369. Similar estimates were sub-
111 mitted as evidence in Ertl and Dejaco's trial. See Jan Sehn, Dr. Ing. Roman Dawidowski, and Eduard
112 Pechalski, Nov. 26, 1946, “Gutachten,” in Signature V526/1–155, DöW microfilm roll 1107.

113 ⁹Historians generally present a halting, incremental transformation of Birkenau into an extermina-
114 tion center, a process some extend into the summer of 1942 and even, in one case, into early 1943.
115 Most recently Laurence Rees, *Auschwitz: A New History* (New York: Public Affairs, 2005), 67, 73,
116 80, 168; Eric Friedler, Barbara Siebert, and Andreas Kilian, *Zeugen aus der Todeszone. Das jüdische*
117 *Sonderkommando in Auschwitz* (Lüneburg: ZuKlampen, 2002), 114–7; and Hans Mommsen,
118 *Auschwitz, 17. Juli 1942. Der Weg zur europäischen “Endlösung der Judenfrage”* (Munich: Deutscher
119 Taschenbuch Verlag, 2002), 167. Because Auschwitz is excepted from the more general context
120 of genocide that occurred in the fall and winter of 1941 nearly everywhere else in Nazi-occupied
121 Europe, many synthetic accounts touch only briefly on early gassings there, such as Peter Longerich,
122 *Politik der Vernichtung. Eine Gesamtdarstellung der nationalsozialistischen Judenverfolgung* (Munich: Piper,
123 1998), 457, 515–6; and Götz Aly, “Endlösung.” *Völkerverschiebung und der Mord an den europäischen*
124 *Juden* (Frankfurt am Main: S. Fischer, 1995), 361. Others concede a “capacity” for genocide at
125 Auschwitz but nevertheless insist that the first design for a gas chamber “does not yet suggest the
126 camp's future role in the Final Solution”: Christopher Browning and Jürgen Matthäus, *The*
Origins of the Final Solution: The Evolution of Nazi Jewish Policy, September 1939–March 1942
(Lincoln, NE: University of Nebraska Press, 2004), 358. These accounts base their assessment
almost exclusively on the primary scholarship of two historians, Robert Jan van Pelt and the late
Jean-Claude Pressac. Jean-Claude Pressac, *Die Krematorien von Auschwitz. Die Technik des Massen-*
mordes (Munich: Piper, 1993). Robert van Pelt and Debórah Dwork, *Auschwitz 1270 to the Present*
(New York: Norton, 1996). The Vienna Auschwitz trial provides a significant part of both van
Pelt's and Pressac's sources. Van Pelt's letter requesting access is preserved in van Pelt to Frau
Kozumplik, Landesgericht für Strafsachen Wien, Aug. 8, 1990, Signature V526/1–155, DöW
microfilm roll 1108. To the extent that van Pelt served as an expert witness in the case of David

127 The Viennese jurors readily accepted it as well and in doing so, they
 128 engaged in a systematic neglect of the testimony of the Holocaust's
 129 victims, whose evidence was the key to the prosecution's case. It is no exag-
 130 geration to say that the jury simply disregarded it.¹⁰ This kind of extreme
 131 skepticism regarding survivor testimony was (and is) by no means limited
 132 to this jury of lay citizens. Few topics are more hotly debated in Holocaust
 133 studies than survivor memory as historical evidence. For example, Peter
 134 Novick judges it dubious at best in his review of Holocaust historiography:
 135 "It is held that survivors' memories are an indispensable historical source . . .
 136 In fact, those memories are not a very useful historical source."¹¹ Thus, con-
 137 temporary historians have perpetuated the jurors' dismissive approach to
 138 survivors.

139 This is ironic, for Austrian survivors spurred on the trial in the first place
 140 because they wanted to have their voice heard. The Community of Auschwitz
 141 Concentration Camp Survivors led by Hermann Langbein pressured the Dis-
 142 trict Attorneys' Office of Vienna repeatedly to stage a large, spectacular trial
 143 like the Federal Republic had done in Frankfurt.¹² By and large, these survivors
 144 insisted that their experience be counted as evidence, evidence of crimes,
 145

147 Irving vs. Deborah Lipstadt, his functionalist argument (identifying a slow, incremental evolution of
 148 gas chambers rather than intentional design) has been used in the legal defense of history itself. See
 149 Robert van Pelt, *The Case for Auschwitz* (Bloomington: Indiana University Press, 2002). On "denier"
 150 trials, testimony, and memory, see Lawrence Douglas, *The Memory of Judgment: Making Law and*
 151 *History in the Trials of the Holocaust* (New Haven: Yale University Press, 2001), 185–256. On the
 152 doubtful nature of Pressac's chronology in particular, see Richard Breitman, *Official Secrets: What*
 153 *the Nazis Planned, What the British and Americans Knew* (New York: Hill & Wang, 1998), 77. Peter
 154 Klein, "Die Rolle der Vernichtungslager Kulmhof (Chelmno), Belzec und Auschwitz-Birkenau
 155 in den frühen Deportationsvorbereitungen," in *Lager, Zwangsarbeit, Vertreibung und Deportation*, ed.
 156 Dittmar Dahlmann and Gerhard Hirschfeld (Essen: Klartext Verlag, 1999), 478. Werner Renz,
 157 "Die Baugeschichte der Krematorien von Auschwitz. Anmerkungen zu Jean-Claude Pressacs Revi-
 158 sion der Geschichte des Vernichtungslagers Auschwitz-Birkenau," *Jahrbuch des Dokumentationsarchiv*
 159 *des österreichischen Widerstandes* (1996).

160 ¹⁰The Frankfurt Auschwitz trial, for instance, relied upon the affidavits of 252 witnesses and called
 161 356 witnesses to the stand. Of these 356, 220—the vast majority—were survivors. Werner Renz,
 162 "Der erste Frankfurter Auschwitz-Prozeß. Völkermord als Strafsache," *Zeitschrift für Sozialgeschichte*
 163 *des 20. und 21. Jahrhunderts* 15 (2000): 29, 39.

164 ¹¹Peter Novick, *The Holocaust in American Life* (Boston: Houghton Mifflin, 1999), 275. Several his-
 165 torians have recently challenged this trend. See Wittmann, *Beyond Justice*. Jan Gross, *Neighbors: The*
 166 *Destruction of the Jewish Community in Jedwabne, Poland* (Princeton: Princeton University Press, 2001),
 167 139–40. Christopher Browning, *Collected Memories: Holocaust History and Postwar Testimony*
 168 (Madison, WI: University of Wisconsin Press, 2003), esp. 37–59. Bartov, "Passing into History,"
 169 and AHR commentary 1177–90, esp. of Paul Miller and Vinay Lal. Reinhart Koselleck,
 170 "Formen und Traditionen des negativen Gedächtnisses," in *Verbrechen erinnern*, ed. Knigge and Frei.

171 ¹²Garscha, "Eichmann: Eine Irritation, kein Erdbeben," 21–34. The tireless effort of Simon
 172 Wiesenthal was more common in other trials, but, beyond holding a joint press conference with
 173 Langbein, he did not play a role in this particular trial. Sabine Loitfellner, "Auschwitz-Verfahren
 174 in Österreich. Hintergründe und Ursachen eines Scheiterns," in *Holocaust und Kriegsverbrechen vor*
 175 *Gericht. Der Fall Österreich*, ed. Loitfellner (Innsbruck: Studienverlag, 2006), 188–9.

169 evidence of culpable evil, evidence also of history.¹³ Neither they nor the pro-
 170 secutors could bring the jury of eight Austrian citizens to weigh it as such. Thus,
 171 although victims played a central role in the trial, their efforts largely came to
 172 nothing; their testimony was almost wholly ignored, their role forgotten.

173 The nature of their experience was nevertheless somewhat distinctive. The
 174 court called former Auschwitz prisoners who had known the SS architects and
 175 their work first hand. This was precisely because the Central Construction Direc-
 176 torate of Auschwitz had carefully sought them out for their training and pro-
 177 fessional skills. The SS had made them, however unwilling, into no less a part
 178 of the “bureaucracy of annihilation” than their captors. They testified not only
 179 about suffering, brutality, and victimization but also about the nature of work as
 180 engineers and technicians. At least potentially they blurred the line between the
 181 “survivor” as witness to horror and the expert witness. And yet the Vienna trial
 182 proved just one case in which any role as expert was denied them, both by the
 183 jury and, to some extent, by later historians. This must count as another aspect
 184 of repressed memory and another way in which the experience of Auschwitz
 185 has become, to tip Pierre Nora’s phrase on its head, a “realm of oblivion.”¹⁴
 186

187 The Victim Myth

189 The miscarriage of justice was by no means inevitable in the Second Republic.
 190 Contrary to the prevalent impression that Austria did nothing to confront its
 191 Nazi past, the fledgling state formed special People’s Courts as soon as the
 192 Allies relinquished jurisdiction for de-Nazification (as early as August 1945 in
 193 the Soviet, July 1947 in the U.S. and British zones). The People’s Courts
 194 initiated upwards of 137,000 cases under the umbrella of two laws, the “Nazi
 195 Prohibition Act” and the “War Criminals Act” passed in May and June 1945.
 196 Although a series of amnesties curtailed and then (by 1955) eliminated these
 197 special tribunals, Austria actually prosecuted more former Nazis in the decade
 198 after 1945 than did the United States in the Federal Republic of Germany,
 199 not only proportionally—Austria had a population roughly equal to that of
 200 Bavaria—but also in real terms.¹⁵

201
 202 ¹³This has recently been emphasized by Gross, *Neighbors*, 24–25, 139–40. See also Carlo
 203 Ginzburg, “Just One Witness,” in *Probing the Limits of Representation*, ed. Saul Friedländer
 204 (Cambridge, MA: Harvard University Press, 1992), 82–96.

205 ¹⁴Gerhard Botz, “Geschichte und kollektives Gedächtnis in der Zweiten Republik. ‘Opferthese,’
 206 ‘Lebenslüge’ und ‘Geschichtstabu’ in der Zeitgeschichtsschreibung,” in *Inventur 45/55. Österreich im*
 207 *ersten Jahrzehnt der Zweiten Republik*, ed. Wolfgang Kos and Georg Rigele (Vienna: Sonderzahl,
 1996), 71, refers to the French historian Marc Auges, who argues that the creation of non-lieux
 208 of memory is just as important to the construction of memory as Pierre Nora’s “lieux de mémoire.”

209 ¹⁵The U.S. occupation authorities interned a total of around 100,000 Germans. For a brief review
 210 of Austrian de-Nazification, see Winfried Garscha and Martin Polaschek, “Vorwort,” in *Holocaust*
 211 *und Kriegsverbrechen vor Gericht. Der Fall Österreich*, ed. Garscha and Polaschek (Innsbruck: Studien-
 verlag, 2006); Dieter Stiefel, “Nazifizierung plus Entnazifizierung—Null? Bemerkungen zur

211 Moreover, Austria punished Nazis who escaped trial with other serious conse-
 212 quences; 7.5 percent of the workforce experienced some form of de-Nazification,
 213 including one half of all civil servants, a drastic purge by any measure. (By compar-
 214 ison, the Third Reich's race laws had affected only five percent of Vienna's
 215 civil servants in 1938.) An "Economic Cleansing Law" (December 1945)
 216 extended the purge to private corporations, ejecting more than 61,000 managers
 217 from Austrian companies. The state seized the assets of former Nazis and levied
 218 fines from ten to twenty percent of their incomes. Known as "sin taxes," these
 219 payments amounted to 605.9 million Schilling by June 1948. Many former
 220 Nazis recovered quickly and found their way back to positions of influence and
 221 wealth; nevertheless, de-Nazification made a powerful impression.¹⁶

222 Given this record, victims of the Holocaust had reason to believe that
 223 Austrians would prosecute the murderers in their midst. Hermann Langbein
 224 sent a steady stream of letters naming SS men who had served in Auschwitz-
 225 Birkenau. He pressed for one overarching collective trial to include the
 226 former Auschwitz physician Dr. Georg Meyer and three officers of the
 227 Central Construction Directorate, who were already awaiting individual trial.
 228 Survivors had identified five additional suspects, and Langbein notified the
 229 state that the Community of Auschwitz Concentration Camp Survivors was
 230 pursuing still others. "The preconditions for a comprehensive trial in Austria
 231 parallel to the Auschwitz trial in Frankfurt on Main should already exist."
 232 When no arrests followed, Langbein reacted with impatience: "That my letter
 233 of Sept. 16 remains unanswered and that you have not even confirmed the
 234 receipt of this letter, has surprised us"; "The Community of Auschwitz Survi-
 235 vors has entrusted me to communicate to you that it is in a state of great concern
 236 because progress is being made so slowly toward the trial."¹⁷

241 besonderen Problematik der Entnazifizierung in Österreich," in *Verdrängte Schuld, verfehlte Sühne. Entnazifizierung in Österreich 1945–1955*, ed. Sebastian Meissl (Vienna: Verlag für Geschichte und Politik, 1986); Dieter Stiefel, *Entnazifizierung in Österreich* (Vienna: Europaverlag, 1981); and Josef Markus, "Die Strafverfolgung von nationalsozialistischen Gewaltverbrechen und die völkerrechtliche Verantwortung Österreichs," in *Verdrängte Schuld, verfehlte Sühne*, ed. Meissl, 150–1. Compare Wittmann, *Beyond Justice*, 22–5.

245 ¹⁶Stiefel, *Entnazifizierung in Österreich*, 192–7, 215–6, 271–86; Wolfgang Kos, "Zur Entnazifizierung der Bürokratie," in *Verdrängte Schuld, verfehlte Sühne*, ed. Meissl, 66, 71; and Klaus-Dieter Mulley, "Zur Entnazifizierung der österreichischen Wirtschaft," in *Verdrängte Schuld, verfehlte Sühne*, ed. Meissl.

248 ¹⁷First quote, Langbein to Staatsanwalt beim Landesgericht Wien I, Dr. Breycha, Oct. 16, 1961; second quote, Langbein to Staatsanwalt beim Landesgericht Wien I, Dr. Breycha, Oct. 23, 1961; third, Langbein to Dr. Warbinek, Sektionsrat, Justizministerium Wien, Oct. 30, 1961, all in Signature V526/1–155, DöW microfilm roll 1106, Hermann Langbein, "Darf man vergessen?," in *Das Grosse Tabu. Österreichs Umgang mit seiner Vergangenheit*, ed. Anton Pelinka and Erika Weinzierl (Vienna: Edition S, 1987), 10.

As Langbein well knew, the Frankfurt trial in the Federal Republic of Germany, which began at the end of 1963, was to serve two functions. First, it would demonstrate the competence of West German society to mete out justice for brown-collar crimes under its own statutes, and second, it would provide such an extensive record that none could credibly deny the atrocities of the Nazi past. But Austria was never to stage a trial of this magnitude. The Interior Ministry did organize a “Department II C” similar to the Zentrale Stelle für Landesjustizverwaltung, organized in 1958 in West Germany. But the Department II C amounted to little. By comparison, Austria prosecuted a paltry forty-six trials under statutory law after the dissolution of the People’s Courts in 1955 (rather than international law or special de-Nazification laws). After West Germany regained full jurisdiction in the 1950s, its Zentrale Stelle provided a staging ground for 30,000 cases, with almost 13,000 indictments filed and 5,426 cases tried. Just as the West Germans expanded their brown-collar trials, the Austrians cut them back.¹⁸

The stage seemed set in Austria for a speedy bout of amnesia. In the Auschwitz trial of Ertl and Dejaco, the Vienna District Court initially dismissed both the feasibility and grounds for any collective “Auschwitz trial” and expressed reluctance to “inconvenience” defendants by bringing them to the capital from their native towns elsewhere.¹⁹ State prosecutors objected strenuously that only a collective trial could apply Austrian law to crimes that were unique in their bureaucratic dimensions. Several shared Langbein’s vision and worked hard to convince the District Court that Austria needed a trial to serve not only justice but also what we now call “truth and reconciliation.”²⁰ They pushed for indictments of up to twelve defendants.

Only by presenting each defendant as a part of the whole, they urged, could anyone truly understand the enormity of Auschwitz:

Those in power in the Third Reich availed themselves of a bureaucratically organized institution . . . There can be no distinction of individual crimes;

¹⁸Wittmann, *Beyond Justice*; Marschall, *Völkgerichtsbarkeit und Verfolgung*, 166–9; Werner Renz, “Der 1. Frankfurter Auschwitz-Prozess. Zwei Vorgeschichten,” *Zeitschrift für Geschichtswissenschaft* 50 (2002): 622–641. Bauer also found support in the Landesgerichtsrat, Heinz Düx, who seems to have played a similar role to Edgar Reisenleitner in Vienna (see below). Renz, “Der erste Frankfurter Auschwitz-Prozess. Völkermord als Strafsache,” 28. Peter Reichel, *Vergangenheitsbewältigung in Deutschland. Die Auseinandersetzung mit der NS-Diktatur von 1945 bis heute* (Munich: C. H. Beck, 2001), 158–81. Norbert Frei, “Der Frankfurter Auschwitz-Prozess und die deutsche Zeitgeschichtsforschung,” in *Auschwitz. Geschichte, Rezeption und Wirkung*, in ed. Fritz Bauer Institut (Frankfurt am Main: Campus, 1996), 126–30. Garscha, “Eichmann: Eine Irritation, kein Erdbeben,” 23–34.

¹⁹Signature unrecognized, Beschluss, Nov. 20, 1961, Signature V526/1–155, DöW microfilm roll 1106.

²⁰Dr. Octavian Coca seems to have prepared most of the prosecution’s case, while Dr. Hugo Kressnik argued the case in court. I have tried to contact some of the attorneys through the DöW but, to date, without success.

295 rather in criminal law it depends how much the criminal responsibility of the
 296 individual extends within the whole, that is, in organized and directed mass
 297 murder.²¹

298 The court finally reversed its dismissal. But after collecting numerous affidavits
 299 and interrogations in the early 1960s, the case was postponed for almost
 300 a decade. Investigation resumed only in 1971, but the case was eventually
 301 whittled down to only two men. Any spectacular trial, one capable of demon-
 302 strating that the Second Republic could mete out justice for its own Nazi past,
 303 that Auschwitz was of a piece, that it was not an exclusively “German” crime—
 304 was sabotaged at the outset by a temporizing judiciary.²²

305 What had become of Austria’s effort to punish National Socialists by the
 306 1960s and 1970s? Why did Hermann Langbein’s plea fall on such reluctant
 307 ears? For one, Langbein was pushing for justice in a very different climate
 308 than had prevailed in the years immediately following the Nazi defeat. If the
 309 last months of 1945 had been filled with accounts in the Austrian press of atro-
 310 cities and their victims, thereafter, the voice of Holocaust survivors all but dis-
 311 appeared. Of the 137,000 de-Nazification cases opened before 1955, fully
 312 108,000 began before March 1948.²³

313 Despite genuine popular sentiment calling for justice, few ever intended de-
 314 Nazification to be an ongoing project. In the crucial decade of 1945–55, the
 315 architects of the Second Republic simply did not share the expectation of
 316 later generations that Austria should remove National Socialists root and
 317 branch. Dieter Stiefel summarizes the entire process colorfully: “At first slam
 318 a fist on the table, then create order, and finally forgive and forget everything.”²⁴
 319 National Socialist institutions became extinct; likewise radical Nazi ideology fell
 320 into disrepute; but few intended to cast former Nazis into outer darkness.

321 By the 1960s, most Austrians assumed that what justice was due had been
 322 done. Moreover, when the Second Republic achieved formal autonomy with
 323 the State Treaty of 1955, Austrians had come to embrace what historians of
 324 memory have called the Victim Myth, a myth not entirely of their own
 325 making. The Allies had identified Austria as “the first free country to fall a
 326 victim to Hitlerite aggression” in the Moscow Declaration of October 30,
 327 1943.²⁵ Statesmen seized on this definition of their country. Other passages
 328

329 ²¹Objection of Tüschmer, StA Wien, Nov. 29, 1961, Signature V526/1–155, DöW microfilm
 330 roll 1106.

331 ²²Loitfellner, “Auschwitz-Verfahren in Österreich,” 185–6.

332 ²³Sonja Niederacher, “Die öffentliche Rede über Entnazifizierung 1945–49,” in *Entnazifizierung*
 333 *zwischen politischem Anspruch, Parteienkonkurrenz und Kaltem Krieg*, ed. Maria Mesner (Vienna: Olden-
 334 bourg Verlag, 2005).

334 ²⁴Stiefel, “Nazifizierung plus Entnazifizierung—Null?,” 35.

335 ²⁵Posted online at the Yale Law School Avalon Web site: <http://www.yale.edu/lawweb/avalon/wjii/moscow.htm>. Günter Bischoff, “Instrumentalisierung der Moskauer Erklärung nach dem
 336 Zweiten Weltkrieg,” *Zeitgeschichte* 20 (1993); and Uhl, “Das ‘erste Opfer.’”

337 demanded accountability for *participation* in the Nazi regime but received far less
338 attention.

339 The Victim Myth had important implications for both state policy and how
340 Austrians judged their past. In 1945, future Chancellor Leopold Figl declared:
341 “For seven years the Austrian people were prostrate under Hitler’s barbarism.
342 For seven years the Austrian people were suppressed and subjugated.”²⁶ Karl
343 Renner, the first provisional Chancellor of the Second Republic, likewise
344 asserted, “. . . although ninety-nine percent of Austrians favored the Nazis in
345 March 1938 (on the basis of fear or tactical reasons), only fifteen percent were
346 really Nazis.”²⁷ Definitions of the “victim” became very plastic indeed and
347 eventually came to include former Nazis. Had they not been ordinary men
348 who fell prey to propaganda, to peer pressure, to the demagoguery of Hitler,
349 above all to Germany? The ratio of “real” Nazis shrank again and again as the
350 portion of Austrians victimized by fear and propaganda swelled to include
351 almost anyone formerly associated with the Third Reich.²⁸

352 Needless to say, survivors who tried to expose the participation of Austrians in
353 the Holocaust contradicted such claims. As one leading Social Democrat
354 recalled, his party urged survivors “not to speak out about the horror of the con-
355 centration camps, because the people didn’t want to hear about it anymore.”²⁹
356 The Victim Myth essentially required their silence.³⁰

357 Nevertheless, it would be a mistake to believe that defining Austrians as
358 victims originally precluded condemnation of brown-collar crimes. In the
359 first post-war years, passionate appeals for justice frequently appeared side
360 by side with equally passionate assertions of the Victim Myth. When *Neues*
361 *Österreich* published the declaration of independence of April 27, 1945, it
362 announced, “No Austrian had ever wanted the National Socialist government
363 of Adolf Hitler” or Hitler’s wars against “people whom no true Austrian had
364 ever harbored feelings of animosity or hatred.”³¹ The paper followed up the
365 next day by vowing no clemency for those who had aided and abetted National
366 Socialism.³² On the left, right, and center many argued that Austrian Nazis had,
367 in fact, been traitors. If National Socialists had victimized Austrians, it also
368 followed that Nazis could not be “true” Austrians. Leading politicians called
369 for a reckoning and made sure that the State Treaty of 1955 provided for
370 special jury courts to try brown-collar criminals under the Code of Criminal
371

372 ²⁶Uhl, “Das ‘erste Opfer,’” 20.

373 ²⁷Stiefel, *Entnazifizierung in Österreich*, 50. This was in 1946.

374 ²⁸Sonja Niederacher, “Die Entwicklung der Entnazifizierungsgesetzgebung,” in *Entnazifizierung*,
ed. Mesner.

375 ²⁹Uhl, “Das ‘erste Opfer,’” 23–4.

376 ³⁰Richard Mitten, “Die ‘Judenfrage’ im Nachkriegsösterreich. Probleme der Forschung,” *Zeit-*
377 *geschichte* 19 (1992): 356–67.

378 ³¹Butterweck, *Verurteilt und begnadigt*, 18–9.

³²*Ibid.*, 19.

379 Procedure (*Strafprozessordnung*).³³ The Vienna District Attorneys' Office
380 brought charges against Ertl and Dejaco under this code.³⁴

381 Yet even the most heartfelt calls for justice rarely rested on any genuine desire
382 to grant the victims of the Holocaust a hearing. The declaration of indepen-
383 dence, which denied Austrians' "animosity" and "hatred," stood in direct con-
384 tradiction to cabinet meetings in which anti-Semitism could be heard in the
385 highest circles of government. Minister of Foreign Affairs Dr. Karl Gruber com-
386 plained openly that displaced persons threatened to "flood Austria with Jews."³⁵
387 Sentiment that Jews were taking advantage of the Austrian people displayed a
388 marked continuity with the Nazi period, even as Austrians' embraced the
389 "Victim Myth" to distance themselves from "Hitler Germany."

390 If anything, the "Austrian street" was even more radical. In September 1947
391 rioting crowds in Bad Ischl shouted, "Hang the Jews!"³⁶ A parliamentary deputy
392 took part in the demonstration and defended the mob before the cabinet.
393 Grievances against displaced persons, he avowed, were legitimate. However
394 much the Second Republic declared Nazis unwelcome, it was no place of
395 grace for survivors. Even as small towns raised statues to "heroic" war dead,
396 vandals destroyed Holocaust monuments and mocked the commemoration of
397 concentration camps as "communist propaganda."³⁷

398 An effort to silence or ignore those who had suffered most involved far more
399 than just the politics of recognition. It also involved tangible assets. Aryanization
400 had led to the seizure or forced sale of around 2.5 billion Reichsmark in Austria.
401 This included 60,000 homes in Vienna alone. The Nazis had forced 120,000
402 Austrian Jews to immigrate; at least 65,000 had been murdered. Should
403 survivors return, they often found those who had seized their property still in
404 possession. Compensation proved nearly impossible. Likewise survivors rarely
405 gained reinstatement to positions lost due to Nazi race laws. Again and again,
406

407 ³³Garscha and Kuretsidis-Haider, *Die Nachkriegsjustiz*, 6–14, 28–9, 51. Evan Bukey, *Hitler's*
408 *Austria: Popular Sentiment in the Nazi Era, 1938–1945* (Chapel Hill, NC: University of North Car-
409 olina Press, 2000), 19.

410 ³⁴Marschall, *Volksgerichtsbarkeit und Verfolgung*, quote, 26, see also 6–10, 14, 17–18, 22–8.
411 Reichel, *Vergangenheitsbewältigung in Deutschland*, 182–98. Rebecca Wittmann, "The Wheels of
412 Justice Turn Slowly: The Pretrial Investigations of the Frankfurt Auschwitz Trial, 1963–65,"
413 *Central European History* 35 (2002): 352–3.

414 ³⁵Protokoll der 69. Ministerratssitzung vom 20. Mai 1947: "Displaced Persons" in Robert Knight,
415 "Vorwort, Einführung," in *"Ich bin dafür, die Sache zu ziehen." Wortprotokolle der österrei-*
416 *chischen Bundesregierung von 1945–42 über die Entschädigung der Juden*, ed. Knight (Frankfurt am Main:
417 Athenäum, 1988), 173. See also Protokoll der 52. Ministerratssitzung vom 14. Januar 1947: "Anti-
418 semitismus in Österreich," 162–4, and Memorandum der Staatskanzlei, Auswärtige Angelegenhei-
419 ten. "Die aussenpolitische und die völkerrechtliche Seite der Ersatzanspruch der jüdischen
420 Nazioffer," 100–12 in the same volume.

421 ³⁶Protokoll der 81. Ministerratssitzung vom 26. September 1947: "Demonstration in Bad Ischl" in
422 Knight, "Vorwort, Einführung," 179–86, citation, 181. See also more generally, Evan Bukey, *Hitlers*
423 *Österreich. Eine Bewegung und ein Volk* (Hamburg and Vienna: Europa Verlag, 2001).

424 ³⁷Uhl, "Das 'erste Opfer,'" 25.

421 the Victim Myth provided the rhetoric for dealing with such problems: since
 422 Nazi Germany had invaded and occupied Austria, “no Austrian government
 423 had existed; therefore it bore no responsibility for the crimes of the Nazi
 424 regime.”³⁸

425 Trade Minister Ernst Kolb of the Austrian People’s Party actually declared:
 426 “Austria has nothing to restitute because it has not done anything . . . the greatest
 427 portion of [Aryanized] property was not seized on racial but on political
 428 grounds. A considerable portion . . . belonged to the state.”³⁹ And if Austria
 429 quickly set up welfare programs for “victims” of National Socialism, they
 430 specifically excluded “victims of racial persecution.”⁴⁰ Social assistance targeted
 431 prisoners of war or those who had lost homes in bombing raids, not the Jews. In
 432 response to Jewish Claims Conference demands for restitution similar to that
 433 agreed upon by Konrad Adenaur, Austria answered: “All the suffering of the
 434 Jews during this time was committed by Germans and not by Austrians;
 435 Austria bears no guilt for these evil things, and where there is no guilt, there
 436 is no obligation for restitution.”⁴¹ The state even used abandoned assets of
 437 Jews to fund its own social assistance programs.⁴²

438 Austria’s politics of silence and double speak goes a long way toward explain-
 439 ing why the state proved so reluctant to stage any spectacular Auschwitz Trial.
 440 On the other hand, it cannot explain the verdict in the trial that did result.
 441 The following sections therefore turn to that trial itself. As Robert Knight
 442 warns, histories of memory that dwell on state policy can give the unintended
 443 impression that memory is a plaything of elites, crafted for pragmatic political
 444 gain.⁴³ As will become clear below, the peculiar importance of the jury in the
 445 Austrian system opens a window, however small, on public memory with a
 446 small “p.”

447 These private citizens, as is the case with any jury, were supposed to represent
 448 all Austrians. Their judgment must count as more than what one historian has
 449 called the “grey theories of public houses and private conversation . . .”⁴⁴ The
 450 jury made policy, joining private memory to the formal interpretation of law.
 451 In a very different sense from that intended by Saul Friedländer, these “ordinary
 452 men” and “ordinary women” were probing the limits of representation.
 453
 454
 455

456 ³⁸Ibid., 22.

457 ³⁹Knight, “Vorwort, Einführung,” 44.

458 ⁴⁰Brigitte Bailer, “Alle waren Opfer. Der selektive Umgang mit den Folgen des Nationalsozialis-
 459 mus,” in *Inventur 45/55*, ed. Kos and Rigele, 183.

459 ⁴¹Uhl, “Das ‘erste Opfer,’” 22.

460 ⁴²Kos, “Zur Entnazifizierung der Bürokratie,” 67.

461 ⁴³Knight, “Vorwort, Einführung,” 9–21. See also Uhl, “Das ‘erste Opfer.’”

462 ⁴⁴Ernst Hanisch, “Die Präsenz des Dritten Reiches in der Zweiten Republik,” in *Inventur 45/55*,
 ed. Kos and Rigele, 34.

The Limits of Austrian Law?

An investigation of Austrian code also suggests that the distorted judgment had very little to do with the limits of the law, per se. The Vienna Auschwitz trial therefore differs from the Federal Republic's case in Frankfurt, not only in scale and scope, but in substance. Both Rebecca Wittmann and Devin Pendas have shown that German prosecutors began with the ambition to demonstrate the enormity of Auschwitz. They sought to convict individuals for their participation in Auschwitz as the "lethal apex of a vast bureaucratic system."⁴⁵ Their effort failed, in the estimation of both authors, due to the limits of the law. In particular, the German definition of murder applies almost exclusively to killing committed with "base motives," an extremely individualistic, subjective definition of the crime. How could this code apply to crimes that were unique due to the enormity of dispassionate killing?

The "desk-job" murderer was more typical than the overt sadist. Wittmann therefore argues that German murder statutes led to no small amount of distortion. The Frankfurt trial "shifted the focus in the courtroom away from Nazi genocide to individual acts of cruelty . . . the most grotesque and shocking crimes were heavily punished while mass-murder conducted through the machinery of genocide, the gas chambers and the crematoria, were pushed into the background."⁴⁶ Pendas goes even further to speculate that "no legal form is unproblematic when confronting the Holocaust."⁴⁷ Yet Austrian code differs significantly from German law as do its jury courts. Therefore the Ertl-Dejaco trial provides an interesting test for such sweeping conclusions.

First, Austrian jurors played a much more active role than is the case in Germany or the United States. Most importantly, they were vested with full authority to establish their own standards of proof under what is called the right to "honor evidence freely" ("freie Beweiswürdigung"). Although bound by oath to respect the truth, Austrian jurors were at liberty to weigh evidence according to their lights. This made the Vienna trial different.

For example, the Federal Republic bound judges to more precise criteria, similar to the way in which American judges must dismiss evidence under certain conditions. Judges in Frankfurt had to evaluate testimony in the defendant's favor in any instance in which the least doubt existed about a witness' reliability. Some witnesses provided incriminating testimony, but judges dismissed it when contradictions, even about otherwise unrelated

⁴⁵Pendas, *The Frankfurt Auschwitz Trial*, 78–9.

⁴⁶Rebecca Wittmann, "Legitimizing the Criminal State: Former Nazi Judges and the Distortion of Justice at the Frankfurt Auschwitz Trial 1963–65," to appear in *Lessons & Legacies of the Holocaust VII*, ed. Dagmar Herzog (Evanston: Northwestern University Press, 2005). I thank Rebecca for an advanced copy of this paper. Pendas concurs. Pendas, *The Frankfurt Auschwitz Trial*, 292.

⁴⁷Pendas, *The Frankfurt Auschwitz Trial*, 54.

505 events, cast doubt on a witness's memory as a whole. Judges also dismissed evi-
 506 dence when witnesses became overly emotional, regardless of the content of
 507 their testimony.⁴⁸ In Austria the decision to dismiss testimony rested solely
 508 with the jurors under the right to "honor evidence freely."

509 Second, Austrian law offered much greater latitude for interpretation and
 510 relied much less on narrow definitions of any individual killer's subjective
 511 state of mind. Austrian code concentrates more on *how* criminals kill. This, in
 512 turn, gave the jury more leeway for judgment than was the case in Frankfurt.
 513 Taken together, the jury's unique position combined with the relatively open
 514 structure of Austrian law to make brown-collar trials much more subject to
 515 the bias of ordinary Austrian citizen juries.

516 This is why, ultimately, the judgment in Vienna says much more about post-
 517 war Austrian society than it does about the validity of the case against Ertl and
 518 Dejaco, for the state prosecutors laid their case very well.⁴⁹ The District Attor-
 519 neys' Office was keenly aware of the Frankfurt case and initially sought to
 520 succeed where their German counterparts had failed. In the process it attempted
 521 to forge new precedents for individual guilt within criminal collectivities. It was
 522 perfectly obvious (*liegt auf der Hand*), argued the District Attorneys' Office, "that
 523 the responsibility of the individual can only be clarified if the events in their
 524 entirety and the participation of the individual in them can be shown."⁵⁰ The
 525 size of the Vienna trial may have been radically curtailed, but the state still
 526 aimed to establish a holistic judgment of the enormity of Auschwitz.

527 The presiding Chief Justice Edgar Reisenleitner went out of his way to open
 528 the way to conviction. Hellmut Butterweck concludes (as does Dick de Mildt of
 529 the West German judiciary) that the National Socialist past had compromised
 530 Austrian judges. On the other hand, he notes important exceptions, as when
 531 investigating judges or prosecutors had themselves suffered persecution from
 532 1938–1945 and took to their work passionately.⁵¹ Neither the pretrial investi-
 533 gation nor the trial itself in 1972 evinces any overt "brown collar" sympathy on
 534

535 ⁴⁸Renz, "Der erste Frankfurter Auschwitz-Prozeß. Völkermord als Strafsache," 41. Here and
 536 above I am grateful for the advice of Martin Polaschek, Associate Professor for Legal History at
 537 the Faculty of Law, University of Graz, Austria. Pendas, *The Frankfurt Auschwitz Trial*, 156–9,
 538 160–8, 223, 238–40. Wittmann, *Beyond Justice*, esp. 68–70, 79–89.

539 ⁴⁹Simon Wiesenthal counted the opening statement by the prosecution to be "one of the best in
 540 an NS-trial" that he had ever read. Loitfeller, "Auschwitz-Verfahren in Österreich," 188–9.

541 ⁵⁰Objection of Tüschmer, StAWien, Nov. 29, 1961, Signature V526/1–155, DöW microfilm roll
 1106.

542 ⁵¹Butterweck, *Verurteilt und begnadigt*, 53, 323–5. Dick de Mildt, *In the Name of the People: Perpe-*
 543 *trators of Genocide in the Reflection of their Post-War Prosecution in West Germany* (London: Martinus
 544 Nijhoff Publishers, 1996), 325. Werner Renz notes that many judges opposed the efforts of Land-
 545 esgerichtsrat Heinz Düx in Frankfurt to bring that case to court, even judges whose jurisdiction
 546 had nothing to do with "brown-collar crimes." *Ibid.*, 28. The records of this Vienna trial are
 silent on the issue of whether or not Reisenleitner was similarly opposed. Compare, for the case
 of Austria, Markus, "Die Strafverfolgung von nationalsozialistischen Gewaltverbrechen."

547 the part of Edgar Reisenleitner. In other Austrian brown-collar cases, it was not
 548 uncommon for judges and jurors alike to express open contempt and even to
 549 mock survivor-witnesses or the prosecuting attorneys.⁵² Yet this was not the
 550 case in Reisenleitner's court.

551 It is important to note that Reisenleitner was in a powerful position of influ-
 552 ence. Austrian jurors and judges, not to mention the judge and court, had a
 553 markedly different relationship compared to the American system. For instance,
 554 rather than sitting to the side, Austrian Jury Courts (*Geschworenengericht*) empa-
 555 nelled eight citizens alongside three judges. A chief justice (*Vorsitzender*), in this
 556 case Reisenleitner, presided over the whole, but he did far more than referee
 557 objections, attorneys, witnesses, and the jury. The Chief Justice was the *sole direc-*
 558 *tor* of the proceedings. All questions had to be posed to him first and were
 559 addressed to witnesses after approval. Only the Chief Justice had the right to
 560 call witnesses, though both defense attorneys and prosecutors could request
 561 them. There was no "cross examination." Austrian judges also gave much
 562 closer instruction to the jury than is the case in American courts. Before any
 563 jury withdrew for deliberations, the chief justice provided a formal "legal
 564 instruction" (*Rechtsbelehrung*) meant to guide deliberations, and Austrian
 565 judges were at much greater liberty to elevate or impugn the credibility of wit-
 566 nesses in the eyes of the jury.

567 If anything, Reisenleitner's "legal instruction" encouraged the jury to inter-
 568 pret Austrian law broadly. This was no simple matter, for the Nazi past had com-
 569 plicated Austrian legal code. Dejacó and Ertl were subject to multiple murder
 570 charges. From 1939–1945 the Third Reich had imposed the Imperial
 571 German Criminal Code (*Reich Strafgesetzbuch*). In 1945, Austria reestablished
 572 its own legal code, which predated the Anschluss. The defendants were
 573 subject to both. Thus a comparison of the limits of German and Austrian law
 574 was part of the trial itself and Reisenleitner's "Legal Instruction."

575 The German law was most applicable to what in English might be called "hate
 576 crimes," committed as "acts of malice (*Böseheit*)," with base motives, or murder
 577 perpetrated in an especially gruesome (*grausam*) or treacherous (*heimtückisch*)
 578 way. These remained prosecutable under §211 of the Reich Criminal Code,
 579 the same code used by the Federal Republic in the Auschwitz trial. As noted
 580 above, it placed unusual emphasis on the killer's subjective state at the time of
 581 the deed. §211 applied to killing committed "out of pleasure" (*Mordlust*) for
 582 instance, in order to satisfy sexual desire, greed, or other "base motives." Any
 583 other willful killing fell under the definition, not of murder (*Mord*), but of
 584 "death blow" (*Tötschlag*), a far broader category than mere manslaughter in
 585

586 ⁵²Sabine Loitfellner, "Im Vorhof der Vernichtung," paper delivered Jan. 28, 2004, at the Dokume-
 587 tationsarchiv österreichischen Widerstands, Vienna. I thank the author for providing me a copy of
 588 this paper.

589 American law. In fact, German imperial code §212 defined the “death blow”
590 as any other acts of criminal killing not covered under §211, that is, killing in
591 the absence of base motives or pleasure. Yet despite these limitations, Chief
592 Justice Reisenleitner specifically emphasized that the jury had latitude to
593 convict Ertl and Dejaco under §211 for crimes of the Nazi period, because
594 “Political motivations can also be base, for instance murder out of racial
595 hatred.”⁵³

596 §134–§138 of the Austrian Legal Code dealt with murder in a much less
597 restrictive manner. Rather than distinguish murder out of “base motives”
598 from all other kinds of killing, as does German law, §134–138 concentrated
599 more on *how* a criminal kills rather than *why*. Austrian §135 was very similar
600 to §211, covering murder perpetrated by “treachery” (catching the victim
601 unawares, for instance), but it applied to murder in any especially vicious
602 manner, no matter what the perpetrators’ motives. Intention still mattered,
603 to be sure, and the prosecution still bore the burden of demonstrating that
604 the killing was willful. But Austrian prosecutors were, at least potentially,
605 released from establishing that defendants had been depraved individuals
606 who, as §211 put it, experienced “pleasure in killing” (Mordlust). Reisenleit-
607 ner took pains to point out that section 1 of §135 specifically included the use
608 of poison as “treacherous murder (*Meuchelmord*).”⁵⁴ He made sure, in other
609 words, that the implications for applying §135 to Auschwitz could hardly
610 go unnoticed.

611 The Vienna district attorneys constructed their case around another particular
612 statute: §136, the charge of “directed murder.” §136 provided them with a
613 different strategy than their counterparts in Frankfurt, one more appropriate
614 to the peculiar nature of Auschwitz as a criminal collective. §136 was originally
615 meant to cover the order to murder, as in contract killings, or any other direct
616 incitement to kill. The prosecution tried to extend it to cover the rational plan-
617 ning of systematic extermination. Here again Reisenleitner informed the jury,
618 “Any individual who instructs [the murderer] to do something or *directly*
619 [emphasis in original] lends a hand in carrying through a murder or who has
620 co-participated in an active manner” could be sentenced to life-long imprison-
621 ment under §136.⁵⁵ In particular, he explained, the jury was free to apply §136
622 to any case in which a perpetrator had “worked toward a rationalized and
623

624 ⁵³Vorsitzender Richter Dr. Edgar Reisenleitner, undated, from 1972, “Rechtsbelehrung,” in Sig-
625 nature V526/1–155, DöW microfilm roll 1106.

626 ⁵⁴After the annexation of Austria, the Verordnung zur Durchführung des Gesetzes zur Änderung
627 des Reichsstrafgesetzbuch vom 24.9.41 replaced the Austrian Book of Criminal Code with the
628 Reich Book of Criminal Code. A law of July 31, 1945, reversed this, but specified that no law
629 could be retroactively applied that was harsher than another law valid for Austrian citizens at the
630 time of the criminal act. If courts had to choose between the republican Austrian code or
German code, they had to prosecute the more lenient law.

⁵⁵Ibid.

631 progressive process of murder or the maintenance of this process . . .”⁵⁶ It would
 632 have been hard for the jury to claim that the limitations of this law prevented its
 633 application to the designers of the gas chambers.

634 Dr. Octavian Coca’s opening statement stressed that murder in Auschwitz
 635 *could not be* reduced to sadism. He dwelt upon individual acts of murder in a
 636 mere three pages of a 72-page statement. Instead he built a case for conviction
 637 under §136. Coca urged judges and jurors alike to see Auschwitz in its entirety
 638 and argued that Auschwitz *as a whole* operated only through the engagement of
 639 each individual perpetrator who took part in it.

640

641 The mass murders committed in Auschwitz cannot be parsed into individual
 642 offenses. They must instead be understood as a unitary, progressive criminal
 643 process, as murder, whose commission began with the victim’s first entry
 644 into the camp. When the labor power of the exhausted victims had been
 645 used to the last, these, too, were killed by gassing. The system in Auschwitz
 646 was so organized that, from the first moment, everything was undertaken to
 647 achieve the extermination of the victim.⁵⁷

648

649 For Coca, the gas chambers were central, but scarcely the only evidence in an
 650 attempt to establish a new precedent. In seeking to extend §136 to bureaucratic
 651 crimes, he argued that, no less than in a contract killing, SS managers had will-
 652 ingly and knowingly directed murder, even if they had not committed it with
 653 their own hands. The “factory-like extermination equipment for the killing
 654 of millions,” Coca told the court, could not be counted as an isolated artifact;
 655 rather it was a piece within an entire system of degradation and murder. The
 656 defendants had conceived and managed it.⁵⁸ They had worked on some projects
 657 with great alacrity while neglecting others. Genocide had absorbed their con-
 658 stant and careful attention. When seen as a whole, the camp repeatedly
 659 yielded indisputable evidence that the perpetrators had exercised their agency
 660 to increase, steadily and consciously, the peril of their victims’ life and limb.
 661 This was part of the definition of “directed murder” under §136. Coca con-
 662 cluded his statement by emphasizing, “*The committed act [of murder] must be*
 663 *viewed in its entirety*” [emphasis in original].⁵⁹

664

665 ⁵⁶Reisenleitner, undated, “Rechtsbelehrung,” Signature V526/1–155, DöW microfilm roll
 666 1107. His language more or less drew upon passages of the prosecution’s opening statement.

667 ⁵⁷Begründung, District attorneys, Wien, June 6, 1971, Signature V526/1–155, DöW microfilm
 668 roll 1106, 70. Compare Donald Bloxham, *Genocide on Trial: War Crimes Trials and the Formation of*
 669 *Holocaust History and Memory* (Oxford: Oxford University Press, 2001), 185–220, who seems at
 670 times to imply that the paradigm of conspiracy and aggression set by a “Nuremberg Historiography
 671 of the Holocaust” is rarely transcended.

672 ⁵⁸Begründung, District attorneys, Wien, June 6, 1971, Signature V526/1–155, DöW microfilm
 roll 1106, 52.

⁵⁹Ibid., 69.

Witness Testimony

673
674
675 The prosecution relied heavily on witnesses who had found themselves
676 embedded in the camp's bureaucracy to make its case. Few of the survivors
677 who testified at the trial had suffered as mere passive victims. They had lived
678 in Primo Levi's "Gray Zone." They were low-level managers and blue-collar
679 workers in the machinery of destruction. The prosecution also turned to
680 them to demonstrate Ertl and Dejaco's conscious intent (required for conviction
681 under §211 of the Reich code and §135 or §136 of the Austrian code alike).
682 Further, witnesses testified to the former SS architects' active participation
683 and initiative in building up Auschwitz's capacity to murder (particularly relevant
684 to §136).

685 Former prisoners gave repeated accounts that Dejaco and Ertl were fully conscious
686 of their work's purpose. The evidence proved so overwhelming that both
687 Ertl and Dejaco were compelled to admit this as well, Dejaco going so far as to
688 state that gassing "was soon no secret in all of Upper Silesia."⁶⁰ Second, the prosecution
689 sought to demonstrate ongoing initiative, calling witnesses who testified to the eagerness
690 and ambition with which the Central Construction Directorate pushed the pace of building
691 the crematoria. Here again, even Fritz Ertl (who had managed contracts with private construction
692 firms) eventually admitted this. He related that a member of Auschwitz's Political Department
693 "told me at that time that . . . he knew that one planned to make
694 Auschwitz into an extermination camp, and it was in context with the Jews."
695 He then elaborated, not without some dismay, "One did not have to rush so
696 much for the completion of the crematoria . . . I noticed how much one
697 rushed to complete the three crematoria."⁶¹
698
699

700
701 ⁶⁰Walter Dejaco, Deposition, April 3, 1962, Signature V526/1-155, DöW microfilm roll 1106.
702 This had been Depositions of Franz Schebek, Aug. 24, 1962; Leopold Wurm, April 9, 1962; Paul
703 Steiner, Nov. 9, 1962; Anna Töffler, Aug. 16, 1962; Bernhard Bonitz, Jan. 7, 1965, Herta Soswinski,
704 April 6, 1966; and Ludwik Lawin, Sept. 7, 1966, all in Signature V526/1-155, DöW microfilm roll
705 1106. Other SS men who worked within rungs of the SS construction hierarchy did not deny that SS
706 engineers knew what they were doing. One former Waffen SS truck driver, Josef Spanner, Deposition,
707 March 12, 1971: "The gassing rooms obviously belonged to the crematoria. Immediately
708 after the beginning of construction the purpose of these installations leaked out . . . I say that
709 because the members of the Construction Directorate did not just look at the construction but
710 also constantly carried the blueprints around with them." Even the *Wiener Zeitung* reported that
711 no one could have remained ignorant, "Wer wüßte vom Todeslager? Ella Lingens sagte im Auschwitz-
712 Prozess aus," Jan. 27, 1972, and "Von Vergasungen erfahren," Feb. 4, 1972. See also affidavit by
713 Friedrich Entress from the Nuremberg Trials, April 14, 1947, Signature V526/1-155, DöW microfilm
714 roll 1107.

711 ⁶¹Fritz Ertl, Vernehmung of June, 2, 1971, Signature V526/1-155, DöW microfilm roll 1106.
712 Ertl mistook the number of crematoria. See also Rudolf Kauer (a German prisoner who worked
713 with Dejaco), Deposition, Sept. 18, 1963, Signature V526/1-155, DöW microfilm roll 1106,
714 and letter of Kauer to Geschworenengericht beim Oberlandesgericht, Wien, Feb. 21, 1971, Signature
715 V526/1-155, DöW microfilm roll 1108. Kauer spoke of Dejaco's "ambition" and "drive." Fritz

715 Central to the prosecution's case that the camp's construction as a whole
 716 evinced malicious initiative above and beyond gas chambers, the court heard
 717 witnesses who had never worked on the crematoria at all but could testify to
 718 the negligence of work on prisoner barracks. One prisoner, who otherwise
 719 vouched for the correct compartment of Dejaco, for instance, denounced
 720 him for designing barracks for Soviet prisoners of war "without ceilings,
 721 without partitions . . . impossible to heat, all the more because the barrack
 722 walls were 13 cm. thick."⁶² By contrast, the time lavished on the crematoria
 723 was comparable to the care taken to renovate an SS vacation villa in
 724 Poromka.⁶³ Clearly the SS could prioritize its most pressing concerns, and
 725 one of them was genocide.

726 As the attorneys tied "directed murder" to a novel definition of individual
 727 responsibility within bureaucracies, they also attempted to develop arguments
 728 about individual motivation in collective organizations. Neither Dejaco nor
 729 Ertl denied taking part in the Holocaust. However reluctantly, both conceded
 730 that they had participated in genocide. What they resolutely denied was that
 731 they had knowingly or willingly done so or that they had ever *wanted* to play
 732 a role in the Holocaust.

733 The prosecution attacked the problem of motivation by arguing that this, too,
 734 could never be understood by focusing upon single events at isolated moments
 735 in time. It urged the jury to take a holistic approach to intentions. Since neither
 736 fellow SS men nor former prisoners testified that Ertl or Dejaco had been pas-
 737 sionate anti-Semites, this issue of individual motivation forced the prosecution
 738 to argue sociologically. It delved into their biographies. It presented evidence
 739 of indoctrination and association with social groups that had well-known com-
 740 mitments to National Socialism and, by implication, its doctrines of racial
 741 hatred.

742 Fritz Ertl was the more ambiguous case. He readily admitted his and his
 743 family's nationalistic predispositions but predictably maintained, "I did not pre-
 744 occupy myself with politics."⁶⁴ On the other hand, as a young Austrian in Linz,
 745 he had belonged to the German Völkisch Gymnastics Club as well as a rowing
 746 club and a university fraternity (*Burschenschaft*). A discussion of the politicization
 747 of the universities in Germany and Austria in the 1920s is beyond the scope of
 748
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 750

751 Ertl's wife also confirmed her husband's testimony: Hildegard Ertl, Deposition, June 6, 1971, Signa-
 752 ture V526/1-155, DöW microfilm roll 1106.

753 ⁶²Deposition of Stefan Swiszcowski, Sept. 27, 1963, read in Feb. 8, 1972, Signature V526/1-
 754 155, DöW microfilm roll 1106 and 1107.

755 ⁶³See, for example, the testimony of Henryk Porebski, Feb. 18, 1972, and Ludwig Lawin, Feb. 17,
 1972, Signature V526/1-155, DöW microfilm roll 1107.

756 ⁶⁴Ertl, Deposition, May 25, 1971, Signature V526/1-155, DöW microfilm roll 1106.

757 this essay, but the fact that these were *German* nationalist organizations in Austria
758 implies something more than apolitical indifference.⁶⁵

759 Still much evidence suggests that Ertl turned away from the extreme racial
760 supremacy typical of the SS. While serving at Auschwitz, he married a Polish
761 woman from a nearby village. Her father had fought against the Germans in
762 the Silesian civil wars of the early 1920s. None of this could have pleased
763 Nazi fundamentalists typical of the SS, although Ertl's wife's family did apply
764 to be rated as "Ethnic German" (Volksdeutsche). And although Ertl's fraterniza-
765 tion with Poles can scarcely count as evidence that he was not anti-Semitic or
766 that he had ceased to be a radical nationalist, his choice of bride seems to
767 have alienated his comrades at Auschwitz. It clearly counted as a transgression.⁶⁶

768 Ertl also seems to have been genuinely disaffected with his service. He took
769 the highly unusual step of securing a transfer to the Eastern Front in 1943.
770 That a skilled and scarce technical professional fled forward into combat
771 rather than remain safe in an office job implies anything but his glee with Ausch-
772 witz. Furthermore, it is also telling that his superior, Karl Bischoff, let him go,
773 for Bischoff repeatedly secured draft exemptions for his engineering staff. The
774 pathos and frequent honesty of Ertl's testimony also lends credibility to his
775 account.⁶⁷

776 Here again, the prosecution called survivors to comment on the motives of
777 those with whom they had been forced to work. In Ertl's case, the picture of
778 a convinced but conflicted National Socialist was confirmed by the architect
779 Ludwig Lawin:

781 In the Construction Directorate there were different kinds of SS men. Some
782 were neutral, even if they were not really so in fact; they were still not
783 unfriendly . . . Then there were the others that held to the regime. Even
784 among these there were again differences and among these were Dejaco
785 and Ertl. They were such men that represented the regime. Dejaco was a
786 leading terrorist (*Schreckenmensch*); the one in the second rank was Ertl.⁶⁸

787 ⁶⁵For a good review of literature on German universities in the Nazi period, see Bukey, *Hitler's*
788 *Austria*, 6–7, 21; Gerhard Botz, "The Changing Patterns of Social Support for Austrian National
789 Socialism," in *Who Were the Fascists? Social Roots of European Fascism*, ed. Stein Larsen, et al.
790 (Bergen: Bergen Universitetsforlaget, 1980), 202–25; and Ulrich Herbert, *Best: Biographische*
791 *Studien über Radikalismus, Weltanschauung und Vernunft 1903–1989* (Bonn: Dietz, 1996), 51–68. SS
792 personnel file of Fritz Ertl, Lebenslauf of Oct. 28, 1941, Signature V526/1–155, DöW microfilm
793 roll 1106. On German racism against Slavs, see John Connelly, "Nazis and Slavs: From Racial
794 Theory to Racist Practice," *Central European History* 32 (1999), 1–33.

794 ⁶⁶Fritz Ertl to RuSHA, June 16, 1943, "Verlogungs- und Heiratgesuch," BDC RuSHA Akte
795 Fritz Ertl, collected in the trial's Voruntersuchung.

795 ⁶⁷RuSHA Akte Fritz Ertl, Signature V526/1–155, DöW microfilm roll 1106. The estrangement
796 between Dejaco and Ertl was mentioned by both men, but they still continued to visit each other's
797 families after the war.

797 ⁶⁸Lawin testimony, Feb. 17, 1972. See also testimony of Alfred Przybylski, same day, testimony of
798 Zofia Bratro, Feb. 11, 1972 in Signature V526/1–155, DöW microfilm roll 1107.

799 On the other hand, as Lawin's statement also suggests, there could be little
 800 doubt about Walter Dejaco. His biography demonstrated dedication to the
 801 Nazi cause in general, and his work demonstrated enthusiasm for the gas
 802 chambers in particular. Dejaco joined the SS in Austria in 1933 just after the
 803 National Socialist German Labor Party and all its formations were declared
 804 illegal. In 1934 he was arrested and imprisoned for five months. He lost his
 805 job and was forced to seek work as a ski instructor in Italy and Germany. Wit-
 806 nesses also testified to Dejaco's enthusiastic ambition as a leading designer of the
 807 gas chambers. "He pushed himself forward in this task out of ambition, when
 808 others did not want to have anything to do with it."⁶⁹ Or here is Lawin
 809 again, "Dejaco was always striving and did his work with excitement."⁷⁰
 810 Finally, even Fritz Ertl (quoted above) emphasized the speed and ambition
 811 with which construction on the gas chambers went forward.

812 Despite plentiful evidence, the prosecution failed to convince either judges
 813 or jury that long-standing political identification with National Socialism lay
 814 at the root of the actions at Auschwitz. As Dick de Mildt has noted, when
 815 West German courts were confronted with defendants' long-standing affilia-
 816 tion with Nazi institutions, judges usually turned this evidence on its head.
 817 "Youthful" conviction quickly became evidence, not of real intention or
 818 commitment, but of diminished responsibility for individual agency, since
 819 the defendants had "fallen victim" to "peer pressure" or mistaken "ideological
 820 propaganda."⁷¹ Austria never possessed a monopoly on the exculpatory
 821 Victim Myth.

822 The prosecution's attempt to establish sociological context as evidence did not
 823 sway the Austrian jury, though neither, it seems, did the direct statements of
 824 Dejaco, who admitted to his own racial attitudes upon direct questioning by
 825 the judge: "It is correct that I was against the marriage of Ertl to a Polish
 826 woman. I was still at that time very much taken with the SS, and I was of the
 827 opinion that that was not correct."⁷² Although Dejaco made this statement in
 828 reference to the Poles, not to Jews, it leaves little doubt about his own identifi-
 829 cation with the SS and its racial ideology at the time he worked as an architect at
 830 Auschwitz.

833 ⁶⁹Rudolf Kauer, Deposition, Sept. 18, 1963, Signature V526/1-155, DöW microfilm roll 1106.
 834 "Dejaco hat auch Dienstreisen unternommen, um sich andere Vernichtungsanlagen anzusehen,
 835 zwecks Verbesserung der eigenen Anlagen. . . . [Alles] wurde . . . von vornherein bei der Planung
 836 bedacht. Die Gaskammern wurden nach Dejacos Plänen gebaut." See also Kauer testimony, Feb.
 837 2, 1972, Signature V526/1-155, DöW microfilm roll 1106. Kauer to Geschworenengericht
 838 beim Oberlandesgericht, Wien, Feb. 21, 1972, Signature V526/1-155, DöW microfilm roll
 839 1108. For more on this peculiar survivor, see below.

839 ⁷⁰Testimony of Ludwig Lawin, Feb. 17, 1972, Signature V526/1-155, DöW microfilm roll 1107.

839 ⁷¹De Mildt, *In the Name of the People*, 313.

840 ⁷²Dejaco testimony, Jan. 20, 1972, Signature V526/1-155, DöW microfilm roll 1107.

The Defense and the Jury

To counter the prosecution, the defense quickly tried to subvert any comprehensive understanding of bureaucracy and individual agency within it. But the defense did not write this script alone; rather, Ertl and Dejaco made use of stock clichés of a bureaucratic Holocaust which had found a ready acceptance in the public at large. The *Wiener Zeitung*, for example, repeatedly selected variants of these for its headlines, “Only following orders”; “Others Thought for Us”; “Who knew of the Death Camp?”⁷³

As these headlines only suggest, most of the defense’s argument hinged on the division of labor, claiming that it was impossible for SS men to know what they were doing or why and that, even if they did know, nothing could be done to change the situation. Bureaucracy, they implied, rendered the subjective motives of any single individual irrelevant to coordinated action. Dejaco claimed that plans came from above: “The overall planning came from Berlin.”⁷⁴ “[Karl] Bischoff [chief engineer of the ZBL-Auschwitz after October, 1941] should be standing in my place today. We have to take a bath (ausbaden) for what Bischoff did . . .”⁷⁵ Ertl, on the other hand, hinted at dark conspiracies from below: “Without my knowing it, they [the gas chambers] were built by members of the Kommandant’s staff in collusion with the Political Department. They did this in secret by excluding all members of the Construction Directorate at that time.”⁷⁶

The Vienna press quickly picked this up (though not without skepticism). The crematoria had been “built on the sly” (*schwarz gebaut*, i.e. outside normal regulations). Thus, whether blaming superiors or those at lower levels of a dim bureaucratic jungle, the defendants consistently underscored the opaque nature of the Holocaust’s evolution within an unwieldy modern institution. Needless to say, this strategy was propped up by a caricature of bureaucracy, one in which modern institutions supposedly concealed overarching purposes, fragmented individual initiative, and nullified personal motivation.⁷⁷

⁷³*Wiener Zeitung*, “Nur die Befehle ausgeführt,” (Jan. 20, 1972); quote of Dejaco, used in the headline “Für uns dachte andere,” *Wiener Zeitung* (Jan. 21, 1972); headline “Wer wüßte vom Todeslager?,” *Wiener Zeitung* (Jan. 27, 1972). Robert Gellately’s observations of the press and propaganda under National Socialism are likely pertinent here as well. The press made most ready use of clichés and stereotypes that were already widely accepted by the public. See Robert Gellately, *Backing Hitler: Consent and Coercion in Nazi Germany* (Oxford: Oxford University Press, 2001), 34–69.

⁷⁴Deposition of Walter Dejaco, April 3, 1962, Signature V526/1–155, DöW microfilm roll 1106.

⁷⁵Trial testimony of Walter Dejaco, Jan. 19, 1972, Signature V526/1–155, DöW microfilm roll 1107.

⁷⁶Beweisantrag (appeal of evidence) of Fritz Ertl, Oct. 20, 1971, Signature V526/1–155, DöW microfilm roll 1107.

⁷⁷Obviously bureaucracies have become ubiquitous in the modern world because they accomplish the opposite; namely, they *facilitate* collective action, *combine* complex motivations, and *intensify* communication. Despite recent attempts to redress these caricatures, it is noteworthy that the last thirty

883 By contrast, former prisoner-bureaucrats, like the drafter Alfred Przybylski,
 884 provided valuable evidence about the context of daily work, an accurate
 885 rather than distorted view of how bureaucracies function:

886
 887 There were meetings about new construction in which all SS men sat in one
 888 room. The details of mass murder were discussed among them. I wasn't in
 889 these discussions . . . I did see, however, how all the SS men came together.
 890 I can't say exactly what was said, but directly after their conference the
 891 work was given out, and from this I drew the conclusions.⁷⁸

892
 893 As in any well-organized bureaucracy, the ZBL had to rely upon the transfer
 894 of information, input, and the conscious integration of individuals in collective
 895 action. It did not—as one might glean from the defense as well as many contem-
 896 porary histories of Auschwitz—maintain mutual ignorance among atomized
 897 individuals.

898 While it is true that the minutes of the meetings Przybylski describes are lost
 899 to us, survivors still knew their context well. They themselves served the
 900 bureaucracy of the camp and could accurately judge its actions. They repeatedly
 901 witnessed the priority and excitement generated by the crematoria and their
 902 integration with what went on elsewhere throughout the camp complex. As
 903 one survivor confirmed: “The whole Construction Directorate oriented itself
 904 to this one thing, to finish these plans with special energy.”⁷⁹ “Naturally . . .
 905 even if the blueprints did not say these rooms were gassing rooms directly, we
 906 already knew from before what purpose such rooms served,” testified another
 907 drafter. “We had already seen it in the main camp where that crematorium
 908 was already in operation. This was practically the same!”⁸⁰ But the jurors
 909 ceded this testimony and that of many other technicians and professionals no

910
 911 years of scholarship on modern organizations, industry, and technology remain completely ignored
 912 and have gained almost no reception in Holocaust studies. See Manuel Castells, *The Rise of the*
 913 *Network Society* (Oxford: Blackwell, 1996); David Harvey, *The Condition of Post-Modernity*
 914 (Oxford: Blackwell, 1989), esp. 121–200; Thomas Parke Hughes, *Networks of Power* (Baltimore:
 915 Johns Hopkins University Press, 1984); Oliver Williamson, *Markets and Hierarchies: Analysis and Anti-*
 916 *trust Implications* (London: Macmillan, 1975); Douglass North, *Institutions, Institutional Change, and*
 917 *Economic Performance* (Cambridge: Cambridge University Press, 1990); James Beniger, *The Control*
 918 *Revolution: Technological and Economic Origins of the Information Society* (Cambridge: Harvard University
 919 Press, 1986); and Alfred Chandler, *The Visible Hand: The Managerial Revolution in American Business*
 920 (Cambridge: Harvard University Press, 1977). Compare Yaacov Lozowick, *Hitler's Bureaucrats: The*
 921 *Nazi Security Police and the Banality of Evil* (London: Continuum, 2000).

922 ⁷⁸Testimony of Alfred Przybylski, Feb. 17, 1972, Signature V526/1–155, DöW microfilm roll
 1107.

923 ⁷⁹Zbigniew Gosczyński, Deposition in Signature V526/1–155, DöW microfilm roll 1107
 924 (survivor).

925 ⁸⁰Alfred Przybylski, testimony, Feb. 17, 1972, Signature V526/1–155, DöW microfilm roll 1107.
 926 Prisoners, including Jews, were gassed in Auschwitz in 1941 with Zyklon-B. The “old cremator-
 927 ium” of Auschwitz’s main camp was used for this purpose by the spring of 1942.

925 credibility. Survivors would not be allowed to blur the boundary between
 926 victims and expert witnesses. They could not overturn preconceptions of a
 927 bureaucratic Holocaust.

928 This cannot have been due to the compelling nature of the defendants'
 929 narrative. Using Dejaco's and Ertl's own interrogations from the 1960s as well
 930 as primary documents from Auschwitz, both men were caught in lies.⁸¹ Most
 931 damning, in September 1942, Dejaco had traveled to Chelmno to inspect
 932 what even he eventually admitted was a pit crematorium. Dejaco could only
 933 proffer a rather lame excuse:

934 That any crematorium was built can be clarified if one considers that a camp
 935 for ca. 100,000 people was planned and had to count on a corresponding
 936 number of deaths. This did not mean that mass extermination must have
 937 been intended.⁸²
 938

939 Survivor engineers, architects, technicians, and office personnel refuted this.
 940 The architect Ludwig Lawin, for instance, readily conceded that crematoria
 941 might conceivably be "normal" in Germany, but Birkenau's were not, by any
 942 stretch of the imagination:

943 In Germany cremation is done very often and therefore we did not think any-
 944 thing of it when it was said that this was a crematorium. We learned that
 945 gassing installations were being installed through the experience of watching
 946 them build it.⁸³
 947

948 It was, in other words, patently obvious from the construction that these were
 949 not "normal" crematoria and morgues.

950 Yet, as will become clear, the jury gave no weight to testimony by survivors as
 951 technical professionals. The deaf ear turned to witnesses was only too obvious to
 952 survivors. Dennis Urstein remarked caustically that the jury was composed of
 953 "ninety percent Nazi faces."⁸⁴ Hermann Langbein also resented the skeptical
 954 reception of his fellow survivors: "The jurors bought into [Dejaco's] story,
 955 that he had had no clue about the purpose of the buildings during their con-
 956 struction." Langbein blamed the miscarriage of justice, however, not on the
 957 limits of the law but on Austrian society at large: "In the courtroom flyers
 958 were distributed that described me as a Judas ... Some people concluded
 959 from the egregious judgment that jury trials are simply not reliable."⁸⁵

960 In a tersely worded document, the eight jurors judged that Dejaco, in particu-
 961 lar, could not be seen as a "spiritual father" (*geistige Urheber*) of the extermination
 962

963 ⁸¹Deposition of Dejaco, April 3, 1962, Signature V526/1-155, DöW microfilm roll 1106.

964 ⁸²Ibid.

965 ⁸³Lawin testimony, Feb. 17, 1972, Signature V526/1-155, DöW microfilm roll 1107.

966 ⁸⁴Survivor video testimony of Dennis Urstein, interviewed by Paula Draper, HVA-SVHF

⁸⁵Langbein, "Darf man vergessen?"¹⁰.

967 facilities. This was despite his leadership of Auschwitz's planning department and
 968 repeated testimony that he had drawn up the first diagrams with conviction,
 969 energy, and ambition. Among his prisoner coworkers he was known as the
 970 "design engineer (*Konstrukteur*) of the gas chambers."⁸⁶ But any claims that he
 971 demonstrated initiative or conscious intent, the jurors wrote, "lacked any
 972 proof." Statements by survivors were dismissed peremptorily as "no compelling
 973 proof of guilt."⁸⁷

974 That the jury showed a marked reluctance to convict is, in itself, neither sur-
 975 prising nor peculiarly Austrian. It is a weakness toward which all peer juries are
 976 prone. Hannah Arendt acidly commented upon this almost a decade before.⁸⁸
 977 What does seem noteworthy is that the jury quite plainly indulged every
 978 cliché of technocracy in setting the defendants free. This was also in keeping
 979 with Austria's "Victim Myth." In the post-war period Austrians frequently
 980 blamed anonymous structural forces, especially German bureaucracy, for com-
 981 pelling "ordinary men" to serve the Third Reich. Provisional Chancellor Karl
 982 Renner wrote a book dedicated to this theme shortly before he died.
 983 Another Austrian Social Democrat declared in 1948, "We should not forget
 984 that all of modern technology was placed in the unrestricted service of propa-
 985 ganda. It is no wonder that many people, who didn't know about the true
 986 nature of National Socialism, followed the pied pipers of Munich."⁸⁹

987 Belief that an alien, foreign power had used modern institutions and techno-
 988 logical systems to compel honest Austrians to do its bidding provided another
 989 bulwark against the voice of the Holocaust's true victims. This was particularly
 990 glaring in the reception of a single expert witness secured by the defense,
 991 Diploma Engineer Gerhard Dubin. He is the only witness that the jury's hand-
 992 written decision mentions by name: "The majority rejection [of the charges] is
 993 based in essence on the report of the expert witness (Diploma Engineer Gerhard
 994 E. J. Dubin), according to which no conclusions about gassing installations can
 995 be gained from the plans."⁹⁰

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⁸⁶Josef Mikusz, testimony, Feb. 17, 1972, Signature V526/1-155, DöW microfilm roll 1107.

⁸⁷Wilhelm Hoyer, decision of the jury, Oct. 3, 1972, Signature V526/1-155, DöW microfilm roll 1107.

⁸⁸Hannah Arendt, "Introduction" to Bernd Naumann, *Auschwitz* (London: Pall Mall Press, 1966), xi-xii.

⁸⁹Stiefel, *Entnazifizierung in Österreich*, 62. See also Karl Renner, *Demokratie und Bürokratie* (Vienna: Universum, 1964), esp. 47-8. Fascism "places the apparatus of a single party in place of the people and makes its party apparatus into the absolute director of the state-bureaucratic apparatus [toward] the single goal of the violent seizure of power." Kos, "Zur Entnazifizierung der Bürokratie."

⁹⁰Wilhelm Hoyer, decision of the jury, June 3, 1972, Signature V526/1-155, DöW microfilm roll 1107. Unlike American juries, the Austrian court judges as well as specially appointed advisors work with jurors to reach a conclusion. How much they influenced the jury's decision or what their own commitments were in this case can, unfortunately, only be inferred. I thank Winfried Garscha for explaining Austrian court procedure.

1009 The engineer answered little more than a dozen questions, mostly to cast
1010 spurious doubt on the authenticity of Central Construction Directorate blue-
1011 prints submitted at the court's request by the Polish State Auschwitz Museum.
1012 Dubin repeatedly declared them to be mere "copies" and not "originals,"
1013 hardly surprising, since that is how blueprints function.⁹¹ When queried by
1014 Ertl's attorney, Dr. Winfried Mörth, "Can one read from the plans lying here
1015 before us that gassing installations were to be installed in these objects?"
1016 Dubin predictably answered: "For construction people that is not possible
1017 without other knowledge. From these plans, for me, that cannot be deter-
1018 mined."⁹² Of note, Dubin claimed here to speak for all civil engineers, silencing
1019 the voice of prisoner engineers who had said the opposite.

1020 To survivors the purpose of Birkenau's killing machinery had been plainly
1021 recognizable. Numerous examples have already been quoted above. These
1022 survivors included credentialed doctors such as Stanislaus Klodzinski, the
1023 Diploma Engineer Jan Pilecki, the architect Alfred-Czeslaw Przybylski,
1024 Doctor of Civil Engineering Jerzy Widera, and the polytechnic professors Dr.
1025 Szczefan Swiszowski and Dr. Wladyslaw Plaskura, to name only the most
1026 elite. Others were skilled technicians. They contravened Dubin's testimony
1027 over and over again. SS officers "did not tell us what the plans represented,"
1028 testified one survivor of Auschwitz's metals work shop, "but on the basis
1029 of the descriptions and the drawings we were able to determine that it involved
1030 the construction of five new crematorium ovens and gas chambers."⁹³ But the
1031 jurors chose to grant credibility only to Dubin.

1032 This was also despite the fact that Dubin acknowledged his own lack of
1033 technical competence to the court. Notably concerning the gas chambers'
1034 unique ventilation systems, he testified, "What purpose they served, I cannot
1035 say. A thermodynamics expert must be asked."⁹⁴ This is interesting to note
1036 because one of the prosecution's reports was based upon the expertise of
1037

1038 ⁹¹Here, too, the jurors had to ignore repeated survivor testimony about the authenticity of these
1039 very diagrams. See, for example, Kauer testimony, Feb. 11, 1972, Moszynski testimony, Feb. 16,
1040 1972, Signature V526/1-155, DöW microfilm roll 1107.

1041 ⁹²Testimony of Dipl. Ing. Gerhard Dubin, March 1, 1972, Signature V526/1-155, DöW micro-
1042 film roll 1107.

1043 ⁹³Deposition of Bronislaw Galuszka, Nov. 4, 1965, Signatur V526/1-155, DöW microfilm 1106,
1044 read into the trial record, Feb. 8, 1972. See also Dejaco's response, testimony of Feb. 16, 1972, Sig-
1045 natur V526/1-155, DöW microfilm 1107. Galuszka's testimony was hardly unique; see, for
1046 instance, testimony of Dr. Szczefan Swiszowski, March 7, 1972, and testimony of Rudolf Kauer,
1047 Feb. 2, 1972, in Signature V526/1-155, DöW microfilm roll 1107. Prisoners also testified who
1048 worked as archivists in the Central Construction Directorate of Auschwitz (ZBL) records.

1049 ⁹⁴Testimony of Dipl. Ing. Gerhard Dubin, March 1, 1972, Signature V526/1-155, DöW micro-
1050 film roll 1107. The expert testimony of Dawidowski was taken from the Polish Höss trial and pre-
1051 sented within Jan Sehn's expert report. "Beglaubigte Übersetzung aus der polnischen Sprache," dated
1052 June 12, 1946, Signature V526/1-155, DöW microfilm roll 1106. See esp. 1-7. Compare van Pelt,
1053 *The Case for Auschwitz*, 216. The ventilation system of the gas chambers is a unique feature betraying
1054 their purpose and was been repeatedly emphasized by witnesses. See Michael Thad Allen, "The

1051 Dr. Engineer Roman Dawidowski, a professor of mechanical engineering and
 1052 thermodynamics, that is, just the kind of expert Dubin called for. Dawidowski,
 1053 along with numerous prisoner engineers, repeatedly singled out the massively
 1054 overbuilt ventilation system of Birkenau's crematoria II and III, along with
 1055 other salient details, as indisputable proof that the buildings served no other
 1056 purpose than gassing.⁹⁵

1057 To no avail. The jurors obviously believed the defendants' narrative. It is also
 1058 important to remember that this seems to have been despite the guidance of
 1059 the chief justice, Reisenleitner. His formal clarification of Austrian law
 1060 (Rechtsbelehrung) reiterated to the jury that Ertl and Dejaco could clearly be
 1061 convicted, especially under §136. Yet the jury did not just let the defendants
 1062 go; above and beyond this, when Ertl and Dejaco appealed for restitution of
 1063 costs incurred in the trial, the jury readily granted it, with the justification
 1064 that "the presented evidence was not able to convince [them] to declare a
 1065 guilty verdict."⁹⁶ Austrian law normally grants such restitution only in cases
 1066 where innocence has been proven and clears defendants of further suspicion.

1067 The exasperation of the District Attorney's Office was only too evident. One
 1068 prosecutor objected: "The court has decided that the presented evidence has not
 1069 been sufficient to convince the jury to declare a guilty verdict. Therefore the
 1070 court has also concluded the very opposite [i.e., that they were innocent]." But,
 1071 he hastened to add, "There is sufficient incriminating material of such mag-
 1072 nitude that there can be no question of eliminating suspicion." Then he nearly
 1073 lost his temper, specifically with the jury of Austrian citizens: "One can see to
 1074 what extent the jury exercised its right to *honor evidence freely* [emphasis added]
 1075 in the fact that they have granted credibility to the defendant Dejaco—who
 1076 said he only found out about the true purpose of the extermination machinery
 1077 once it was completed. Almost every witness at all relevant to this subject
 1078 announced that they recognized the purpose of this machinery in the planning
 1079 stage and that, likewise, this purpose was an open secret."⁹⁷

1080 The defendants had more or less proposed that the very existence of bureau-
 1081 cratic work showed the implausibility, even the impossibility, of their compre-
 1082 hension, motivation, or control. Auschwitz's morgues and crematoria began
 1083 as nothing more than "normal" installations, which were then transformed
 1084

1086 Devil in the Details: The Gas Chambers of Birkenau, October 1941," *Holocaust & Genocide Studies* 16
 1087 (2002): 189–216.

1088 ⁹⁵See testimony of Moszynski, Feb. 16, 1972; testimony of Henryk Porebski, Feb. 18, 1972, Sig-
 1089 nature V526/1–155, DöW microfilm roll 1107; Deposition, Leopold Moszynski, July 9, 1966, Sig-
 1090 nature V526/1–155, DöW microfilm roll 1106.

1091 ⁹⁶Date illegible, "Beratungsprotokoll," Signature V526/1–155, DöW microfilm roll 1108. Loit-
 1092 fellner, "Auschwitz-Verfahren in Österreich," 190.

1093 ⁹⁷No signature, probably Dr. Hugo Kressnik, May 5, 1972, "Beschwerde," Signature V526/1–
 1094 155, DöW microfilm roll 1108.

1093 without their knowledge and against their will. As the jury's short note on the
 1094 expert testimony of the engineer Dubin demonstrates, this argument was not so
 1095 much sustained by evidence as it was by the jury's eagerness to believe and, one
 1096 suspects, a sheer unwillingness to convict. Recall, Dubin admitted to his own
 1097 inability to judge details of the crematoria of Birkenau on the stand. The dismis-
 1098 sal of numerous technically trained, expert survivors as witnesses also demon-
 1099 strated a disturbing tendency to silence the voice of the SS's victims, whose
 1100 experience of the bureaucracy and personality of perpetrators counted, in this
 1101 case, for nothing.

1102 1103 1104 Judgment of Memory? 1105

1106 What happened in Vienna suggests that Hannah Arendt's oft quoted statement
 1107 that, where all are guilty, none can be judged, might best be understood socio-
 1108 logically rather than, as it is so often invoked, philosophically.⁹⁸ Where all are
 1109 implicated, where in Austrian society could juries be found to condemn their
 1110 fellows for a Nazi past they all shared in common? There is little evidence
 1111 that the Vienna District Court failed because the crimes of Auschwitz were
 1112 so extraordinary that the writ of Austrian law could not cope. The Vienna pro-
 1113 secution developed sophisticated narratives capable of explaining why and how
 1114 individuals can be held accountable within complex technological and bureau-
 1115 cratic systems. They called knowledgeable witnesses to support their case and
 1116 produced plentiful examples of the contradictions in the defendants' case.
 1117 Austrian society refused to listen. There was no paradoxical ontology of
 1118 modern society, the metaphysics of justice, or the limitations of law that resulted
 1119 in this judgment.

1120 The defendants did little more than draw upon clichés of modern bureaucracy
 1121 common to the day. This should come as no surprise. Who could expect a jury
 1122 of ordinary citizens to throw over what was then argued by prominent historians
 1123 and social scientists, some of whom were suggesting then (and today) that "self-
 1124 operating" bureaucratic structures had given rise to Auschwitz? This is not so
 1125 much to reopen debate over "functionalism" vs. "intentionalism" as it is to his-
 1126 toricize that debate. Historians of memory have yet to confront the extent to
 1127 which "functionalist" arguments arose out of perpetrators' defense arguments,
 1128 arguments that have had an influence far beyond academic journals.⁹⁹ As this
 1129 particular trial demonstrates, what historians would later call "functionalism"
 1130 itself became part of the post-war history of Austrian justice.

1131
1132 ⁹⁸Compare Karl Jaspers, *Die Schuldfrage. Ein Beitrag zur deutschen Frage* (Zurich: Artemis Verlag,
 1946), 29–39.

1133 ⁹⁹Bloxham, *Genocide on Trial*, is a good beginning, though it concentrates much more on the
 1134 deficiencies of "intentionalism."

1135 Beyond this, evidence drawn from the trial records continues to inform
 1136 influential histories of the Holocaust, in particular the history of Auschwitz's
 1137 role in the destruction of the European Jews.¹⁰⁰ Despite a creative, impressive
 1138 depth of original research and their sensitivity to the suffering of victims, histor-
 1139 ians such as Robert Jan van Pelt or Jean-Claude Pressac have continued to follow
 1140 the narrative of the perpetrators in significant details. These authors portray the
 1141 extraordinary design of the first crematoria of Birkenau as a "normal" morgue
 1142 and reproduce a "transformation narrative" of a halting, slow evolution of
 1143 Auschwitz-Birkenau into a death camp.

1144 Partly building upon Pressac's and van Pelt's specialized studies, recent schol-
 1145 arship has presented the design of Birkenau's gas chambers as somehow isolated
 1146 from the Nazi genocide throughout the rest of the occupied East and unrelated
 1147 even to the gassing of prisoners with Zyklon-B in Auschwitz's main camp.¹⁰¹ In
 1148 its broad style, in other words, this scholarship perpetuates an argument
 1149 advanced by Ertl and Dejaco. Narratives of a lumbering, bureaucratic Holocaust
 1150 have become self-reinforcing and extraordinarily resilient in the face of contrary
 1151 evidence. In Vienna in 1972, this meant silencing the voice of well-trained,
 1152 informed survivors. The Gray Zone has become a zone of oblivion.

1153 Why have decent, credible, hardworking contemporary historians chosen
 1154 to sustain such a dubious narrative? It is going much too far to say that
 1155 they have proven no more eager to listen to survivors than the Austrian
 1156 jurors. But this trial is indicative of attitudes toward victim testimony that
 1157 reach far beyond it. A divide exists between document-based histories, on
 1158 the one hand, and oral histories or studies of survivor "memory" on the
 1159 other. Institutional historians commonly express outright contempt for
 1160 victim testimony. Wide-spread circumspection is the norm. Here is Raul
 1161 Hilberg, for example:

1162
 1163 In German documents one may discover the Holocaust in all of its bureau-
 1164 cratic complexity, but records of this kind tend to deal with people in the
 1165 aggregate . . . Yet if we look for personal accounts of the perpetrators, we
 1166 will find ourselves largely stymied. The Germans left few private diaries,
 1167 and their memoirs for the most part are heavily self-censored . . . The situ-
 1168 ation is the reverse in the case of Jewish sources. Jewish documents . . . are

1169 ¹⁰⁰Jean-Claude Pressac, *Die Krematorien von Auschwitz*. Van Pelt and Dwork, *Auschwitz*. See also
 1170 Jan-Erik Schulte, "Vom Arbeits- zum Vernichtungslager. Die Entstehungsgeschichte von Ausch-
 1171 witz-Birkenau 1941/42," *Vierteljahrshfte für Zeitgeschichte* 50 (2002): 41–69. Compare Michael
 1172 Thad Allen, "Anfänge der Menschenvernichtung in Auschwitz, Oktober 1941. Eine Erwiderung
 auf Jan Erik Schulte," *Vierteljahrshfte für Zeitgeschichte* 51 (2003).

1173 ¹⁰¹See footnote 10 above. For two specialized studies that deal directly with the first gasings at
 1174 Auschwitz, see Karin Orth, "Rudolf Höß und die 'Endlösung der Judenfrage': Drei Argumente
 1175 gegen deren Datierung auf den Sommer 1941," *Werkstattgeschichte* 18 (1997): 45–57. Klein, "Die
 1176 Rolle der Vernichtungslager Kulmhof (Chelmno), Belzec und Auschwitz-Birkenau." These argue
 for no clear connection to the destruction of the European Jews.

1177 relatively sparse in number. On the other hand, there are multitudinous
1178 statements of survivors recording their recollections.¹⁰²

1179
1180 Implicit in Hilberg's statement is the assumption that survivors have little to say
1181 about the bureaucracies in which they were embedded or the nature and per-
1182 sonality of perpetrators. Lawrence Douglas has noted that this was often true.
1183 In the Eichmann trial in Jerusalem, for example, survivors repeatedly produced
1184 graphic testimony of their suffering but many had never heard of Eichmann until
1185 after the war. In consequence, the Israeli court was almost wholly in agreement
1186 with Hilberg. Testimonies in which "survivors of the Holocaust . . . poured out
1187 their hearts" were "to be regarded as by-products of the trial."¹⁰³ They were to
1188 be considered "color" but not evidence.

1189 Douglas's skepticism is well founded, but the danger resides in generalizing it
1190 to all testimony. The Vienna District Court heard out this debate as well, albeit
1191 in an altered form. The renowned west-German historian Hans Buchheim
1192 served as expert witness and drew a sharp distinction: "Our [expert] experience
1193 is that the [eye-]witness . . . more or less colors what he wishes to present . . ." As
1194 a bulwark against the unbridled subjectivity of witnesses, he opposed the histor-
1195 ian's craft of "Working from the contemporary documents [which] lends objec-
1196 tivity."¹⁰⁴ Buchheim, in this particular case, was refuting DeJaco and Ertl, who
1197 sought to contradict him simply because they had "been there" and he had not.
1198 But Buchheim defended the historians' objectivity in universal terms that cast
1199 doubt on all contemporary witnesses alike, SS men or victims, informed or
1200 uninformed observers, those with an overwhelming motive to lie and those
1201 with an overwhelming motive to tell the truth. How could this have shaken
1202 the tendency, already widespread within Austria, to discount the victim as
1203 witness?

1204 If Buchheim may be taken as exemplary of document-based historians, on the
1205 other side of the divide are scholars who have placed survivor testimony at the
1206 center of their studies. Thus, it is not that survivors have been ignored or neg-
1207 lected. A vast literature has arisen around Holocaust memory and survivor nar-
1208 ratives.¹⁰⁵ This literature tends to be directed toward several broad questions, the
1209

1210 ¹⁰²Raul Hilberg, "I Was Not There," in *Writing and the Holocaust*, ed. Berel Lang (New York:
1211 Holmes & Meier, 1988), 18. In practice, when Hilberg finds survivor testimony relevant to perpe-
1212 trators and their organizations, he uses it as such. Compare his recent book on methods, *Sources of*
1213 *Holocaust Research* (Chicago: Ivan R. Dee, 2001), 153, and esp. his discussion of the former *Sonder-*
1214 *kommando* prisoner David Olère, 167. See also Wittmann, "The Wheels of Justice Turn Slowly,"
364–5.

1214 ¹⁰³Douglas, *The Memory of Judgment*, 149.

1215 ¹⁰⁴Hans Buchheim, testimony, Jan. 28, 1972, Signature V526/1–155, DöW microfilm roll 1107.

1216 ¹⁰⁵Van Pelt and Dwork include sections on survivor experience in *Auschwitz*. These aptly demon-
1217 strate the suffering of victims, their courage, and perseverance. Still these sections often stand alone, as
1218 digressions from the lengthy narrative describing the SS's management of genocide. The survivors are
not actors in this drama; they are only acted upon.

1219 importance of which is undeniable: How is memory constituted, collective and
 1220 personal? How does it function?¹⁰⁶ How does memory serve as a tool for pol-
 1221 itical movements, especially nationalism?¹⁰⁷ What can memory tell us about the
 1222 transference of trauma across social boundaries and generations?¹⁰⁸ Yet, ironi-
 1223 cally, the themes explored in this literature easily reinforce some of the worst
 1224 stereotypes evident in the Vienna courtroom.

1225 For instance, some embrace the emotive quality of testimony and condemn
 1226 the search for “facts” in general. At times this is coupled to a suspicion that
 1227 legal process or any other effort to reconstruct accurate historical narrative
 1228 threatens to damage survivor memory: “. . . lawyers defending war criminals
 1229 . . . deny that in the concrete process of remembering, facts are enmeshed
 1230 within the stories of a lifetime.”¹⁰⁹ One critic of post-war trials, Giorgio
 1231

1232 ¹⁰⁶Harald Welzer, Sabine Moller, and Karoline Tschuggnall, *“Opa war kein Nazi.” Nationalsozia-*
 1233 *lismus und Holocaust im Familiengedächtnis* (Frankfurt am Main: Fischer, 2002). Konrad Jarausch, “Survival in Catastrophe: Mending Broken Memories,” in *Shattered Past: Reconstructing German Histories*, ed. Konrad Jarausch and Michael Geyer (Princeton: Princeton University Press, 2003), 317–41. Dan Diner, “Gedächtnis und Methode. Über den Holocaust in der Geschichtsschreibung,” in *Auschwitz*, ed. Fritz Bauer Institut, 11–23. Saul Friedländer, “Trauma and Transference,” in *Memory, History, and the Extermination of the Jews of Europe*, ed. Saul Friedländer (Bloomington: Indiana University Press, 1993). Lawrence Langer, “Interpreting Survivor Testimony,” in *Writing and the Holocaust*, ed. Lang, 26–40, as well as *Holocaust Testimonies: The Ruins of Memory* (New Haven: Yale University Press, 1991). Lutz Niethammer, “Diessets des ‘Floating Gaps.’ Das kollektive Gedächtnis und die Konstruktion von Identität im wissenschaftlichen Diskurs,” in *Deutschland danach*, ed. Ulrich Herbert, et al. (Bonn: J. H. Dietz Nachfolger, 1999).

1241 ¹⁰⁷Peter Fritzsche, “The Case of Modern Memory,” *Journal of Modern History* 73 (2001): esp. 106–
 1242 9. Garscha, “Eichmann: Eine Irritation, kein Erdbeben.” Tony Judt, “The Past is Another Country: Myth and Memory in Postwar Europe,” *Daedalus* 121 (1992): 83–118. Rudy Koshar, *Germany’s Transient Pasts: Preservation and National Memory in the Twentieth Century* (Chapel Hill, NC: University of North Carolina Press, 1998). James Young, “Introduction: The Art of Memory,” in *The Art of Memory: Holocaust Memorials in History*, ed. James Young (Munich: Prestel Verlag, 1994), 19–38. Pierre Nora, “General Introduction: Between Memory and History,” in *Realms of Memory, Volume 1*, ed. Lawrence Kritzman and Pierre Nora (New York: Columbia University Press, 1996), 1–20. Lutz Niethammer, “Erinnerungsgebot und Erfahrungsgeschichte. Institutionalisierungen im kollektiven Gedächtnis,” in *Deutschland danach*, ed. Herbert, et al., 583–92. Jeffrey Herf, *Divided Memory: The Nazi Past in the Two Germanys* (Cambridge: Harvard University Press, 1997). Peter Reichel, *Politik mit der Erinnerung. Gedächtnisorte im Streit um die nationalsozialistische Vergangenheit* (Munich: Carl Hanser Verlag, 1995). Marcuse, *Legacies of Dachau*, esp. 73–186.

1251 ¹⁰⁸Foremost is probably Dominick La Capra, *History and Memory after Auschwitz* (Ithaca: Cornell University Press, 1998). James Young’s most recent work also engages this theme, “Mirroring Evil,” symposium, April 10, 2003, Emory University, Atlanta, Georgia (discussing exhibition at the Jewish Museum of Brooklyn that opened March 17, 2002) as well as “The Art of Memory.” Fritzsche, “The Case of Modern Memory,” reviews this literature: 112–7. For an older classic, Alexander and Margarete Mitscherlich’s *The Inability to Mourn: Principles of Collective Behavior* (New York: Grove Press, 1975), 3–68. Nadine Hauer, “NS-Trauma und Kein Ende,” in *Das Grosse Tabu*, ed. Pelinka and Weinzierl, 28–41.

1257 ¹⁰⁹Selma Leydesdorff, “A Shattered Silence: The Life Stories of Survivors of the Jewish Proletariat of Amsterdam,” in *Memory and Totalitarianism*, ed. Luisa Passerini (Oxford: Oxford University Press, 1992), 147. Compare Frei, “Der Frankfurter Auschwitz-Prozess,” 129–30; Bloxham, *Genocide on Trial*, 152. See also Giorgio Agamben, *Remnants of Auschwitz: The Witness and the Archive*, trans. Daniel Heller-Roazen (New York: Zone Books, 2002), 18. For a critique of the sentimentalism

1261 Agamben, dissolves the survivor's experience almost entirely into a metaphysics
 1262 of subjectivity. Survivors cease to be astute observers of history: "They are onto-
 1263 logical operators, that is, the devastating weapons used in a biopolitical struggle
 1264 for Being . . . The field of this battle is subjectivity."¹¹⁰ However much this may
 1265 elevate the status of the victim, it is unclear that this overweening emphasis on
 1266 subjectivity encourages anyone to listen to what survivors have to say about
 1267 history. Whether defending or dismissing survivor testimony, then, a consensus
 1268 seems to hold that victims have little to tell about perpetrators or their insti-
 1269 tutions. This only reinforces beliefs about the subjectivity of survivor memory
 1270 in ways that have frustrated, among others, survivors.¹¹¹

1271 Survivors are often revered, even "sanctified" for having a great deal to say
 1272 about suffering. Nevertheless, they are too often assumed to have little to say
 1273 about why and how the Holocaust happened more generally.¹¹² They are sup-
 1274 posed to speak only for themselves. Perhaps Martin Broszat made the most
 1275 poignant statement in this regard. In a well-known exchange with the survivor
 1276 and historian Saul Friedländer, Broszat distinguished between the victim's
 1277 memory as "mythical" and "German historians more focused upon rational
 1278 understanding." Like his colleague Buchheim, Broszat clearly demarcated the
 1279 memory of the witness from rational history.¹¹³

1282 of much commemoration of victims and their memory, see Karl Stuhlpfarrer, "Österreich," in *Ver-*
 1283 *brechen erinnern*, ed. Knigge and Frei, 247.

1284 ¹¹⁰Agamben, *Remnants*, 146–7.

1285 ¹¹¹In a short paragraph in which he announces his disgust with almost every trend in scholarship
 1286 on the Third Reich of his day, Jean Amery declared, "Let no young political scientist, no matter how
 1287 clever he is, tell me his conceptually untenable stories. To someone who was an eyewitness, they
 1288 appear utterly stupid." Jean Amery, *At the Mind's Limits: Contemplations by a Survivor on Auschwitz*
 1289 *and its Realities* (Bloomington: University of Indiana Press, 1980), viii.

1289 ¹¹²See, for instance, Ellen Fine, "The Absent Memory: The Act of Writing in Post-Holocaust
 1290 French Literature," in *Writing and the Holocaust*, ed. Lang. James Young calls upon memory to
 1291 "reflect a discontinuity of form, a futility in reconciling past and present," in "The Art of
 1292 Memory: Holocaust Memorials in History," in *The Art of Memory*, ed. Young, 21. See also Langer,
 1293 "Interpreting Survivor Testimony," in *Writing and the Holocaust*, ed. Lang, 26–40. Lawrence Kritzman,
 1294 "Forward," in *Realms of Memory*, ed. Kritzman and Nora, ix–xv. Martin Broszat and Saul Fried-
 1295 ländler, "A controversy about the Historicization of National Socialism," an exchange of letters in
 1296 1987, in *Reworking the Past: Hitler, the Holocaust, and the Historians' Debate*, ed. Peter Baldwin
 1297 (Boston: Beacon Press, 1990), 106. Lutz Niethammer singles out survivors' oral histories as the well-
 1298 spring of "otherness" in modern societies: "Diesseits des 'Floating Gaps,'" 579.

1299 ¹¹³Broszat and Friedländer, "A controversy about the Historicization of National Socialism," 106.
 1300 Some discussion of history and memory that I have found most helpful are Paul Cohen, *History in*
 1301 *Three Keys: The Boxers as Event, Experience, and Myth* (New York: Columbia University Press,
 1302 1997). Richard Terdiman, *Present Past: Modernity and the Memory Crisis* (Ithaca: Cornell University
 1303 Press, 1993). See the "AHR Forum on History and Memory": Susan Crane, "Writing the Individual
 1304 Back into Collective Memory," *American Historical Review* 102 (1997): 1372–85; Alon Confino,
 1305 "Collective Memory and Cultural History: Problems and Method," *American Historical Review* 102
 1306 (1997): 1386–1403; and Daniel Jones, "Meatpackers, Peronists, and Collective Memory: A View
 1307 from the South," *American Historical Review* 102 (1997): 1404–12. Cathy Caruth, "Unclaimed

1303 If nothing else, this Auschwitz trial suggests that survivors should not be so
 1304 speedily dismissed as expert observers of the Holocaust. This can also restore
 1305 one aspect of their narratives so easily overlooked: the desire to live in order
 1306 to relate what actually happened in the camps. This motive may be, as Lawrence
 1307 Langer warns us, little more than a firewall against what was really a chaotic, ani-
 1308 malistic struggle for survival fraught with what Langer calls choiceless choices,
 1309 random luck, and the demolition of self. Yet it is hard to dismiss, say, its veracity
 1310 for witnesses who appeared in this Vienna Auschwitz trial. For instance, Shlomo
 1311 Dragon, one of the prisoners forced to work in the crematoria that Dajaco and
 1312 Ertl designed and built, helped bury the notebooks of fellow prisoners who did
 1313 not survive. After his liberation, Dragon came back to dig them up, stating reso-
 1314 lutely: "One must leave the world a witness."¹¹⁴

1315 To put it differently, survivors like Dragon did not, originally, see their experi-
 1316 ences as the subject for the study of trauma, post-war identity, post-war nation-
 1317 alism, a *differend* or aporia in the Enlightenment, much less a biopolitical battle
 1318 for Being. They wanted to be taken seriously as witnesses to history.

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¹¹⁴Shlomo Dragon in Gideon Greif, "Abraham und Shlomo Dragon: 'In Verzweiflung und Hoffnung—wir waren immer zusammen!'" in *Wir weinten Tränenlos . . . Augenzeugenberichte der jüdischen "Sonderkommandos" in Auschwitz*, ed. Greif (Cologne: Böhlau Verlag, 1995), 105.