

Research Brief

Staging Violence, Staging Identities: Identity Politics in Domestic Prosecutions

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Trials re-enact periods of violence and state repression in order to submit them to authoritative judgment. The legal judgment is, however, only one aspect of such trials, which have broader educational and transformative goals. The question posed in this paper is whether or not trials for systematic or massive abuse have effects for the politicized identities that were at the heart of the violence, and that may still be operative in the post-repression period.

In domestic trials, the main audience is composed of the country's residents. This audience is asked to follow the trial that unmask the country's recent history, and to identify with some characters, stories and norms over others. Two main problems emerge:

- How do the “roles” and “scripts” available to trial participants—judges, prosecutors and defendants as well as survivor-witnesses—enable and constrain them in talking about the identities that were interwoven with state repression?
- Which dynamics of identification occur between the audience and different participants in the trial? Is the audience drawn into reflecting on its own complicity in the violence and its prior relationships to trial participants?

The Frankfurt Auschwitz Trial

The Frankfurt Auschwitz trial (1963-1965) was one of the major trials to prosecute Nazi perpetrators in Germany. It was also notable for concentrating exclusively on crimes that were part of the Holocaust, rather than war crimes.

The trial engaged with the identities of the victims primarily through assessments of the perpetrators' motives. The court determined that a small circle of “main perpetrators,” mainly Hitler and Himmler, had set the conditions for the emergence of Auschwitz as a death camp. Beyond this circle, the court looked for evidence of unusual brutality, sadism or publicly voiced anti-Semitism as indications that SS officers had internalized the motives of the “main perpetrators.” The court accordingly convicted those who had

Research Project

Identities in Transition

In post conflict societies, histories of exclusion, racism and nationalist violence often create divisions so deep that finding a way to agree on the atrocities of the past seems near-impossible. This project seeks, first, to ensure that transitional justice measures are sensitive to the ways in which targeting people on the basis of their ethnic or religious identity may cause distinctive harms and, second, to clarify the difficult political challenges that arise in societies where communities are not ready to cooperate, or even agree on a definition of who the victims are. If transitional justice can find ways to act as a means of political learning across communities, foster trust and recognition, and if it can serve to breakdown harmful myths and stereotypes, then this will be at least a small step toward meeting the challenges for transitional justice in divided societies. The project is managed by Paige Arthur, Deputy Director of the Research Unit at the ICTJ.

personally tortured or abused inmates as perpetrators: their cruelty, often witnessed by others, provided sufficient evidence of their sadism or hatred. Of the fourteen defendants who were convicted for participating in “selections” on the ramp or within the camp, eleven were convicted as accomplices, while only three were found to be actual perpetrators.

The court, by externalizing anti-Semitism and ascribing responsibility to perpetrators who appeared more readily violent, allowed the West German public to distance itself from the “beasts” whose brutality they could not recognize as representative of a wider problem. The SS functional elites—the bureaucrats, doctors and pharmacists—could more easily convince the public that they were caught up in a system that exploited their expertise, rather than having been driving forces in this system.

Meanwhile, the victims’ lived experiences of Jewish identity rarely entered the picture. The Auschwitz trial introduced the West German public to previously ignored dimensions of persecution and suffering under the Nazi rule. Yet it did little to dispel the Nazi ideology of discrete “races,” and only seemed to suggest that Germans and Jews were indeed different people, thereby ensuring that the trial’s audience maintained an emotional distance from the Holocaust survivors.

Argentina’s Trial of the Juntas

The trial of the Argentina juntas in 1985 was an important legal and political event that was widely discussed and reported on in Argentina. The identities of many who were disappeared were shaped through the experiences of political violence and opposition to prior military dictatorships. The military junta that took power in 1976 banned political activities and started a broad campaign to “annihilate subversion.” This policy included the abductions of persons labeled “subversive” as well as their internment in a network of about 340 clandestine detention centers.

As a result of the juntas’ ideological campaigns, the political identities and commitments of many of the disappeared were still tinged with suspicion of subversion at the time of the trial. The trial therefore reproduced two strategies for talking about the disappeared that had already been employed by those who campaigned on their behalf: human rights and kinship. The political identities of the disappeared were de-emphasized by the prosecution and the court in favor of representations of the disappeared as loving family members or as abstract persons whose human rights were violated.

These strategies succeeded in humanizing the disappeared at the trial. They emerged as passive, innocent victims, “grabbed away from normal life by state terrorism.” These dominant discourses about state repression silenced the militancy and the political identities of many of those who disappeared—as well as the political identities and beliefs of the agents of repression. The context of the trials in the 1980s was still marked

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by the military's criminalization of collective identities and political commitments. The trial succeeded in establishing disappearances and military responsibility for them as a widely accepted fact. But the trial did not dismantle the imposed identity of "subversive" that had had such murderous consequences. Open discussion of the identities of victims of state repression as political activists only became possible in the 1990s onward—well after the trial.

Germany's Trial of the East German Politbüro

While the Auschwitz trial and the trial of the juntas are noteworthy for the ways in which they engaged with identities imposed by the state, the trial of the East German Politbüro members merits attention primarily for its contribution to shaping a new, sub-national collective identity. The trial, which took place in unified Germany from 1995 to 1997, provided the defendants with an opportunity to link their individual fate to grievances of a wider East German population. The prosecution used the trial as a stage for affirming and celebrating German unity.

The Politbüro members were charged with homicide in the cases of four young men whom border guards shot when they tried to cross the Wall separating East and West Berlin. The Politbüro had occupied the top position in the chain of command that led to the killings. Their trial had been preceded, however, by a significant number of trials of lower-ranking military personnel for the same type of offenses. Given the established jurisprudence that condemned border shootings as excessive, it was generally expected that the members of the Politbüro would be convicted, and they were. The public interest in the trial thus resulted not so much from the drama as from pronouncements made about the general status of the border as well as the personal status of the defendants. Among them, Egon Krenz—who had been the de facto head of state of the German Democratic Republic (GDR) for a short period—was eager to present himself as the representative of former GDR citizens disadvantaged by unification.

Being East German had not been a decisive marker of political identity prior to unification: in fact, the majority of East Germans had voted for unification, and many had been eager to leave the country. East-Germanness was only politicized as a positively valued identity within unified Germany. In this new context, it provided a frame for articulating grievances arising from the unequal mode of unification. The trial of the East German Politbüro demonstrates that trials can be used by the defendants to articulate political identities that respond to contemporary grievances and disparities of power—including the perceived injustices of the trials.

About the Author

Christiane Wilke is Assistant Professor in the Department of Law at Carleton University, Canada. She earned her PhD in Political Science at the New School for Social Research, New York City. Her current book project examines how criminal trials for massive human rights violations construct the idea of transition through reconceptualizing responsibility, victimhood, and legality.

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Analysis

Trials are limited in their capacity to generate reflection on collective complicity with systematic or massive abuse. There are three key aspects of these constraints that should be flagged for future transitional justice initiatives. First, as was true during the Auschwitz trial, the audience may dissociate itself from the perpetrators, but fail to reflect on its own complicity and involvement in the crimes on trial.

Second, there may be instances, such as the Argentine trial of the juntas, in which the audience identifies with the victims, but these victims are stripped of their distinctive identities in order to make them more palatable to a national audience. Identification with victims is unlikely to lead to reflection on collective complicity when the stigmatizing criteria that made them targets in the first place remains a taboo subject.

Third, as the Politbüro trial shows, actors within trials may be very effective in dividing the national audience, especially through making appeals that resonate with a general sense of identity-based discrimination. That is, trials are spaces in which different actors compete for attention and identification from different parts of the audience—this includes both the prosecution and the defense, as well as others.

These three findings suggest that trials alone may do little to break down hardened identity categories, and in some cases (like the Politbüro trial) may even help to shore them up in the short term. In the end, trials can only stage, express and embody what is thinkable and profitable to do on a national stage at a particular point in time. Trials can, however, be valuable precisely for their obvious limits. When critics publicly discuss shortcomings of trials, they continue to debate past and future identities; and they take part in imagining political communities they want to live in.

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