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Individual Desire or Social Duty? The Role of Testimony in a Restitution Procedure: An Inquiry into Social Practice

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Narratives of victimhood, or in a broader sense, life-story narratives, have gained an important role not only in historiography but also increasingly in the field of transitional justice and in the courtroom. The former is a result of the establishment of oral history and the "history from below" of the 1970s, and the latter emerged from truth commissions (e.g., in South Africa and Latin America) that asserted the usefulness of allowing the witness to speak during a reconciliation process.[2] Both cases are less about the specifics of the past than about the benefits of the storytelling for the individuals in the present; less about gathering evidence than about being an end in itself.[3] Additionally, the International Criminal Court (ICC) in The Hague established new procedures for increased victim participation in legal procedures, not just as witnesses, as was the case in the ad-hoc UN tribunals of the Former Yugoslavia and Rwanda, but also as victims, allowed (within limits) to tell their stories. The Rome Statute (1998) grants victims the right to participate in proceedings, the right to request reparation, and the right to legal representation. Such rights are often granted by national law, but were entirely new to international law.[4] This interest and belief in the participation of victims as a means of creating better preconditions for justice and future reconciliation is a phenomenon that has progressively developed since the 1960s. But to what extent does it favor the

victims (with respect to empowerment or recognition), and what are the pitfalls? What are the implications of a legal framework on the narrative construction of the past?

A brief history of witnessing by victims of Nazism will highlight how testimony relates to the public discourse over time. I shall then examine the challenges of one testimony in a restitution procedure sixty years after the war, with regard both to evidence and to defining the role of a witness. This article will explore testifying as social practice by scrutinizing a hearing from a recent restitution claim in Austria about returning a house that was aryanized in 1938 in Vienna. It aims to reconsider the meanings of "testimony" in a restitution procedure and to show how the study of reparation procedures can make a critical contribution to the study of testimony and vice-versa. I will argue that in scholarly debates and institutional practice, the topic of compensation to victims of National Socialism has often become mired in historical and legal details, instead of focusing on the social practice and its ambivalent effects.

Life-Story Accounts of Victims of Nazism

In the first post-war decade, justice was carried out without a niche for the victim, who was thought to be too emotional for the juridical search for data and culpability. Moreover, the legal proceedings fashioned themselves as future- rather than past-oriented. This selective and collective forgetting as well as post-war myths of anti-fascism, resistance, and victimhood, facilitated Europe's astonishing post-war recovery.[5] In this atmosphere, high-ranking perpetrators of National Socialism were put on trial in the name of justice and future peace. The victims of National Socialism, however, were not encouraged to tell their stories. At the Nuremberg Military Tribunal (1945–46) the victims and their stories played a subordinate role in the courtroom, which was legitimized by the fact that the lawyers had full access to the extensive archives of the Nazis. They questioned only a few witnesses, mainly to confirm the documents.[6] Moreover, the testimonies were entirely constrained by the format of juridical interrogation, which is interactive but not dialogic, centers on the procedure and not the witness, and tends to conflate accuracy with sincerity.[7] This is also characteristic of subsequent trials, such as the Auschwitz trials in Frankfurt (1963–65), which broke the silence of the 1950s, but disappointed the victims. Next to all the difficulties of returning to Germany and being confronted with the perpetrators in the court, former victims had to defend their reliability as witnesses, and accept acquittals and sentences of detention they deemed too short.[8]

Similarly the reparation procedures had no place for the life stories of the victims. This is clearly expressed in the application forms for restitution at that time, which requested a quantification of all losses and provided categories for material goods but offered no space for relating personal experiences. Following Frank Bajohr, this "material reductionism" was enforced by the use of abstract language as well as by the separation of the procedures regarding damage to life and damage to property, excluding any non-material losses regarding lifestyle or education. Some people added lengthy reports of their story of persecution and inserted their life stories into the files anyway.[9] However, as we know from the history of the German *Wiedergutmachung*, the application form answers were often shaped in a way that did not reflect personal histories or suffering, but rather promised the greatest chances of recognition. Victims, often with the help of specialized lawyers, who translated life stories into juridical categories, modeled the data of their lives in accordance with compensation categories, tailored to what commissions would expect and approve.[10]

The files show how over the years, irrelevant facts began to disappear, and relevant descriptions of the persecution become more detailed; how language adjusted to the legal logic and the mindset of that time.[11] However, the official expectations and requirements changed over time. Under the Federal Compensation Act (BEG 1952), in the 1950s the authorities required survivors to show proof of damages due to persecution. Thus, the applicants focused on their forced presence in the ghetto, the poor living conditions, their daily struggle for survival, the loss of personal freedom and health. These narratives of persecution left little space for narratives of the everyday—describing, for example, the hours of labor inside or outside the camp; often the work was not even mentioned, because the BEG compensated the loss of personal freedom but not lost wages. At that time no one was interested in these questions, whereas forty years later, in order to receive a ghetto pension (2002), survivors were required to prove that the work they had done during their time in the concentration camp was like an employment relationship, based upon free will instead of forced labor. Now, in the context of social legislation, they emphasized the orderly working relationship they had had, while in the BEG applications, people reported that they had not had a choice. Those differences in the narratives caused the authorities to reject more than ninety percent of the applicants. As Constantin Goschler has pointed out, in their rejection, the authorities preferred to mistrust the applicants, instead of inferring that ghetto pension law was based on a "false fiction of normality" that did not correspond at all to the petitioners' experience of

the ghetto.[12] Moreover, the pension law inverted the persecution narratives, as well as the logic of compensation. Those who had been relatively better off in the ghettos by holding jobs were most likely to receive a pension. This example illustrates how the public discourse on the Holocaust and its juridical categories shaped the applicants' self-perception as well as their self-presentation.

Directly after the war, many victims preferred not to talk about the past. They were confronted with a public that did not want to hear their stories, and they perceived themselves as survivors; they just wanted to start a new life. Later, when claims for compensation still had not been honored, despite decades of fighting for this, the lack of acknowledgement of their personal experiences was often experienced as traumatic. Because their suffering had gone unrecognized, they felt that their family history had not been officially legitimated.[13]

Only with the Eichmann trial in 1961 in Jerusalem did these personal memories begin to reach a wider public. When personal memories were used in court, survivor narratives came to the foreground, and over a hundred survivors spoke up in public. The figure of the witness (*Zeitzeuge*) was born.[14] The Eichmann trial turned the genocide into a series of individual experiences with which the public could identify. At the same time, those individual stories gained "semantic authority" by transcending individual testimony.[15] They were translated into a collective story of the suffering of the Jewish people, which evoked identification with the victims beyond the juridical framework. By contrast, during the Auschwitz trials in Frankfurt (1963–65), where "normal" members of the SS were charged for their daily routine of murder, the status of the more than two hundred witnesses was "only" that of legal, *eye* witness (*Augen-, Beweiszeuge),* as they were called upon to provide evidence against the perpetrators, not to act as witnesses (*Zeitzeuge*) tasked to remember.[16]

In the 1970s, the status of the witness slowly transformed from *Zeuge,* a witness asked only to confirm documents or to provide documentary evidence within a strict juridical framework, to *Zeitzeuge*, one who was asked to remember and recollect, to tell his or her story to help construct a collective history of what was only called the "Holocaust" in Germany after the airing of the TV series *Holocaust* (1979). This series (USA 1978, Austria 1979) crystallized the victims' experiences in the public's mind, and survivors started to talk more openly about themselves. However, the increasing mediality of the Holocaust changed the character of witnessing. While the classical *Zeuge,* in court or in the media, is an observer of events, the *Zeitzeuge* represents the past through storytelling, mediating

the past through emotions rather than explanations. The "observer" became "representative," an embodiment of an authentic historical presentation by emotionally touching the audience—indicating, according to Judith Keilbach, a shift from a juridical to a historical discourse, from objectivity to emotionality.[17] This media interest in individual destinies was supported by a "psychological turn," which occurred first in the field of medicine and then in society.

When Post Traumatic Stress Disorder (PTSD) was discovered in the late 1970s, in close connection with the Vietnam War, and recognized by the American Psychiatric Association in 1980, a new awareness emerged of the long-term psychological dimensions of war trauma.[18] This new trauma discourse was a precondition for the acknowledgement and the calculation of belated damages for *Wiedergutmachung* (such as providing more specialized treatment). However, the diagnosis of "trauma" also often re-victimized the victims by, for example, undermining their authority, as in cases in which their reports as witnesses were not considered in legal proceedings as providing evidence because of their trauma, or cases in which perpetrators were acquitted because they had been traumatized.[19] While directly after the war the *Wiedergutmachung* represented a purely juridical procedure regarding material matters, it gained a symbolic dimension as "survivors" turned into "victims" and the juridical discourse transformed the discussion into an identity discourse. The "forgotten victims" of National Socialism (such as Roma and Sintis) were "(re)discovered" toward the end of the 1980s, while for some groups (such as forced laborers from Eastern Europe) compensation issues were only addressed in the late 1990s. When this topic (re-)emerged in the 1990s in Austria, how much of a role did life stories and testimonies play in the reparations procedures that took place sixty years after the war?

The Life-Story Approach in Austrian Reparation Procedures

Austria, like many European countries, developed a new policy[20] of public engagement with the legacy of the Holocaust in the wake of the fiftieth anniversaries of the 1990s. These anniversaries revitalized specific memories that focused on the annexation of Austria by Germany in 1938, the end of the war, the liberation, and the struggle for the state treaty. At the same time, the global discourse involving the "Swiss Nazi Gold Bank" affair, new attention to art theft (initiated by the confiscation of Schiele paintings in 1998 in New York) and, in particular, the class-action suits in the United States against German and Austrian firms, served to exert outside pressure on Austria. Consequently, the

government of Austria initiated (among other things) a Historical Commission, an Art Restitution Law (both 1998) and two different Funds for victims of National Socialism.

The life-story approach served as the basis for the 1995 policy of the "National Fund of the Republic of Austria for Victims of National Socialism" (NF), in effect saying, "We are interested in your story." It acknowledged victims with the general gesture of a lump-sum payment, which was based upon a small questionnaire regarding some basic personal facts that could prove that this person had been forced to leave Austria in 1938. Life-story questions were asked on the final page in an open way, leaving space for the applicant to add extra information. In the letters, applicants were also invited to contact the Fund for additional help. Many survivors visited the Fund, and the employees listened to thousands of stories in application procedures. Later, some of these testimonies were published in the public reports of the Fund.[21] The employees also visited potential applicants in and near Vienna, who were either too old to come to the Fund office or were members of specific groups such as the Roma, who had often difficulties completing the applications. Outside of Austria, the Austrian embassies were tasked with this job, which generally took the form of a visit from the NF General Secretary to explain the procedures and personalize the restitution policy.

This approach changed in 2001, when the questionnaires of the "General Settlement Fund" (GSF) began to address heirs also and started to request many details. It was a very ambitious attempt to individualize victim stories, and to compensate for what had been stolen on an individual basis. This fact-finding mission was based upon a detailed twenty-eight-page questionnaire covering categories such as education, bank accounts, mortgages, stocks, bonds, businesses, insurance policies, real estate, and movable property. In addition to providing monetary compensation for those specific losses, the GSF returned property such as houses or pieces of art, but only if they were publicly owned by the Republic of Austria, the city of Vienna, or the federal states, on 17 January 2001, the date on which the "Washington Agreement" was signed between Austria and the United States. The Washington Agreement aimed to dismiss all pending class-action lawsuits against Austria and Austrian companies filed in US courts. In practice, this individualized approach paradoxically led to less attention to life stories and the communication process and more to a feverish search through the archives. It created a dynamic in which the scrupulously detailed questionnaire, supplemented by archival research, gave personal memories less critical importance in

the process since they generally lack that kind of detail. Nevertheless, in some restitution cases, hearings were held if there was not enough historical evidence in the archives to determine a case. Then either the applicants or family members who witnessed the respective events were invited to recount what they knew about the historical situation. Below I will describe such a case, analyzing how the presentation of a life story and the argumentation attendant to its presentation changed during the claim process, and how the applicant reflected upon this process when later interviewed.

Ellis's Restitution Case[22]

Ellis, born in the early 1920s in Vienna, filed a restitution claim with the General Settlement Fund in 2004 for the restitution of a house in Vienna that had belonged to her mother's family in 1938; in 2001 it belonged to the city of Vienna. Filing the claim was not her own idea, as she repeated again and again in our 2009 interview in London. She emphasized that the Jewish community in Vienna had "begged" her to make this claim. The case "came to light" during the research of the Austrian Historical Commission. They documented property transfers between 1938 and 1945 in Austria and focused on the cases that involved public ownership in 2001. The Jewish Community would then examine the question of whether a restitution request had prospects of success. In Ellis's case they discovered that her maternal step-grandmother had been deported to a concentration camp, where she was murdered, and that her house in Vienna had been aryanized by a dressmaker with a tailor shop. He purchased the house for a pittance and sold it after the war to the city of Vienna for a large sum. Upon learning this story, Ellis concluded, "he profited twice."

This part of her family history was new to Ellis. Her mother had come from an upper-middle-class Jewish background, her father had worked as a watch repairman and goldsmith, and she had been raised in a social-democratic milieu. She and her parents had lost contact with the wealthier branch of the family after they lost everything in the depression in 1929. She described herself as part of the middle class who had already been plunged into poverty in those early years, so she was asking herself, "What shall I ask for?" In the interview Ellis emphasized that she herself refused to deal with those issues: "I wanted nothing to do with it, somehow I refused. . . ," just like her parents had done; she claims they had never thought about compensation. She quoted her father as saying, "I have survived, that is the most important. [. . .] Actually nothing happened to me." She went on to state that material losses meant nothing

to her, as "we lost everything in life twice"; first, when she fled with her family to England in 1938, and second, when she again fled to England in 1968, this time with her husband, after having lived in Czechoslovakia as a confirmed socialist. "It [the restitution] came to me, it does not matter to us in life. Possession was not the most important; having property was not our main goal."

Ellis explained the fact that she had filled in various applications at different times as having been the result of collaboration with others: the first was initiated by a friend, a later application was facilitated by the help of a lawyer, and finally another was driven by the suggestion of the Jewish community in Vienna. This most recent application was formulated on the basis of the documents from the archives, which indicated that the sum paid for the house in 1938 was only a fraction of its value at the time, and that the lawyer who represented the claimants, Ellis's aunts, was known to have had a National Socialist past. As Ellis reported in the interview:

> I have seen the papers; they [the aunts] had a lawyer and the *Arisierer* had a lawyer too, both were ex-Nazis, and they made the deal, offering her a settlement of 600 Schillings. 600 Schillings [*it was in fact 6,000, N.I.*] for a whole house! Only a crazy person could agree to this.[23]

But the claim, submitted in December 2004, was rejected by the GSF Commission in February 2006 because there had already been a restitution procedure in 1953 that had been finalized in a settlement signed by Ellis's aunts.[24] Here the GSF law states that if a piece of real estate was the subject of a claim that had previously been decided upon by an Austrian administrative body, then restitution or compensation was not possible again, unless it could be proven that the former procedure had been "extremely unjust."[25] This meant that evidence was required of a significant difference between a property's value and the sale price (*Wertdifferenz*), but evidence was also needed of the restricted private autonomy of the individuals involved (*eingeschränkte Privatautonomie*) to act in their own interests. In this respect the Fund's rejection highlighted the fact that one of the applicants was living in Austria at the time of the deal and that they had an official representative, which indicated that they had had freedom of choice.

After the rejection, the Jewish community of Vienna approached Ellis again, insisting she make an appeal, as they considered it a test case for the definition of "extreme injustice." Winning the case would mean that other applicants could profit from it in the near future. Ellis was finally convinced by their argument that if she did not make the claim, she would

be "harming or disadvantaging others." In December 2006 they made the appeal along new lines. Whereas her first claim had focused mainly on an unjust deal, this claim highlighted the assertion that her aunts had not been given the option to make a different decision or strike a better deal at that time. She argued that her aunts' autonomy had been restricted when they signed the settlement due to their difficult economic circumstances and psychological conditions. Ellis's claim detailed how one of her aunts, studying in London since 1936, was so traumatized by the London Blitz that she was severely psychologically damaged and had to spend some time in a psychiatric clinic. Ellis argued in her appeal that when her aunt was involved in the restitution process in September and October of 1950, she was still in poor psychological condition, worsened by the fact that she had just returned to Austria, was unemployed, and had no economic resources. Her autonomy in deciding whether to accept the restitution procedure had thus been rather limited. Later, her aunt did have work, but a week after signing the settlement in March 1953 she became ill and stayed home for the next two weeks. As Ellis argued, her illness indicated that her experience of the procedure had been very distressing and traumatizing, and that she was rendered unable to make a rational choice about whether to accept or reject the settlement.[26] Moreover, her aunt's sister, who had lost her only son in Auschwitz and was caring for a sick husband, was in a psychologically difficult and economically tense situation as well.

This line of argumentation in Ellis's application was partly questioned by the representatives of the city of Vienna, who doubted whether one could claim to have been experiencing trauma in the mid-1950s due to the bombing of London, especially since this person had continued to practice her profession and had decided to return to Austria. This, they thought, challenged the claim of mental distress or impairment. Moreover, they argued that it was inappropriate to call the lawyers "former Nazis" eight years after the war, because they had been appointed on "the legal basis of a democratic Austria."[27] This led the GSF restitution commission to invite Ellis for a hearing to gather more evidence.

The Hearing

The hearing before the commission officials in August 2007 in Vienna was aimed at getting to know more about the extent to which the aunts could have made an independent decision in the 1950s. Ellis repeated what she had written in the application, adding that after her aunt had been discharged from the psychiatric hospital, she had moved in with

her mother. This living arrangement was so exhausting for her (she was pregnant at the time) that she soon left her parents' home. Later, in the new decision, the Arbitration Panel of the GSF referred to the description of her aunt's "traumatized condition"[28] that made it impossible for the protagonists to make a rational decision for or against the settlement. The new decision acknowledged that the economic and psychological conditions had restricted her aunts' autonomy and that the settlement had been inadequate. As a result, the Committee advised the city of Vienna to return the former family house, or rather to pay the heirs an equivalent sum for it since the property was being used as a school building when the decision was made in 2006. Ellis herself received a small share of three percent, because her mother had owned only a few shares of the house.

Strangely, this positive decision hardly features in the interview with Ellis; it is overlapped by other stories of worries. Ellis started to talk about her experience with the compensation only after she had told me her family's story and her own story, and only after we had had lunch together and a basis for trust had been established. After she had recalled the historical details of the case in matter-of-fact language, her husband interrupted, reminding her that she "should also say that it did not go through the first time." Ellis went on to explain that "In the first instance it was rejected as it was not unjust enough." Then she described how she "was asked" to get involved. Her husband interrupted again, rephrasing it: "They hired you," hinting at some instrumentalization. Then he went on to describe his concerns and fears that his wife might have been treated poorly in the procedure. For example, he described an informal meeting they had in Vienna with the various parties of the restitution claim, organized by the Jewish community who had invited Ellis, as well as representatives of the Austrian government, the city of Vienna and the GSF Restitution Commission. He reported in detail how they met a young lawyer there who was in charge of their case: "He approached me, saying he had many questions, and then only asking one—an irrelevant one." Ellis interjected, "I think he asked if I knew my grandmother or something like that." Her husband continued: "A completely trivial question. Then I realized, and Ellis as well, that it was a pure formality." His impression that the meeting was a farce was confirmed when the application was rejected. Some months later, after the appeal was made, and the case was taken up again, Ellis was invited to a formal hearing, this time by the Arbitration Panel of the Restitution Commission. Ellis, although unhappy with this invitation, admitted that she could not reject the pleas of the Jewish community to

create a precedent case study. Based upon their former experience, her husband repeated his reservations about the meeting: "And then I said, she should not make a fool [*Kasperl*] of herself," emphasizing how much he worried that the second hearing would also become a "show," just a "pure formality" with trivial questions.

This example shows the delicateness of such encounters. While retelling the story, it becomes clear that because she was invited, she expected to be asked as a witness to give a detailed account about past events; she expected questions and engaged listeners, the formal features of a life story interview. However, it seemed to her that merely her appearance at the meeting was sufficient to sustain either her claim or that of the Jewish community. She felt uncertain about her role in the meeting because she had not been treated as a witness.

Despite all the caution, or maybe because of this caution, she described the second hearing as a similarly ambivalent experience. Even though it helped to alter the earlier decision of 2006, and was in this sense a success story, it was not so in other ways. The fact that she was confronted with an unknown and larger audience than she had expected caused some discomfort with the situation. She described it as "quite a show, and a public event." Her husband confirmed her view: "There was a show, as feared." However, a few moments later, they referred to the meeting as "quiet," "very polite," and "respectful." It seems they perceived this politeness as an affront: "the president—the chairman—went out of his way," and the representatives of the city of Vienna "of course were against" this measure. As an academic accustomed to acting in the public sphere, Ellis's discomfort seemed to extend beyond questions of space, publicity, and the audience. Rather, it was triggered by the awareness that one still had to demand justice: "Today, we only won in the second instance," was something she and her husband repeated during the interview, emphasizing that they had to be insistent to obtain justice.

Individual Desire or Social Duty?

Although Ellis's claim was successful, and her testimony helped to sway the decision in her favor, in the interview they focused on their uneasiness surrounding the claim. They mentioned the pressure from America as a "maker" of the GSF, the hostile administrative bureaucracy she encountered when she tried to get back her Austrian citizenship, and the suspiciousness of others that she was trying to obtain a pension by fraud.[29] All these side-stories indicate that she still experiences mistrust and even discomfort with her role as a witness. This demonstrates her

emotional upheaval about the way she was treated, or rather, how she felt she had been treated. The first (informal) hearing had created the feeling that they had invited her less for her knowledge than to create the aura of legitimacy. The same suspicions were aroused by the second (formal) hearing, which she summarized with the following words: "I did not need to tell them that since there was archival proof. I said what I knew about Aunt Marta, and this was confirmed." She might have asked herself what value the hearing had for the Commission. Did they believe her only because they found the corresponding documents in the archives, or would they have reached the same decision only on the basis of her testimony?

This uncertainty might have triggered certain defensive and distancing narratives which she repeated during the interview, when saying it was all other people's idea, emphasizing that she was petitioning as a favor to others—family members, representatives and the larger community of victims. This narrative of "I was asked to fill in the forms" is typical of many applicants, as they rarely formulate the right to make a claim.[30] This is more common in the second generation, which is much more outspoken and demanding about compensation matters. They often criticize their parents' defensive behavior and want them to make a claim, because in their view, it signals emancipation and empowerment. But survivors like Ellis tended to react with reluctance. By distancing herself ("But I am really not trying," "I don't have to stand for that"), she minimizes the danger of getting hurt, but she also minimizes the likelihood of accepting what she has gained.

Ellis's ambivalence may also have had political reasons. Her remarks indicate that her orientation as a socialist prevented her from showing interest in "property/money-issues." Since this was not her "main goal in life," she associated compensation with a capitalistic endeavor that was foreign to her family, "one which she did not try very hard" to achieve. On the other hand she described herself as being involved in a tight social network that asked her to apply. When she told of how a colleague motivated her to find out more about the compensation procedures, it was more to relate the story of their friendship and the way information was exchanged among colleagues, than to represent the story of the compensation itself. This angle was more about the process than the product, more about her lifestyle than the specifics of compensation. The way she represented herself and framed her life—that of a left-wing academic who, until 1968, passionately believed in communist ideals and was active in the socialist movement (and afterward steadfastly maintained her beliefs)—leaves no

place for material desires. That world consists of loyalties, friendships, academic relationships, mutual support, and intellectual passion. In this framework the compensation story is represented as being part of social relations and obligations. It represents not individual desire but social duty.

Conclusion

The narrative frame suggested above downplays any personal dimension and integrates the topic into Ellis's worldview instead of touching her on a personal level. One might ask, as Srila Roy has done, whether a transformation has taken place here, one of personal pain into social suffering. Roy describes how personal pain articulated as public testimony is often transformed into "social suffering," in the same way that storytelling creates a "we," a sense of belonging. "Testimony is, in the final instance, a speech act that draws its meaning from a collective, plural 'us' rather than the 'I' who is in pain."[31] Ellis spoke on behalf of her aunts and her parents, and on behalf of the Jewish community—expressing a mediated pain and victimhood. A typical "Zeitzeugen" rhetoric, in which it is one's duty to witness or report, can be detected here. But Ellis also stated that this urge to bear witness was imposed by others on her and went against her own desire to *not* become personally involved.

After having fought so hard to gain distance, authorship, and recognition in other fields, she did not like to perceive herself as dependent on the judgment of others. Moreover she associated reparation procedures as such with choosing a victim position, with being degraded to a mere petitioner, a role in which she definitely did not envision herself. She expressed an inner conflict between the role expected of her (the social duty to identify with the victims) and her own ideas about lessons she had learned from the past, such as the fleetingness of material possessions, the persistence of intellectual property, and the necessity of social networks. Distinguishing between individual desires and social duties might be one way out of this dilemma.

If we then adjust our perspective to hers, and do not look at the testimony in terms of evidence but view it in the performative dimension, what is revealed? As much as a testimony is about content, it is also about a formal setting: the supporters, the opponents, the judge, and the witness. Viewed from this perspective, it seems that Ellis reasoned she had been treated poorly because she "still" had to fight for justice, though only after having intervened and made an appeal was her case resumed. Only by emphasizing different elements of the story or history, was she able to persuade the Fund to look into the archives again, and to examine the

previously available material in a different light. However, in the end, Ellis concluded that it was the archival evidence that brought about change, and not her testimony. Although her statement in itself was unemotional, her use of the passive voice shows that this left her feeling powerless, even though she won the case. Moreover, ultimately it was the acknowledgment of her aunt's trauma that altered the decision. Thus, a "shift" did take place—one from a discourse about justice to one about trauma; from a discourse about persecution and looting to one about private autonomy and individual conditions; from the promise of compensation to the reality of only partly calculated amounts.

Ellis's remarks can be construed as a critical comment on those judicial categories that were established to legitimize the committees' final decision, but that also determined her status as witness. In other words, she had to remodel her story and claim not simply *injustice*, but *extreme injustice*; she had to stress not hard facts, but psychological conditions. This was Ellis's criticism of the performative nature of the legal process and giving testimony—a game she nonetheless learned to play. However, she seemed disturbed that she had succeeded by following the rules, and not because of her story. When she pictured the hearing as "quite a show, a public affair," and when her husband spoke indirectly of a *Kasperltheater*, it meant she felt that her testimony had not so much been used to confirm the facts, or to acknowledge her as a witness, but rather to legitimize the procedure—and little more than that.

What can this specific case study teach us? Testimonies have gained an important role in the field of transitional justice, forming a crucial basis of so-called Human Rights regimes, such as the International Criminal Court. The participation of victims as a means of personal healing and of creating better conditions for justice and future reconciliation is often interpreted as a progressive development in national and international law, but this is not undisputed in the scholarly literature.[32] This case study has aimed to illustrate that even when a hearing seems to run smoothly and is part of a successful claim, difficulties and frustrations may nonetheless be associated with it. Because testifying in legal proceedings means mixing two distinct rationalities and concepts—one which looks for concrete truth and evidence, the other for a comprehending mind—the whole communication process itself is at least as important as the outcome of the proceedings.[33] In the study of telling life stories, it is precisely in this dialogical character and its performative dimension that reparation policies can learn the most. According to oral historian Luisa Passerini, one has to place emphasis on the interpreter: "All autobiographical memory is

true: it is up to the interpreter to discover in which sense, where, and for what purpose."[34] This begs for more reflection on the reciprocity between telling a life story, witnessing, and reparation procedure.

Notes

1. This work was made possible with the financial support of the National Fund for Victims of National Socialism in Vienna.
2. Victim testimony also prominently featured in the community Gacaca ("grass-lawn") courts of Rwanda.
3. See Anne Fleckstein, "'Nothing but the truth.' Bezeugen in der südafrikanischen Wahrheitskommission," in *Politik der Zeugenschaft. Zur Kritik einer Wissenspraxis*, ed. Sibylle Schmidt, Sybille Krämer, and Ramon Voges (Bielefeld: Transcript, 2011) ['Nothing but the truth' Testifying in the South African Truth Commission, in *Politics of Witnessing. Critique of a Practice of Knowledge*], 311–329; Jose Brunner, "Trauma and Justice: The Moral Grammar of Trauma Discourse from Wilhelmine Germany to Post-Apartheid South Africa," in *Trauma and Memory: Reading, Healing, and Making Law*, ed. Austin Sarat, Nadav Davidovitch, and Michal Alberstein (Standford, CA: University Press, 2007), 97–118; Priscilla B. Hayner, *Unspeakable Truths. Transitional Justice and the Challenge of Truth Commissions (New York: Routledge, 2010)*.
4. Anne-Marie de Brouwer and Marc Groenhuijsen, "The role of victims in international criminal proceedings," in *International Criminal Procedure towards a Coherent Body of Law*, ed. Goran Sluiter and Sergey Vasiliev (London: Cameron May, 2009), 149–204; Jo-Anne Wemmers, "Victim reparation and the International Criminal Court," in *International Review of Victimology*, 16 (2009): 123–126, 124.
5. Tony Judt, *Postwar: A history of Europe since 1945* (London: Penguin Books, 2006). This is most evident in the fact that West German authorities have launched over 106,000 investigations since the end of the war, but these have resulted in only 6,500 convictions; leaving no doubt that covering up and obstructing justice were given priority. Cf. *Im Labyrinth der Schuld: Täter—Opfer—Ankläger*, ed. Fritz Bauer Institut, Irmtrud Wojak, and Susanne Meinl (Frankf.a.M.: Campus Verlag, 2003) [*In the labyrinth of guilt: perpetrators—victims—prosecutors*].
6. See Annette Wieviorka, "Die Entstehung des Zeugen in *Hannah Arendt Revisited*," *"Eichmann in Jerusalem" und die Folgen*, ed. Gary Smith (Frankf.a.M.: Suhrkamp, 2000) ["The Formation of the Witness in *Hannah Arendt Revisited*," *"Eichmann in Jerusalem" and its Impact*], 136–159; for an overview: Marianne Hirsch and Leo Spitzer, "The witness in the archive: Holocaust Studies/Memory Studies," in *Memory Studies* 2, 2 (2009): 151–170, 153.
7. Aleida Assmann, "Vier Grundtypen von Zeugenschaft," in *Zeugenschaft des Holocaust. Zwischen Trauma, Tradierung und Ermittlung*, ed. Fritz Bauer Institut, Michael Elm, and Gottfried Kößler (Frankf.a.M., New York: Campus Verlag, 2007), 33–51, 34f. [Four Basic Types of Testimony, in *Testifying the Holocaust. Between Trauma, Transmisson and Identification*].
8. Irmtrud Wojak, "'Die Mauer des Schweigens ist durchbrochen': Der erste Frankfurter Auschwitz–Prozess 1963–65," in *"Gerichtstag halten über uns selbst . . ." Geschichte und Wirkung des ersten Frankfurter Auschwitz-Prozesses*, ed. Irmtrud Wojak and Fritz–Bauer–Institut (Frankf.a.M.-New York: Campus Verlag, 2001), 21–42. ["'The Wall of Silence Has Been Broken': The First Auschwitz Trial in Frankfurt 1963–65," in *"Judgment Hold About Ourselves. . . ." History and Impact of the First Auschwitz Trial in Frankfurt*].

9. Frank Bajohr, "'Arisierung' und Restitution: Eine Einschätzung," in *"Arisierung" und Restitution: Die Rückerstattung jüdischen Eigentums in Deutschland und Österreich nach 1945 und 1989*, ed. Constantin Goschler and Jürgen Lillteicher (Göttingen: Wallenstein, 2002), 39–59, 56 ["'Aryanization' and Restitution: An Assesment," in *"Aryanization" and Restitution: The Restitution of Jewish Property in Germany and Austria after 1945 and 1989*].
10. See Tobias Winstel, "Die 'Testamentsvollstrecker': Anwälte und Rechtshilfeorganisationen in der Wiedergutmachung," in *Die Praxis der Wiedergutmachung: Geschichte, Erfahrung und Wirkung in Deutschland und Israel*, ed. Norbert Frei, José Brunner, and Constantin Goschler (Göttingen: Wallstein Verlag, 2009), 533–553 ["The 'Executors': Lawyers and Legal Aid Organizations in the Wiedergutmachung," in *The Practice of the Wiedergutmachung: History, Experience, and Impact in Germany and Israel*].
11. Constantin Goschler, "Ghettorenten und Zwangsarbeiterentschädigung: Verfolgungsnarrative im Spannungsfeld von Lebenswelt und Recht," in *Ghettorenten: Entschädigungspolitik, Rechtsprechung und historische Forschung*, ed. Jürgen Zarusky (München: Oldenbourg Verlag, 2010), 101–111, 105f. ["Ghetto Pensions and Compensation for Forced Labor Workers: Narratives of Persecution between Experience and Law," in *Ghetto Pensions: Compensation Politics, Legal Practice, and Historical Research*].
12. Ibid., 108f.
13. Milton Kestenberg, "Diskriminierende Aspekte der deutschen Entschädigungspraxis: Eine Fortsetzung der Verfolgung," in *Kinder der Opfer, Kinder der Täter: Psychoanalyse und Holocaust*, ed. Martin Bergmann et al. (Frankf.a.M.: Fischer, 1995), 74–99, 79 ["Discriminating Aspects of the German Reparation Program: A Continued Persecution," in *Children of Victims, Children of Perpetrators: Psychoanalysis and the Holocaust*].
14. Wieviorka, "Die Entstehung des Zeugen."
15. Shoshana Felman, *The Juridical Unconsciousness: Trials and Traumas in the Twentieth Century* (Cambridge, MA: Harvard University Press, 2002), 148.
16. Irmtrud Wojak, "Die Mauer des Schweigens ist durchbrochen," 26. Here I cannot go into details of the differences between private and civil processes and national differences, but here one sees echoes of the tradition of German criminal law, where it is all about the evidence of complicity and guilt of the accused individual. Thus, to participate in a governmental legitimized mass crime is treated here as a single criminal offense, not as a crime against humanity, as at the Nuremberg trials, which were based upon American jurisdiction.
17. Judith Keilbach, *Geschichtsbilder und Zeugen: Zur Darstellung des Nationalsozialismus im Bundesdeutschen Fernsehen [Historical Images and Witnesses: Displaying National Socialism in German TV]* (Münster: LIT Verlag, 2008), 138–147.
18. See *Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society*, ed. Bessel van der Kolk, Alexander McFarlane, and Lars Weisaeth (New York: Guilford Press, 1996); see also: Duncan Bell, *Memory, Trauma and World Politics: Reflections on the Relationship Between Past and Present* (London: Palgrave Macmillan, 2006).
19. Joanna Bourke, "When the torture becomes Humdrum," in *Times Higher Educational Supplement*, February 10, 2006, 19, cited in Bell, *Memory, Trauma and World Politics*, 9.
20. On the Austrian post-war reparations to victims of National Socialism, see, for an overview: *Schlussbericht der Historikerkommission der Republik Österreich: Vermögensentzug während der NS-Zeit sowie Rückstellungen und Entschädigungen seit 1945 in Österreich*, ed. Clemens Jabloner et al. (Wien-München: Oldenbourg Verlag, 2003) [*Final Report of the Historical Commission of the Republic of Austria: Expropriation during the Nazi Period as well as Restitution and Compensation since 1945* (Publications of the Austrian Historical Commission)].

21. *Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus: 15 Jahre Nationalfonds* (Vol.1: Entwicklung, Aufgaben, Perspektiven; Vol.2: Erinnerungen: Lebensgeschichten von Opfern des Nationalsozialismus) [*National Fund of the Republic of Austria for Victims of National Socialism* (Vol.1: Developments, Tasks, Perspectives; Vol.2: Memoirs: Life Stories of Victims of National Socialism)], Wien 2010. See also several public reports of the NF and GSF; the one from 2008/2009 is available on: http://www.en.nationalfonds.org/docs/Annual_Report_2008_09.pdf.
22. This interview with Ellis [anonymized] and her husband, conducted in German, is part of a larger project, called *The Afterlife of Restitution*, covering about ninety transgenerational interviews, conducted 2007–2009 in Austria, the Netherlands, the United Kingdom, and Argentina by the author, including interviews with ten employees of the NF and GSF.
23. According to the property declaration, the house was valued in July 1938 at 25,000 Reichsmark and was sold by Ellis's step-grandfather in November for 12,000 Reichsmark. After the war, in the 1950s, a restitution process was initiated by his daughters, and the city of Vienna estimated the value of the property around 54,000 Schilling, but the settlement (1953) was then only about 6,000 Schilling; whereas it should have been at least 30,500 Schilling, charged against the former selling price of 7,800 Schilling, which means the value mismatch was about 16,700 Schilling (Decision WA 2/2007 ad 46/2006, 43; brief: Decision 2007).
24. Here it must be noted that about seventy percent of the confiscated property in Vienna was restituted after the war. However, this was often performed under unfair conditions (Jabloner, Schlussbericht, 318f.).
25. Fiorentina Azizi and Günter Gößler, "Extreme Ungerechtigkeit und bewegliches System" ["Extreme Injustice and Dynamic System"], in *Juristische Blätter*, 7 (2006): 415–436.
26. Decision 2007, 5.
27. Ibid., 17.
28. Ibid., 44.
29. Since 1993 it has been possible to reclaim Austrian citizenship (without having to give up one's foreign citizenship), which until 2005 formed the requirement for receiving a pension. See Helga Embacher and Maria Ecker, "A Nation of Victims: How Austria dealt with the victims of the authoritarian Ständestaat and national socialism," in *The Politics of War Trauma: The Aftermath of World War II in Eleven European Countries*, ed. Jolande Withuis and Annet Mooij (Amsterdam: Aksant, 2010), 15–47, 32.
30. Nicole L.Immler, "Restitution and the Dynamics of Memory: A Neglected Trans-Generational Perspective," in *Mediation, Remediation, and the Dynamics of Cultural Memory*, ed. Astrid Erll and Ann Rigney (Berlin, New York: De Gruyter, 2009), 205–228, 220f.
31. Srila Roy, "Of testimony: The pain of speaking and the speaking of pain," present volume, 107. By Molly Andrews, "Beyond narrative: The shape of traumatic testimony," in *Beyond Narrative Coherence*, ed. Matti Hyvärinen, Lars-Christer Hydén, Marja Saarenheimo, and Maria Tamboukou (Amsterdam: John Benjamins Pub Co, 2010), 147–166, 150.
32. Emily Haslam, "Victim Participation at the International Criminal Court: A Triumph of Hope over Experience?" in *The Permanent International Criminal Court: Legal*

and Policy Issues, ed. Dominic McGoldrick, Peter Rowe, and Eric Donnelly (Oxford: Hart, 2004), 315–334.

33. Similarly Paul Gready argues, regarding the South African Truth and Reconciliation Commission, that processes matter as much as products. Paul Gready, "Telling Truth? The Methodological Challenges of Truth Commissions," in *Methods of Human Rights Research*, ed. Fons Coomans, Fred Grünfeld, and Menno T. Kamminga (Antwerp: Intersentia, 2009), 159–185, 175.
34. Luisa Passerini, "Women's Personal Narratives: Myths, Experiences, and Emotions," in *Interpreting Women's Lives: Feminist Theory and Personal Narratives*, ed. Personal Narratives Group (Bloomington, IN: Indiana University Press, 1989), 189–198, 197.

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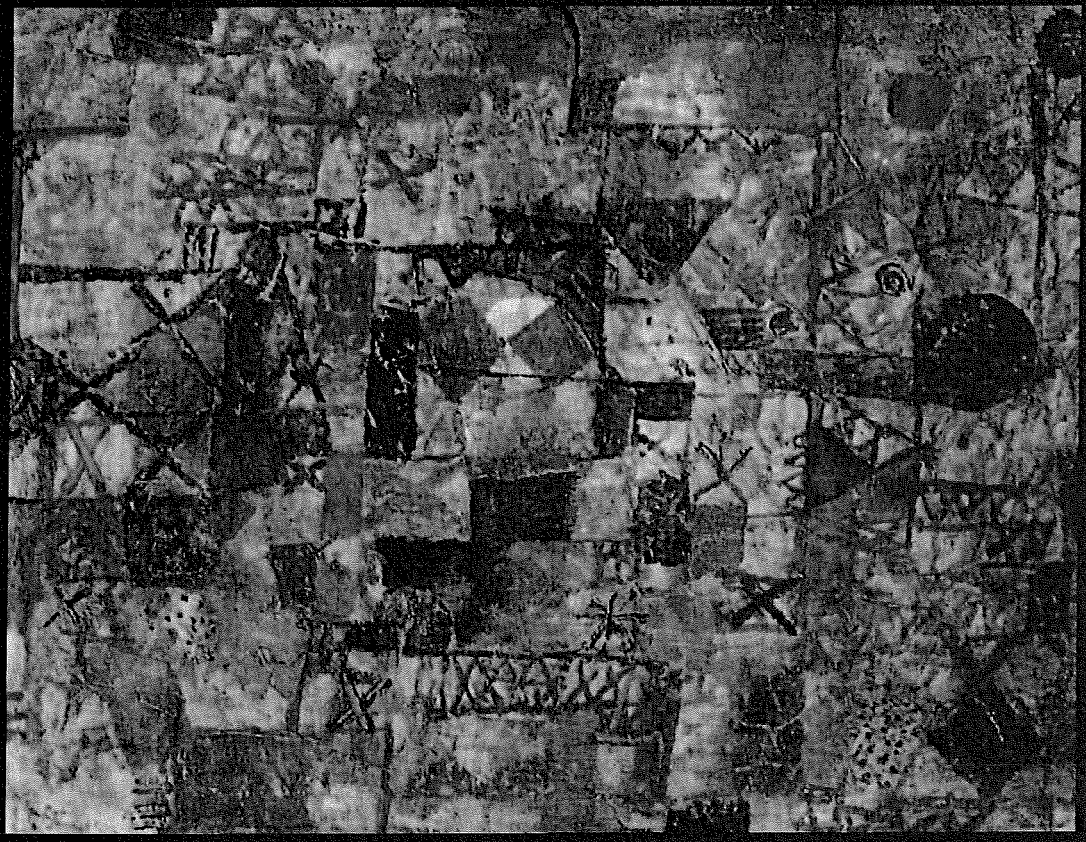

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