The 2015 Auschwitz-trial of Lüneburg:
A Critical Discourse Analysis of Collective Memory of the Holocaust in Nazi-trials in Modern-day Germany.

Author: Astrid Juckenack
Abstract

The points of departure in this thesis are the reciprocal relationship between the memories of human rights violations, the application of the relevant law and the understanding of what is criminal, as well as the recent trend in German courts to belatedly try low-profile Nazi-criminals. To explore these phenomena further, a critical discourse analysis incorporating historical elements is conducted on the 2015 trial of “the bookkeeper of Auschwitz” Oskar Gröning and the related media-reports. By identifying and investigating the expression of collective memory therein, a shift is revealed in that low-level participation in the Holocaust is no longer remembered as a moral infringement exclusively, but accepted as a criminal act for which a perpetrator ought to be held liable. Alongside Holocaust-focused collective memory, there are further tendencies toward a distinct memory of the prolonged failure of the German judiciary. It was thus found that long-term societal change can prevail against a deeply ingrained culture of impunity.

Keywords: human rights, collective memory, Holocaust, Germany, Auschwitz, Auschwitz trial, Oskar Gröning, SS, accessory to murder, impunity

Wordcount: 16,497 words
# Table of Contents

Abstract 2

Abbreviations 6

1. **Introduction** 7
   1.1 Introduction to the Problem Area 7
   1.2 Research Problem, -Questions and –Aim 8
   1.3 Relevance for the Field of Human Rights 9
   1.4 Delimitations 9
   1.5 Ethical Considerations 10
   1.6 Disposition 10

2. **Theory** 10
   2.1 Collective Memory 11
      2.1.1 Introduction to the Theory, Its Development, and Points of Controversy 11
      2.1.2 Institutionalization of Collective Memory in Trials and the Law 13
      2.1.3 Collective Memory and the Shaping of History 15
   2.2 Conceptual Framework: Articulation and Reception of Witness-testimony 17
   2.3 Theoretical Considerations 19

3. **Method** 20
   3.1 Research Design 20
   3.2 Critical Discourse Analysis 21
   3.3 Historical Dimension 22
   3.4 Methodological Considerations 23

4. **Material** 25
7.5 Change and Reconstruction of the Memory-narrative

8. Discussion of the Findings

9. Conclusion

10. Bibliography

10.1 Dictionary Entries

10.2 Books

10.3 Book Chapters

10.4 Journal Articles

10.5 Court Material, Law, Resolutions etc.

10.6 News Articles

10.6.1 No Author Indicated

10.6.2 With Author
Abbreviations

FRG  Federal Republic of Germany
GDR  German Democratic Republic
HEV  Häftlingsgeldverwaltung ("inmates’ money administration")
HGV  Häftlingseigentumsverwaltung ("inmates’ property administration")
ICCPR  International Covenant on Civil and Political Rights
ICESCR  International Covenant on Economic, Social and Cultural Rights
IMT  International Military Tribunal
NSU  National Socialist Underground
SS  Schutzstaffel ("Protection Squad")
UDHR  Universal Declaration of Human Rights
UN  United Nations
UNGA  United Nations General Assembly
USA  United States of America
1. Introduction

1.1 Introduction to the Problem Area

Following the end of the Second World War, high-ranking Nazi-perpetrators were tried for crimes against humanity and war crimes in front of the International Military Tribunal (IMT) in Nuremberg. The IMT thereby “set a precedent in that international human rights law can be applied to individuals” (Birdsall 2009:43-44), facilitating a shift from impunity towards individual accountability for large-scale crimes (ibidem). With the “potential for individual responsibility ... its corollary, individual rights” in regards to international law emerged as well, and was given further expression in the Charter of the United Nations (Smith 2012:27-28; UN Charter 1948) and subsequently the 1948 Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966 (ibidem).

Although the indictments according to the Nuremberg Charter did not include genocide, a reference to the newly established term was made in the course of the proceedings and “practices of “extermination”” (Smith 2012:226,227) were among the acts condemned by the charter. Moreover, the UDHR and the 1948 Genocide Convention were passed in close proximity to, and therefore ought to be considered in the light of, one another (ibidem). Decades later, “the unique tragedy of the Second World War” (A/RES/60/7) and Holocaust remembrance remain present, as topics, within the UN and continued significance is attributed to them, for instance when the General Assembly (UNGA) designated January 27th the International Day of Commemoration and not only condemned modern-day discrimination, but rejected Holocaust-denial as well, thus specifically guarding Holocaust-memory and expressing the normative “never again” goal (ibidem).

Therefore, it appears that the link between the aftermath of the Holocaust and international criminal- as well as human rights law is strong, and that Holocaust memory and remembrance remain important values in the international community. Huyssen holds that how violations of rights, and how the rights themselves are remembered, shapes the application and emergence of new law (Huyssen 2011:608). Holocaust-memory has evidently left a lasting mark, shaped the application of law to individual perpetrators as well as the evolution of human rights law, and continues to be looked upon as a “lesson[s] ... to help prevent future genocides” (A/RES/60/7).
Especially in Germany, institutionalization of Holocaust-memory is widespread (Langenbacher 2014:55f). There has been, however, a lack of individual accountability of Nazi-perpetrators according to German law, which today is considered a striking failure of the German judiciary (Walther 2015). Trials against Nazi-perpetrators have been widely criticized for having been too few, and for the lenient sentences or acquittal in which they usually resulted (Wittmann 2005).

Germany appears to attempt mending this error, and a trend of charging now-elderly people for their involvement in the concentration camp machinery is visible (Zeit Online, 21.09.151; Walther 2015). In 2015, Oskar Gröning –also dubbed “the bookkeeper of Auschwitz” (Die Welt, 06.04.15)- was tried in Lüneburg and found guilty of being an accessory to murder in 300,000 cases (Landesgericht Lüneburg 2015:1). This change in legal demeanor suggests a shift in the perception of how and to whom the law ought to be applied. This re-discovery of individual responsibility for perpetrators more than 70 years after the Holocaust presents an intriguing phenomenon on which to focus more research. Being a recent example of this change, the 2015 Lüneburg trial will be at the center of this thesis.

1.2 Research Problem, -Questions, and -Aim

Taking the belated shift towards individual responsibility for Holocaust-offences in the German justice-system as a starting point, it is the aim of this thesis to explore the reciprocal relationship between the memories of rights violations on the understanding of the law, to examine the production and reproduction of collective memory of a violation in its socio-cultural context, and thus to contribute to how an understanding of rights is created and altered. To this end, the expression of collective memory in the 2015 trial will be explored to determine how it takes place, is present in the trial, and communicated to the public. Changes in Holocaust-remembrance will be investigated thusly in relation to the application of the law. The research questions are:

- How is Holocaust-focused collective memory evident in the dealings with modern-day Nazi trials in Germany?

- What is the relationship between Holocaust-memory and the application of the law to Nazi-perpetrators 70 years after the Holocaust, and how has the understanding of criminal liability for Holocaust-crimes changed?

1 Dates will be stated: Day - Month - Year (last two digits; all news articles were published in the 2000s)
1.3 Relevance for the Field of Human Rights

The relevance of this thesis to the field of human rights is connected to Holocaust studies and memory studies respectively. As has been recapitulated above, the Holocaust and the end of the Second World War are closely tied to the emergence of the genocide terminology and human rights law. It continues to be studied as an example by which to assess and scrutinize other cases of genocide and mass atrocity, and genocide-prevention remains a highly-valued goal in the international community. There is further merit in putting memory studies in a human rights context. Both fields have experienced a surge in the 20th century but are usually considered separately. However, Huyssen finds that “contemporary memory studies should be linked more robustly with human rights and justice discursively and practically to prevent memory … from becoming a vacuous exercise feeding parasitically and narrowly on itself” (Huyssen 2011:608). To study memory in isolation renders it of little use, which the human rights context could mend.

The contribution of this thesis is firstly by using the connection of memory studies and human rights in order to examine collective memory in a constructive and tangible manner. By illustrating how memory of the Holocaust is expressed in Nazi-trials in Germany today, this thesis can add to the study of the relation between memory, large-scale crime and the law. Secondly, by exploring a very recent case with the means of a critical discourse analysis as well as a historical component, the subject of the Holocaust will be approached from a contemporary perspective and add to the utilization of history regarding current events. By tying the case to both collective memory and the law, thirdly, it can illuminate the relationship between human rights violations and the understanding of human rights, and thereby contribute to counteracting a still-existing culture of impunity.

1.4 Delimitations

Due to substantial differences in the legal and political background, only previous trials conducted in the Federal Republic of Germany (FRG) will be considered in this thesis, whereas trials in the German Democratic Republic (GDR) will be left out. References made to “Germany” before 1990 will pertain to the FRG. Although German law may prove relevant for the understanding of the chosen trial as well as background information, it is not the aim of this thesis to analyze or evaluate the legal foundations of the trial. The author recognizes that the verdict, as it has been appealed, is not yet legal, but its legality is of no particular significance for this thesis.
While the selection of news sources included in the analysis, and ultimately the legal case itself, is naturally selective, it can be representative nevertheless. The selection process will be considered in more depth, and the selection of the material motivated in chapter four. The Holocaust is not going to be at the focus of this study. The emphasis will rest on the institutionalization of its memory and relation to collective memory theory. While it may act as an influence on these, it is exactly that: A point of departure, but not the end of this study.

1.5 Ethical Considerations

All of the primary sources used herein are publicly available. The author will aim provide faithful translations to the best of her ability. As the author herself is German, the question of a potential influence of German collective memory arises. To analyze German collective memory “from within” may be possible only to a degree, as there may be aspects so internalized as to escape notice. This thesis will try to remain aware of this element, and thereby hopefully minimize its influence. The opposite scenario—an analysis of the collective memory of an unfamiliar society—bears similar weaknesses. To avoid the issue entirely might be impossible.

1.6 Disposition

In the first chapter, the subject area, research problem and questions have been introduced, as well as the delimitations, aim, relevance, and ethical considerations. Chapter two will introduce the theory—collective memory—and conceptual framework upon which this thesis rests. Chapter three will explain the research design and methods intended for the analysis. A critical discourse analysis will be conducted, alongside elements of a historical analysis. In chapter four, the selected primary material will be introduced and motivated. Chapter five will provide previous research on the institutionalization on Holocaust-focused collective memory in German law and politics. Chapter six will contain a brief introduction to previous and recent Nazi-trials in Germany and the 2015 trial. This will be built upon in chapter seven, in which the analysis of the trial and surrounding media discourse will follow. Chapter eight will provide a brief recapitulation and a discussion of the findings. Lastly, chapter nine will contain a conclusion and suggest possibilities for future research in the area.

2. Theory

This chapter is going to outline the theoretical and conceptual frameworks, which will be presented rather broadly at the outset, as to provide a general understanding of them, and subsequently be narrowed down to fit the subject matter more closely. Subsequently, a
conceptual framework integral to the expression and change of collective memory over time, especially in the context of the chosen case, will be elaborated on. As the applicability of the research design and methods will heavily depend on the particularities of the theory, the choice was made to commence with an explanation of the theory before introducing the methods in more detail.

2.1 Collective Memory

2.1.1 Introduction to the Theory, Its Development, and Points of Controversy

While the theory of collective memory was first postulated by Maurice Halbwachs, he partially draws from the preceding notion of a collective consciousness put forth by Émile Durkheim. According to Durkheim, “two consciousnesses exist within us: the one comprises only states that are personal to each one of us . . . whilst the other comprises states that are common to the whole of society” (Durkheim 1997:61). These two types of consciousness are closely interlinked, thus “bind[ing] the individual directly to society” (ibidem). A society’s collective consciousness is shaped by its history (Durkheim 1997:62), and is therefore unique to each society. Within society, it functions as a unifying force (Durkheim 1997:64).

Maurice Halbwachs holds that

“[e]very recollection . . . exists in relationship with a whole ensemble of notions which many others possess: . . . that is to say with the whole material and moral life of the societies of which we are a part of or of which we have been part.”

(Connerton 1989:36)

Since these memories exist within a group and are passed on and shaped by it, this applies to fresh and old memories alike (ibidem). As Pierre Nora remarks, Halbwachs's theory also asserts that “[m]emory is blind to all but the group it binds” and is individual in that it differs depending on cultural practices and experiences (Nora 1989:9). Moreover, the passing on of memories through different generations renders them subject to change (Connerton 1989:36).

Each person, according to Halbwachs, possesses both an “autobiographical memory” constituted by what one has witnessed personally and retrospectively relates to events endowed with historical significance, and a “historical memory” of events “remembered” due to the witness testimony of others, with which a society defines itself but to which “autobiographical memory” is no longer connected (Halbwachs 1980:51-54). However, internalized collective memory also shapes the experiences made by an individual; a society
and its beliefs, is therefore continually present within its members, and individual memory is ultimately shaped by what knowledge has been ingrained to their consciousness by the society of which they are a member (Halbwachs 1980:23).

Proponents of a more nuanced view of collective memory have suggested additional distinctions. Olick considers the term too broad and imprecise, and argues that collective memory can be divided into two distinct schools of thought. He differentiates between collective memory and collected memory (Olick 2007:20-22). Following these categories, collected memory consists of “the aggregated individual memories of members of a group” (Olick 2007:23), as encompassed in Halbwachs's work. The collective character of these memories, Olick argues, has its roots in individuals, and stems from individual memories impacting one another (ibidem). Collective memory, on the other hand, assigns a greater amount of influence to a (majority) group’s power to shape the remembrance of an event, as “[g]roups provide the definitions, as well as the divisions, by which particular events are subjectively defined as consequential” (Olick 2007:28). In turn, these definitions define how society as a whole remembers. Certain groups thus prescribe how and what is remembered within a society (ibidem).

Weedon and Jordan additionally discuss two related types of memory. Counter-memory commonly includes of a revised conception of history to give groups that were previously overlooked their own standing within, often in the context of subjects such as gender relations and racism (Weedon and Jordan 2012:150). The dominant memory narrative is seen as either ignorant of or designed to erase the collective memory, and the distinct identity, of a group perceived as an “Other” by replacing it with another version (Weedon and Jordan 2012:148-149). The concept of postmemory has its roots in Holocaust studies, the role played by survivors, their contribution to both collective and individual memory, and particularly “the relationships of children of survivors of collective trauma to the experience of their parents” (Hirsch 1999, in: Weedon and Jordan 2012:147) as they did not share their parents’ experiences first-hand but may have internalized accounts thereof sufficiently intense as to consider this internalization “memory.” As the children of survivors are shaped by subtleties of their parents’ trauma as well, but develop a memory that is “of a different qualitative and temporal order from the memories of survivors” (Weedon and Jordan 2012:147-148), postmemory constitutes a means by which to understand the relation collective memory creates between generations of a specific subgroup (ibidem). However, conflicts between different narratives may emerge (Wollaston 2001:505) as different “communities of memory,”
which utilize their particular narratives in pursuit of differing personal or political goals. Moreover, some members may consider themselves belonging to multiple groups, and are consequently between narratives (Wollaston 2001:506).

In more recent literature, it thus appears that the experiences of minorities and marginalized groups from their own perspective increasingly become of concern, as their memory is frequently one of being harmed by the dominant group, and is thus a narrative that is especially vulnerable. While the collectiveness of collective memory remains an accepted circumstance, seemingly more, smaller collectives are being considered, and relations not only between them and the dominant group but also between one another become a focus of attention.

2.1.2 Institutionalization of Collective Memory in Trials and the Law

Collective memory is tied not only to a group but also to a “special framework,” which establishes a relation between people and their environment (Halbwachs 1950:7). Halbwachs sees the perception of laws as valid as rooted in a society’s collective memory of what is legal and illegal, and further in the recognition of the legal spaces within which certain laws apply (ibidem). The law is seen as constant due to the deeply ingrained acceptance of it as valid, even though the individuals it applies to and the society within which it exists are subject to constant change (Halbwachs 1950:8).

Both the maintenance of as well as the influence on the law by collective memory are thus closely interlinked, as is the influence of the law on collective memory. This is also visible in the emergence of human rights instruments within the UN following the Second World War (Smith 2012:27ff).

Collective memory has a bearing on the law, and is institutionalized within it. Following an incident resulting in “cultural trauma,” it can serve as an “[a]nalogue [d]evice” which connects the recent trauma to previous historical experiences. Moral believes held partially on the basis of past events can motivate legal action following a recent trauma; this may also be drawn from by activist-groups to “legitimize claims for legal change” (Savelsberg and King 2007:200-204). Moreover, “historical consciousness” leads to the continuous reappraisal “of the past in light of the present” (Savelsberg and King 2007:202-20). A new perspective on past atrocity, put in the context of recent events, might therefore lead to new laws being passed in reaction to new insights, for example regarding the protection of minorities from hate crimes (ibidem).
Furthermore, law affects collective memory. Indirectly, it regulates access to and distribution of information, and consequently determines which versions of history can be developed and ingrained in collective memory, in whose power it is to interpret and spread information, and who declares it valid (Savelsberg & King 2007:192-199). Directly, the law can influence collective memory in or in connection with other institutions and mechanism, such as truth commissions aiming to elucidate mass atrocities (ibidem). According to Osiel, trials following mass atrocity can be used to shape collective memory thereof on multiple levels. By investigating and trying the occurrences in question, they may raise awareness and provoke their critical reassessment. Moreover, “they even influence our underlying notions of what memory is about, what it is for” (Osiel 2011:468) and thus shape not only how the past is looked upon, but what role this perspective on its history plays in the further development of a society (ibidem; Savelsberg & King 2007:191).

Osiel holds that “by highlighting official brutality and public complicity,” such trials provide people with the occasion to reevaluate and critically reflect upon the ideological underpinnings that brought them about (Osiel 2011:468). Thus, trials following incidents of mass atrocity “present moments of transformative opportunity” and may therefore be conducted with the aim to enact justice on one hand, and to simultaneously influence the development of collective memory by way of holding publically attention-focusing trials (ibidem). In the case of these “trial[s] by fiat,” as an instant of which the Nuremberg trials can be understood, the political regime and societal conditions that enabled mass atrocity are tried and judged as well; it is thus put in a wider context established by the victorious powers (Connerton 1989:7).

While to conduct such trials is part of the process to reform a society, they further pose the challenge to strike a just balance between conducting a legally sound trial and reappraising the recent past (Osiel 2011:468). Typically, the “defense counsel will tell the story as a tragedy, while prosecution will present it as a morality play” (Osiel 2011:469). These “‘poetics’ of legal storytelling” may be analyzed further, with a focus on the intricacies of how a history of mass atrocity is communicated in court, which “narrative tropes were employed,” and how effective the undertaking was in regards to the creation of new collective memory (Osiel 2011:468).

The “fracticide” experienced by a society and the resulting aim to re-build it as a nation provide an environment in which such trials can be especially effective in introducing a new/altered value system. Moreover, high-profile trials and the revision of the old order can
take the place of “myths of founding and refounding,” although to conduct a trial with the aim to create a myth of such impact places the legality of the trial at risk. The decision to ritualistically criminalize and “stigmatize” previously condoned actions can be integral to reinventing collective memory (Osiel 2011:469-470). The fragile state of a society may, however, not only provide an opportunity but constitute a necessity for instilling new collective memory throughout the restorative legal process, as “collective memory of the past might indeed foster a cycle of condemnation, blame, and renewed violence” which controlled legal action can prevent (Gallant and Rhea 2010:273).

Regarding the law’s role in shaping collective memory following mass atrocity specifically, Osiel points toward the insufficiency of law to pass judgement on an entire society, and the complex background from which collective memory emerges. Therefore, legal measures alone will likely not suffice, but form part of a framework within which a new collective memory which includes a far-reaching sense of responsibility can develop (Osiel 2011:470), and society’s acceptance of certain judgement may be a lengthy process, especially where the majority group finds itself on trial (Borneman 2002:559).

It therefore appears clear that while the law and trials alone are unlikely to be impactful enough as to shape collective memory single-handedly, they can provide the framework in which such change takes place, and can further be indicative of overarching societal change. How a society understands itself and its responsibility towards particular groups, as well as how it understands its past, is evident in its laws and the enforcement thereof, and changes in these views become, in turn, visible as changes in the law and judiciary.

2.1.3 Collective Memory and the Shaping of History

Halbwachs notes a difference between memory and history, and considered history to come into force after the recession of memory (Halbwachs 1950:79). While history encompasses pieces of memory deemed particularly important, the selection of what is or is not considered history according to “necessities and rules not imposed on the groups that had through time guarded them as a living trust” sets it apart from memory (ibidem). Historical events considered significant and worthy of preservation may therefore not be congruent with what is prominent in collective memory. While recorded history follows a certain narrative, identification with it is no longer ingrained in society (Halbwachs 1950:80-81). Moreover, history sections the past into separate stages, whereas the transformation of memory is continuous and not dateable, as historic periods would suggest (ibidem). The dependence of
collective memory on the society that maintains it also renders memory subject to a process of forgetting, which does not apply to history. Though history may be unable to incorporate the fluent development of a society, changes occurring between generations—especially those that “create a great chasm between two generations,” for example the outbreak of a conflict or crisis—naturally lead certain memories to wane and ultimately vanish (Halbwachs 1950:82). Berel Lang further holds that “history is primarily external” and as such something that can be acquired by an outsider, whereas “memory is typically possessive” and accessible only to those belonging to a group within which it exists (Lang 1999:5).

Pierre Nora’s work on lieux de mémoires (Nora 1989) is based on a change of the transition from collective memory to history. For Nora, there is a prolapse in the beginning of history, as the expression of the past through “lieux de mémoire, sites of memory,” is relied upon more frequently (Nora 1989:7), resulting in the artificial and removed expression of history through sites, institutions and policies established for remembrance (Nora 1989:12). In contrast, “milieux de mémoire, real environments of memory” are banished earlier on (Nora 1989:7). Thus, Nora notes that where the term “memory” is used, it is not referring to true memory as much as “archival” commemorative sites that depend on the physical existence of a thing rather than an internalized experience (Nora 1989:13).

Jay Winter does not consider memory to become history earlier on, but instead sees the need for a third term: that of “historical remembrance” (Winter 2011:426). In the light of armed conflict and mass atrocity that increasingly affect civilians without accounting or compensating for their suffering sufficiently, the need for the practice of historical remembrance, of neither history nor memory without influence of one on the other, has risen (Winter 2011:427-428). Winter contends that as witnesses and victims may aim to create a distinct memory of their experiences, while historians simultaneously treat and study these events as history, the two objectives necessarily intertwine. Moreover, historians are subject to and influenced by memory-practices themselves (Winter 2011:427). Lang asserts that “[t]he writing of history ... is always directional (whether or not this is true of history as such),” and involves the choice to include and exclude particular details and events, and to thus portray an event as unique, common etc. (Lang 1999:3). Furthermore, history is assigned to a certain group or people, thus raising the question where or to whom a piece of history belongs (Lang 1999:29). Nevertheless, “[c]ommemoration requires reference to history,” and this engagement with history, even though it might not be unequivocally authoritative/objective, is therefore not obsolete (Winter 2011:426). This intersection of memory and history calls for a
term more receptive of its subjectivity, thus creating the need for “historical remembrance” (Winter 2011:426-427).

Winter already points towards the ambiguity of history. Indeed, Halbwachs’s view of history is rather uncritical in its assumption that the understanding of history is not subject to societal change. Peter Burke contests this conception, noting that the selection of events put down as ‘history’ is based upon the understanding, during a certain time and within a certain culture, of what ought to be history. This perception, in turn, is changing, and the interpretation of past events is thus, too, undergoing transformation. It exists a “history of history” (Burke 2011:188). As a result, historians should utilize memory as a source and a subject of study, as to examine why an event is remembered, how memory changes over time, and who influences the dominant narratives (Burke 2011:189-191).

It is therefore notable that the influence between history and collective memory is closely interlinked, with the interpretation of the past being influenced by current collective memory and vice versa. With an observed rise in collective memory (Burke 2011:189; Winter 2011:426), the study of memory increases as well (ibidem). Ultimately, history is no longer regarded as more objective or less static than memory, but awareness thereof also provides an opportunity for further study.

2.2 Conceptual Framework: Articulation and Reception of Witness-testimony

As has already been described above, the witnessing of any event is shaped and directed by collective memory, and the collective memory of a human rights violation, in turn, determines the development and application of human rights. Though he is not speaking in reference to witnesses and/or victims of a crime, Halbwachs notes that the accumulation of remembrance may be more efficient than the recollection purely of individual experience (Halbwachs 1980:22-24). While collective memory is not indispensable to the process of reconciliation, to establish a “[c]onsensus about visions of the past or future” may help it along nevertheless. To achieve such a consensus, witness-testimony is an essential component (Borneman 2002:542). But apart from the witnessing itself, how one bears witness to witness-testimony may be understood as being subject to these influences as well.

Borneman considers witnessing to be “a kind of cultivated listening” which, following a violent experience, can constitute a starting point to and take on a crucial role in the healing process (Borneman 2002:549). Remembering, and keeping memory detailed to prevent it from fading into indistinction, can often be connected to a deeper sense of obligation of
survivors to those who died (Hass 2001:132). Individuals, state actors, non-governmental organizations, and committees specifically concerned with reconciliation are all potential listeners; as such, the audience is very diverse (Borneman 2002:550-553). Their listening makes possible that victims can claim a voice of their own and express their own perspective/experience, and aims to “symbolically right[ing] the wrong” as a place for the oppressed group within the societal system of the dominant oppressors is created (ibidem). This contributes to building “networks of trust” between individuals and “with the courts and judicial system” (ibidem). For truth-telling to be effective, it must further go beyond the recollection of an event and hold the potential to constructively influence prevailing believes.

Confessing differs from witnessing in that it is often involuntary, and is further enacted in the hopes of forgiveness, which in turn can come into effect regardless of whether justice or some amount of reconciliation have been achieved. In this sense, forgiveness, if enacted without simultaneous legal consequences, can be counter-productive and impair the process of remembering, accounting for, and redressing circumstances that facilitated the atrocities (Borneman 2002:549-550). However, while the discovery of the truth is considered essential for the process of reconciliation, perpetrators may be more willing to speak openly about their actions if they are granted amnesty. The open acknowledgement of these wrongs may, in turn, facilitate reconciliation more than effectively than punishment (Hayner 2002:155-160).

While witnessing may be dependent on the political context within which it is done, listening as a practice can be done more independently, as facts and experiences can be comprehended and interpreted belatedly and still be effective (Borneman 2002:554). Ultimately, however, neither one can be impactful on their own unless they are “plugged into practices and systems of power” (Borneman 2002:556). Thomas Trezise points towards the relationship between witnessing and listening as well. He adds that the process of witnessing not only allows victims to claim their voice, but ideally “to create for themselves a present and a future” by recounting and simultaneously dissociating their past from themselves (Trezise 2013:8). Moreover, listening to survivor’s experiences also requires listeners to observe themselves and their fellow listeners, and to critically evaluate their own experiences rather than simply acknowledge them (Trezise 2013:9). Purposefulness and impact of the testimony of survivors thus partially depend on the capabilities of the listeners (ibidem).
2.3 Theoretical Considerations

Even though collective memory theory has evidently developed into a broad field encompassing many aspects of society and the social world, a number of common themes within all parts of the theory discussed above can be identified. Particular consideration will be given to these points in the analysis, as they are either discussed controversially or pose the possibility of a new trend or development.

Overall, the interrelatedness of collective memory and other factors – the effect of history, the law, and other memory narratives on collective memory or vice versa - are considered recurrently. There is an emphasis put on the context in which collective memory emerges and develops, and to which it is bound. Furthermore, the natural change and intentional manipulation of collective memory alike are discussed, as are the motives due to and circumstances under which such change inevitably takes place (Osiel 2011; Halbwachs 1980). The relation between collective memory and previous events is stressed as well, in the context of “autobiographical” and “historical” memory (Halbwachs 1980:51-54) in general, in relation to witnessing-practices (Borneman 2002:551), and in the connection of recent trauma to previous historical experiences and emerging new perspectives of past atrocities (Savelsberg and King 2007:204; Osiel 2011:468) specifically. Whether attempts to alter the collective memory narrative are undertaken by an actor involved in the trial used in this study will be one of the focal points of the analysis. The new time-factor offers the opportunity to complexly look upon the relation between history, memory and what each is considered to be.

The tension between different narratives constitutes a further recurring topic which will be considered in the analysis, as does the emphasis put on “communities of memory” (Wollaston 2001:505) and similar concepts in the more recent literature. Collective and collected memory (Olick 2007), counter-memory and postmemory (Weedon and Jordan 2012) all embody conflicting narratives and purposes between generations, majority and minority groups etc. Tension is also a visible theme in regards to collective memory and the notions such as witnessing, forgiveness and reconciliation, and potential conflicts arising from forgiveness without the judicial underpinnings (Borneman 2002:550).

Key concepts are therefore: Conflicts within and between groups; willful and natural change or collective memory narratives, the interrelatedness of collective memory and outside influences; and the relation between the conception of history, memory and the present. Moreover, the role of witnesses/ survivors and rest of society, in regards to forgiveness,
accountability, testimony, and reconciliation are integral features addressed in the conceptual framework.

3. Method

A qualitative case study will form the research design and therewith set the frame within which a critical discourse analysis of the chosen material will be conducted. The critical discourse analysis will constitute the central method of the analysis. As there is a historical dimension to this thesis, aspects of this area will be included and used to determine the themes and patterns used to analyze the material as well. Called herein the “historical dimension,” this aspect will be supportive of the critical discourse analysis rather than an alone-standing method. After introducing each of the methodological components used in this thesis, considerations pertaining to their strengths and weaknesses in relation to their application in this study will follow.

3.1 Research Design

The research design of this thesis is a case study, the aim of which is to conduct an “in-depth investigation of one or more examples of a current social phenomenon, utilizing a variety of sources of data” (Keddie 2006:20). The loose conception of what constitutes a case – whether it relates to “an individual person, an event, or a social activity, group, organization or institution” (ibidem) - allows for a wide variety of incidents and subjects to serve as a case (Flick 2009:134). Sampling in a (qualitative) case study is done purposively (ibidem); the case and relevant empirical material are chosen based on their usefulness for the study (Flick 2009:122). This selection can follow various strategies and pay specific attention to whichever attributes render a case a promising choice (ibidem).

The aim of a case study is to move beyond a description and analysis of the particular case at hand, but to gain insight into an overarching problem (Flick 2009:134). As a case study therefore frequently aims to explain a trend or development, it is often used as a basis of research and put in connection with other methods (Keddie 2006:21).

While the flexible notion of a ‘case’ makes a case study an attractive approach on one hand, Becker and Ragin consider the understanding of what constitutes a case to have become “distorted and corrupted over time” (Ragin 1992:3). They consider the vagueness and liberalness with which many methodological terms are used in various fields detrimental to the social sciences as a whole, as it makes communication difficult and leads to unnecessary inconsistencies (Ragin 1992:4).
3.2 Critical Discourse Analysis

In critical discourse analyses, “[d]iscursive practices are viewed as an important form of social practice” through which “the social world including social identities and social relations” is construed (Jørgensen and Phillips 2002:61). Therefore, the use of language to create discourse is product as well as constituent of social practice (ibidem). Critical discourse analysis is commonly focused on the empirical analysis of “language-in-use” (Jørgensen and Phillips 2002:62-63; Gee 1999:1). Discourse, in this context, is consisting not only of textual and verbal, but by visual material as well (Jørgensen and Phillips 2002:61).

The relation between discourse and the social world is one of mutual influence. While discourse not only reflects but actively shapes and impacts the social world, it is in turn subject to its influence (Jørgensen and Phillips 2002:61). Apart from this, interdiscursivity and (manifest) intertextuality (Locke 2004:43) constitute crucial aspects to this type of analysis, describing how one piece of discourse, e.g. a written text, can fall within the realms of multiple discourses, and how different texts may be used in the composition of one another (ibidem).

Moreover, discourse fulfills an ideological function. Being aware of this sets a critical discourse analysis apart from other types of discourse analysis. A critical discourse analysis assumes “that discursive practices contribute to the creation and reproduction of unequal power relations between social groups,” and seeks to uncover and examine these practices, and furthermore to conduce to their change (Jørgensen and Phillips 2002:63-64).

The approaches to analyzing discourse are manifold (Locke 2004:2). The approach taken in this thesis will be (loosely) based on Norman Fairclough’s approach, which builds up a three-dimensional model consisting of a concentration on the examined text and its “linguistic features” firstly, followed by an analysis of the discursive practice evident within the text, meaning the “processes relating to [its] production and consumption,” and lastly relating it to the overall social context in which it stands, thereby examining social practice (Jørgensen and Phillips 2002:68).

One can further apply “three interrelated processes of analysis” to the three dimensions of critical discourse analysis according to Fairclough. The description of the text itself is succeeded by an interpretation targeting the text as well as the discourse practice, and completed by an explanation, connecting discourse practice and sociocultural (social) practice (Locke 2004:42). The focus on discourse practice achieves to widen the scope of the
analysis from a “micro-level of a particular text ... [to a] macro-level of the socio-cultural context” (Locke 2004:69).

The application of Fairclough’s approach therefore allows for an analysis according to distinct focal points (Locke 2004:42). This thesis’ analysis is going to put an emphasis on *sociocultural practice* in order to grasp the direct circumstances as well as “the various sociocultural practices and discursive conditions at both institutional and societal levels” from which a text has emerged, and according to which it can be situated within its context (ibidem). This level of analysis seeks to evaluate the relation between a text and the predominant power-structure, “discursive hegemony or a particular social practice,” and further to answer whether the function of the text is their maintenance or alteration (Locke 2004:43). At the basis of Fairclough’s framework lies the assumption that discourse can only be understood in connection to its proper context rather than in separation of it (Jørgensen and Phillips 2002:70).

Uwe Flick points toward the vagueness of the method. He considers its many approaches to be too ambiguous and lacking in reliable standards (Flick 2009:341). However, the variety of available approaches is useful for conducting critical discourse analyses in different fields while obtaining compatible results (Gee 1999:4-5). Jørgensen and Phillips further consider the lack of clarity as to how the relation between “discursive and non-discursive moments of social practice” ought to be analyzed a weakness of the method (Jørgensen and Phillips 2002). Nevertheless, this also leaves considerable freedom in applying the method, and renders it a flexible approach that can be molded according to the types of material it analyzes, and the underlying theory used in the process.

**3.3 Historical Dimension**

Owing to the historical aspect to this thesis, obtained from the connection drawn between institutionalized collective memory in post-war and modern-day Germany, there will be a historical dimension to the method used in this thesis as well, loosely drawing from the aim set to a historical analysis, which “seeks to make sense of the past through the disciplined and systematic analysis of the ‘traces’ it leaves behind” (Gardner 2006:135). While it may serve to outline the historical background to a social research subject, its combination with other research methods can endow it with a larger role within research (Gardner 2006:135).

The view on and understanding of discourse within historical research is of particular relevance to this thesis. Similarly to a critical discourse analysis, methods used in historical
research frequently draw from Foucault’s notion of discourse, and thus set out to grasp “not just a pattern of language use, but a form of ‘power/ knowledge’” and its influence (Tosh 2002:187; Munslow in: Jenkins 2003:xiii). This conception of discourse, focused on constructed patterns and knowledge rather than inferring them based on the use of language itself, is what is going to be utilized in this thesis. To identify defining features of the theory and apply them to analyze the sample seems, in this case, more promising, as the expression of collective memory in itself is the looked-for object, neither its linguistic nor otherwise subliminal expression.

A problem encountered in the area of historical analyses is the inevitable “temporal divide between the past ... and the present” (Gardner 2006:135). Tosh and Jenkins alike stress the importance of maintaining awareness of the influences and the far-reaching nature of discourse. In any discipline, scholars “invent all its descriptive categories and any meanings it can be said to have,” as well as the approaches taken to applying methods and interpreting results, according to what best serves their purpose. Thusly does their work add into a separate body of discourse; they themselves are “discoursing” (Jenkins 2003:11; Jenkins in:Tosh 2002:190). Awareness that interpretation is ultimately part of discourse is therefore necessary (Tosh 2002:187ff).

3.4 Methodological Considerations

The case to be studied in this thesis was chosen because it is representative of a trend observed in the German judicial system during recent years. The aim of this study is not only to describe the case examined herein, but to explain it in the context of these developments. The study therefore aims to be explanatory (Keddie 2006:20). Due to its compatibility with other methods (Keddie 2006:21), such a case study poses a convenient frame within which to conduct this research.

Fairclough’s model, and its focus on sociocultural practice in relation to “both institutional and societal levels,” is rendered highly applicable to the empirical material analyzed herein (Locke 2004:42). In this study, the reproduction and reception of memory/experience is going to be studied within its wider social context, thereby making the transition from the micro-level (Locke 2004:69), the particular experience, to the macro-level, the society shaped by the recollection of a multiplicity of such experiences. The emphasis put on intertextuality and interrelatedness of social practice further renders it in consonance with the chosen theory and its emphasis on the interdependency of the memory of rights-violations and the law.
Fairclough’s model thus appears well-suited with respect to the relations between memory and social practice the theory seeks to explain.

Moreover, as an explicitly critical discourse analysis is not political but value-oriented, and as such in line with the approach from a justice and human rights rather than an explicitly political perspective (Jørgensen and Phillips 2002:65). It is also highly suitable for the analysis of power-structures (Jørgensen and Phillips 2002:63-64). In this study, the power-relation considered is between the survivors of the Holocaust and the modern-day German state, as it was upon the latter to grant the former their appearance in the trial. Thus, Germany creates the platform for survivors to share their experiences, which the media reproduces and reports. In a broader sense, Holocaust-survivors may have a significant role in shaping collective memory of the Holocaust, but the decision to try Holocaust-crimes lies ultimately with the state. The media, too, depends to an extent on the state, as recordings of the trial were limited (Huth 2015:7), and is at the same time part of the dominant group which shapes the collective memory narrative and Holocaust-remembrance.

Common approaches to critical discourse analysis appear to rest substantially on the analysis of the linguistic patterns (Jørgensen and Phillips 2002; Gee 1999; Locke 2004). Fairclough’s approach is no exception. Nevertheless, this thesis will neglect this aspect somewhat, and instead put an emphasis on recurring themes and patterns of the literature. This choice was made for several reasons. Firstly, a large amount of the primary sources is only available in German, and translated by the author when relied upon in this thesis. Regarding the presence of both professional translations from various languages (e.g. English, Hungarian) to German, and the author’s own translations from German to English, whether an analysis of linguistic intricacies can provide useful results is questionable. Secondly, and more importantly, a heavy emphasis on linguistics does not appear a promising approach for the application of the chosen theory. Moreover, that which renders a discourse analysis critical lies within the connection to social practices (Jørgensen and Phillips 2002:63-64), to which particular attention will be paid. Therefore, the aim is to operate on a level of content.

It is not the intention of this thesis to conduct a rigorous historical analysis. However, elements of it may be employed, as it can be combined with other methods and allows for the incorporation of a critical examination of the past in the critical analysis of current discourse. As has been shown already, the understanding of history both shapes and is shaped by present circumstances. Therefore, to consider historical influence is necessary for this study.
Moreover, the view taken on discourse, as explained in the section above, is especially compatible with the thesis-aim.

4. Material

The material analyzed can be divided into two sections: Material relating to Oskar Gröning’s trial directly, and media material reporting and/or commenting on it. This chapter will briefly introduce and describe each type of source, motivate its selection, and further assess potential problems and ways to compensate for them.

As has already been pointed out, the sampling for this study is purposive. One case is examined, and three news sources were chosen to grasp its representation in the media. As Gillian Rose points out, however, a sample may be representative even when it is not large in size, and may be chosen especially due to its significance and representativeness (Rose 2001:62-64). The selection of the material to be analyzed follows this assertion.

4.1 Court material

The material relating to the trial consists of the verdict (Landesgericht Lüneburg 2015) from 15 July 2015, and the protocols documenting a substantial part of the proceedings (Huth 2015). During the trial, the recording of neither audio nor video footage was permitted, and the court itself did not protocol the proceedings. The written account of the trial and its publication were therefore an independent effort undertaken by the editor, his colleagues, and the publisher (Huth 2015:7).

However, the first two days were not protocolled fully, and Oskar Gröning’s testimony is therefore cut short (Huth 2015:8). Throughout the book, historical documents referenced in the trial are not always explicitly named or their content described (Huth 2015:129ff), and occasionally the decision to summarize statements in part has been made (Huth 2015:236). Therefore, an additional dimension presents itself in the material, as not only the proceedings on one, but moreover their portrayal -wherever such subtleties are evident- on the other hand can be analyzed. The decision to protocol the trial days, and the subsequent publication of the material merely constitute another discursive practice to be considered in the analysis. Herein, the verdict was primarily used to obtain background information, whereas the more detailed protocols will be, alongside the media material, the focal point in the analysis.
4.2 Media

As the trial commenced in April, and the verdict was spoken in July 2015, news articles published between the 1st of February and the 30th of September will be considered. The settled-upon time-frame is therewith wide enough as to include roughly one and a half months of pre- and post-trial media reports.

The media sources chosen for this study are the online representations of the weekly newspapers *Die Zeit* and *Der Spiegel*, as well as that of the daily newspaper *Die Welt*. All three newspapers were founded during the founding of “a nominally free press” in allied-occupied Germany following the Second World War. All of the news sources listed above have high numbers of circulation and are widely-read today, and consequently reach a wide target group (Hess 2009:75-76). *Die Zeit* is considered liberal in its general news coverage, while *Der Spiegel* is a liberal newspaper as well and emphasizes accurate investigative journalism, with varying success (ibidem). *Die Welt* has historically claimed to separate news reports and political stances more rigorously (ibidem), and belongs to the conservative *Springer* publishing group (Hollstein 1982:34). Due to their similar foundational history and subsequent development, as well as their large target group, this thesis considers them a sufficiently representative sample. While there are differences in their exact political orientation, none of them stands out as an outlier by being radical or employing a different reporting method altogether. Thus, these media outlets are not only suitable as samples in a critical discourse analysis, but can moreover be used as part of one sample.

The term used in the search-functions of the respective websites was “Oskar Gröning,” and resulting in 36 results for *Spiegel Online*, 31 results for *Zeit Online*, and 57 results for *Die Welt* within the chosen time-frame, amounting to a total of 124 articles. All of these articles were read; however, they were narrowed down further as to exclude those that were not connected to the trial itself, focused on other trials, or provided a brief summary rather than any reflections of the trial from the sample. Thus, the most representative and significant articles were chosen in accordance with Gillian Rose (Rose 2001:61-64).

5. Previous Research: Institutionalization of Holocaust-focused Collective Memory in German Law and Politics

Ample research has been conducted on the Holocaust, collective memory of it, and German post-war history. It is the aim of this thesis to contribute to this thoroughly developed field of study by providing a perspective based on very recent and therefore less intensively studied
events. Herein, the institutionalization of collective memory of the Holocaust in German law and politics in its origins, historical development and current state will be looked upon.

Mary J. Gallant and Harry M. Rhea’s work “explores the interplay between collective memory and international law” (Gallant and Rhea 2010:265), and examines the international community’s conscious attempt at the implementation of international law following the Second World War in order to assert a certain understanding of the past, to achieve justice, and to thusly prevent violent acts of revenge (Gallant and Rhea 2010:270-272). Building on the influence of international law on the emerging narrative following the dismantling of a society, other publications pay closer attention to the influence collective memory of the Holocaust has had on German domestic law. According to Eric Langenbacher, the German Basic Law has been influenced by Holocaust-memory considerably, as is German foreign policy by its self-perception as a “land of perpetrators (Tätervolk)” (Langenbacher 2014:55). The Basic Law’s extensive regulations on war, armament and the military, and its relation to international law” –a “subordination” to international law as pointed out by other scholars as well (Savelsberg & King 2005:580)- and multinational political unions, are all traced to the historical background of its establishment in 1949 (Langenbacher 2014:58).

However, in spite of the extent of this influence, difficulties encountered during the trials of Nazi perpetrators not only due to an unwillingness to apply it to its full extent (Arendt 1963:16-17), but due to deficiencies within the law’s inability to grasp large-scale atrocity (Wittmann 2002:347; Pendas 2006:58-61), are many. Arendt, Langenbacher, and Wittmann alike consider the reciprocity between law and politics, i.e. the political aims the trials of Nazi-perpetrators sought to achieve on one hand, as well as the political environment leading to the lenient verdicts (Langenbacher 2014:59; Arendt 1963:16ff; Wittmann 2002:348).

A further tie is made to the influence of Holocaust-focused collective memory on current German law, e.g. concerning hate crime legislation and its influence on attitudes towards radical right-wing groups, Holocaust denial, and racially motivated violence (Bleich and Hart 2008; Savelsberg and King 2005). While the impact of Holocaust-memory on German law is evident, it is no longer explicitly mentioned, but rather an unmentioned though influential presence (Langenbacher 2014:70). A similar trend can be observed in German politics and foreign policy, as explored in-depth by Eric Langenbacher. He considers a few concepts to be especially embodied in German politics, e.g. “never again and never alone,” leading to an emphasis on the prevention of racist and right-wing tendencies (Langenbacher 2014:57-58). The strategy resulting from this attitude towards the past is embodied by the concept of
Vergangenheitsbewältigung, Germany’s ever-evolving “agenda” of dealing with and accounting for its past in an attempt to eventually overcome it (Kansteiner 2006:102).

Whether earlier trials of Nazi-criminals in Germany fall within the political or legal frame of the discussion is debatable. Hannah Arendt considers the courts to have failed to adequately sentence perpetrators, owing to the high numbers of former Nazi officials in them, and the indifference of the German people toward the matter (Arendt 1963:16.17). However, she recognizes the political dimension of these trials (ibidem), which Langenbacher points out as well (Langenbacher 2014:59). Kansteiner finds a middle-ground: He does not contest that Adenauer’s approach to the Holocaust was one of indistinct and overall weak discourse, but to limit his time in office to this would be to take an inaccurately narrow look upon the matter (Kansteiner 1999:88). Wittmann is in agreement with Langenbacher and Kansteiner rather than Arendt, asserting that while Holocaust-discourse in post-war Germany was weak, to create “a new democratic West German identity” was prioritized (Wittmann 2002:346).

This debate illustrates the multifarious role Holocaust-focused collective memory can take on, as it can be perceived as constituting both: a central value (Vergangenheitsbewältigung) on one hand, and simultaneously an obstacle to reaching other principal goals. Overall, collective memory of the Holocaust appears to take on a prominent position in Germany, but to have been neglected in regards to trials and the law. As has become evident in the above, a lot of research on the institutionalization of Holocaust-focused collective memory in Germany is available, also regarding the recent political development and its expression in the law. However, recent trials do not appear to have been taken into account largely, and the literature existing thus far is mostly descriptive or evaluative of the trials, but do not consider them in a theoretical context. This thesis aims to fill the gap existent in the literature.

6. The 2015 Lüneburg Trial

6.1 Background

6.1.1 Previous trials

German trials conducted between 1945 and 1949 still “concerned the full panoply of Nazi crimes ... [such as] denunciations, [and] crimes against political opponents” to which the law was no longer applicable in later years. The focus on homicide only emerged in the trials conducted by German courts once these other crimes became statute-barred (Pendas 2010:429). Neither those non-homicidal crimes, nor the later trials targeted or sentenced a significant amount of perpetrators (Wittmann 2005:15), as the German penal code’s “strict
ban on retroactivity” did not allow for its application to crimes against humanity or genocide (Wittmann 2002:347), and was inapt for trying Nazi-crimes as murder, as the attributes that render a killing murder according to German law\(^2\) could seldom be tied to an accused individual (Pendas 2006:58-61).

In late 1963, the Frankfurt/Auschwitz trials commenced. The Holocaust was generally seen to have “faded almost entirely into the background” during the trials (Wittmann 2005:143), as most significance was attributed to “unauthorized brutality” rather than murder, and witness-testimony restricted considerably. Only singular violent acts were considered in court, and witnesses’ experiences thereby discounted (ibidem), often amounting to a “second victimization” (Walther 2015).

Fritz Bauer, attorney general during the trials, had intended to try Auschwitz as one overarching criminal act (Walther 2015:230-233). This attempt was not picked up by the court, which lead to the “atomization” of Auschwitz in that Bauer’s initiative was understood as a collective trial of random, individual acts (Walther 2015:230). To tie any one former SS-man to the death of a particular victim proved next to impossible, as the required evidence could not be provided (Pendas 2006:58-61). This set a precedent based on which Nazi perpetrators would be tried –or rather their sentencing avoided- for decades to come (Walther 2015:230).

6.1.2 Recent Development

In 2007, Mounir al-Motassadeq was convicted to the maximum penalty of 15 years in prison for having been a functional accessory to murder in 256 cases during the 9/11-attacks (Walther 2015:232). His promotion of the attack and his awareness that the survival of any of the passengers was not intended were sufficient for a conviction; direct involvement in the killing was unnecessary\(^3\) (Walter 2015:232). This application of the law, was continued during the trial of John Demjanjuk\(^4\)(Walther 2015:229-230). In 2009/2011, Demjanjuk was found...

\(^2\) A murderer under this provision is any person who kills a person for pleasure, for sexual gratification, out of greed or otherwise base motives, by stealth or cruelly or by means that pose a danger to the public or in order to facilitate or to cover up another offence.” (German Criminal Code (StGB), Section 211(2)).

\(^3\) He was therefore sentenced for being a “cog in the wheel” to the full extent of the law, thereby setting a precedent.

\(^4\) Preceding his trial in Germany, Demjanjuk, a former Ukrainian Red Army soldier who had become an SS-guard following his capture by the German army, had been falsely found guilty and sentenced to death in Israel for cruel acts at Treblinka concentration camp. Following the dissolve of the Soviet Union, newly available documents confirmed Demjanjuk’s innocence (Sharfman 2005:65). Upon his release from prison and his return to his home in the USA, investigations against Demjanjuk were picked up once more, this time regarding his al-
guilty for his role in the “Operation Reinhard” aiming to exterminate the Polish Jews. The five-year-sentence was appealed and, as Demjanjuk died before a final decision, never entered into force (Wittmann 2015: 241,246).

While the Demjanjuk trial set an important precedent, Rebecca Wittmann looks upon it from a decidedly critical perspective (Wittmann 2015:241). Especially in comparison to the outcomes of previous Nazi-trials, Wittmann deems the Demjanjuk-sentence a failed attempt to make up for past failures (Wittmann 2015:245). She is critical of Demjanjuk’s Ukrainian origin not only when she questions the jurisdiction of the German court, but especially in regards to who is regarded and tried as a Nazi. She suggests that Demjanjuk was a relatively welcomed perpetrator because he was not a German citizen, thus providing the German court with the occasion to rigorously hold trial over a Holocaust-related crime whilst holding trial over a man who is perceived as an “other” (Wittmann 2015:245).

Looking at upcoming trials and investigations, even in the light of the Demjanjuk-precedent, Thomas Walther comes to the pessimistic conclusion which toward trends -e.g. the rather specific time-frames and victim-numbers in upcoming trials- indicating the continued atomization of Auschwitz-crimes (Walther 2015:233).

6.2 The Trial

6.2.1 The Accused

Oskar Gröning was born in 1921 and raised according to a German-nationalist ideology (Landesgericht Lüneburg 2015:2). Gröning, a trained bank-clerk, voluntarily joined the SS in 1940, as he found them a “snappy” group and was impressed by their decisive and uncompromising conduct in Poland (Landesgericht Lüneburg 2015:2-3). To avoid the war, he requested to work as a paymaster, and was first stationed at the SS in Ellwangen and Dachau, where he continued his occupational training (ibidem). He was transferred to Auschwitz 25.09.1942 (Landesgericht Lüneburg 2015:5).

6.2.2 Previous Investigations

In 1978, investigations were launched against Oskar Gröning and 61 other former SS-men in Frankfurt/ Main. During the related interrogation, however, he was informed that the intent was to use Gröning as a “witness of the prosecution.” These investigations were ceased in 1983, after Gröning had fled to Argentina. In 2001, Germany expressed an interest in trying Demjanjuk, a naturalized US-citizen at the time, and successfully requested his extradition (Wittmann 2015:241ff).
1985. Gröning appeared as a witness in two trials against former SS-men, in 1988 and 1991, but his testimony was not considered relevant to the trial-outcome in either case (Landesgericht Lüneburg 2015:16-18).

In a 2005 interview, Gröning described his duties at Auschwitz to the news magazine “Spiegel” but stressed that he had been no more than a witness to the atrocities he described, considered himself a “cog in the wheel” rather than a perpetrator, and was not criminally liable (Greyer, 09.05.05). The interview drew attention to Gröning, leading to an initiative of the Central Office of the State Justice Administrations for the Investigation of National Socialist Crimes in which they requested the continuation of investigations against Gröning. The prosecution in Frankfurt/Main first rejected this, but reacted to another request by the Central Office following the 2011 sentencing of John Demjanjuk (Landesgericht Lüneburg 2015:18).

6.2.3 Indictment

Oskar Gröning was accused of having been an accessory to murder in 300,000 cases. The indictment particularly concerned his work in the Häftlingsgeldverwaltung (HGV), a division of the Häftlingseigentumsverwaltung (HEV), where his responsibilities entailed the handling of valuables and foreign currency brought of Auschwitz by the Jewish people, delivery of the profits to Berlin, and on several occasions duty at the “ramp” where the deported arrived (Landesgericht Lüneburg 2015:8-10). Even though he was employed at Auschwitz since 1942, the indictment specifically concerned the killing of the Hungarian Jews in 1944 due to the accused’s advanced age and the possibility of a speedier trial when indicting a single large but coherent incident (Lehmann in:Huth 2015:151).

7 German: Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung nationalsozialistischer Verbrechen; hereinafter: Central Office
8 “inmates’ money administration/ management;” own translation
9 “inmates’ property administration/ management;” own translation
10 Between May 15 and July 8 1944, the German forces arranged for the execution of the so-called “Ungarn-Aktion” (“Operation Hungary;” own translation), aiming to exterminate the Hungarian Jewry in a quickly paced and concise undertaking (Conway 1984:179). In spite of having been under German occupation as of March 1944, the cooperation of the Hungarian military and police remained extensive (ibidem). Approximately 437,000 Hungarian Jews were ghettoized and subsequently deported to Auschwitz (Walther 2015:230), of which 80% were killed immediately either in the gas chambers or at the hands of shooting squads (Landesgericht Lüneburg 2015:15); the remaining victims were exposed to deliberately unsurvivable living conditions, starvation, and slave labor (Conway 1984:179), and survival is usually attributed solely to a successful escape or the eventual liberation of Auschwitz in 1945 (Landesgericht Lüneburg 2015:15ff). Some were transferred to other concentration or slave-labor camps, subjected to cruel experimentation, or sent on death marches later on (Huth et al 2015). It is estimated that at least 300,000 people died; this number, however, is an interpretation of the available evidence in favor of the perpetrators, as documentation on some immediate
6.2.4 Defense

Oskar Gröning and his lawyers denied neither his involvement in the processes at Auschwitz nor a moral responsibility that follows. They did, however, contest criminal liability, as he did not contribute to making the Holocaust possible, and could not have hindered it (Huth et al 2015:235). The defense claimed that, as Gröning had not been informed that the investigations against him were halted in 1985, the proceedings against him were effectively spanning 37 years, a length rendering them unconstitutional (Huth 2015:236). This possibility is acknowledged by the prosecution as well; the attorney therefore proposes to reduce the final sentence (Huth 2015:152). It was further put forth that Gröning should be considered a chief witness\(^\text{11}\) and should thus be exempted from prosecution based on his having acted as a witness in the trials of other, higher-ranking SS-men previously (Huth 2015:237).

6.2.5 Verdict and Outcomes

Two main points were established throughout the trial: Firstly, that the systematic killing of the Hungarian Jews constitutes murder, based on the unnecessarily cruelty, deceitfulness, and intentionality (Landesgericht Lüneburg 2015:33-35). Secondly, it was found that Oskar Gröning was an accessory to these murders in spite of not being connected to any one explicit murder, as had previously been considered necessary (Landesgericht Lüneburg 2015:35f). On July 15, 2015, Oskar Gröning was sentenced to four years in prison. He is further responsible for the costs of the trial and expenses of the plaintiffs (Landesgericht Lüneburg 2015:1). Whether Gröning is able to serve this sentence was not determined at the time (Landesgericht Lüneburg 2015:39).

Claims pertaining to his potential standing as a chief witness, the alleged unconstitutionality of the trial-length, as well as the possibility that he was complicit in rather than an accessory to the murders were denied (Landesgericht Lüneburg 2015:35-41). The verdict has since been appealed by the plaintiffs' as well as Oskar Gröning's lawyers alike, but a decision has not yet been made (Norddeutscher Rundfunk, 20.01.2016).

7 Analysis

In this analysis, an emphasis will first be put on different groups appearing in the trial, and what relationship and/or influence they have on collective memory. Then, the focus will be killings is lacking or not sufficiently concrete, and the number of people immediately killed is likely 320,000 (Landesgericht Lüneburg 2015:15, 41).

\(^{11}\)German: “Kronzeuge”
shifted towards the relationship between history and the law, and the relationship between the conception of history and the understanding of the present respectively. Following this, possible changes to the current Holocaust-memory narrative will be examined. In doing so, the two research question concerning how Holocaust-focused collective memory is expressed in the trial, and how the relationship between a remembered violation and the application of the law has changed, will be answered.

7.1 Groups and Actors Shaping the Memory-narrative

7.1.1 Groups of Witnesses

Some main factors can be observed about the discursive practices the witness-statements are made in. The majority of witnesses, as well as the accused, draws from their personal experiences. Witnesses who speak on behalf of a family member draw mainly from their family-history. The expert witnesses, historians (Bajohr in:Huth 2015:41ff; Hördler in:Huth 2015:129ff) and a pathologist (Anders in:Huth 2015:112ff), base their statements on their expertise, founded in formal education and work experience but conceivably shaped by collective memory, too. A former judge, who presided over a trial in which Gröning appeared as a witness, testifies and consequently draws from personal experience gathered during the exercise of his profession (Struß in:Huth 2015:114ff).

Within the group of survivors, considerable disagreement could be observed when Eva Mozes Kor, who was subjected to experiments by camp-doctor Josef Mengele, forgave Gröning and the Nazis during her testimony (Kor in:Huth 2015:19), forgave him in person outside of the trial, and appeared in a talk-show (Das Erste, 26.04.15), in which she deemed the trial unnecessary and considered reconciliation a better alternative (Friedrichsen, 27.04.15). 49 joint-plaintiffs, as well as survivor- and memorial-organizations rejected Kor’s statement, accused her of publicly staging her forgiveness, and of “[degrading the Lüneburg trial] ... to a personality-show and soap opera” (Spiegel Online, 27.04.15; Zeit Online, 27.04.15). Concerns that her statements injure the integrity of other survivors, relieve Nazi-perpetrators of their guilt, and take a responsibility to remember from German society, were expressed (Zeit Online, 27.04.15; Die Welt, 27.04.15). Thus, forgiveness is seen as potentially harming

---

12 In the course of this chapter, no references for aspects explained in the “theory” chapter will be included in the text.

13 “I forgave the Nazis. My forgiveness does not acquit the perpetrators . . . The Nazi-Regime did not work. Tell this to the youth, Mr. Gröning!” Own translation

14 Own translation
memory and remembrance, even as it occurs within the wider context of a trial and with explicit mention that forgiveness is not absolution.

Eva Kor, in turn, appears to have been aware of the mixed feelings towards her, and is somewhat dismissive towards them, comparing her critics to petulant children\textsuperscript{15} (Dargent, 27.04.15). Moreover, she draws a clear distinction between being a survivor and a victim, stating that she considers herself a survivor who “refuse[s] to be a victim\textsuperscript{16}” (ibidem). In the trial, she had stated that “forgiveness is an act of self liberation” (Kor in:Huth 2015:19). Hence, it appears that she does not regard those criticizing her forgiveness as “survivors.”

A lot of significance is attributed to this distinction not only by Eva Kor. Plaintiff-lawyer Christoph Rückel states that “... we [the lawyers] represent the voice of the Survivors\textsuperscript{17}, they do not want to be merely witnesses or victims, they are Survivors ... today still, they are the voice of the abased, the voice of unspeakable suffering\textsuperscript{18}” (Rückel in:Huth 2015:202). He speaks of survivors in the plural, but of their voice in the singular. The survivors are referred to as one group with a shared voice serving multiple but cohesive purposes, who take on a responsibility as the consequence on their own survival and death of others. Surviving is understood as more than the fact that one did not die, and expresses both personal victory and responsibility for those who did. While the terminology is used to make a distinction, however, who makes it and how is what ultimately signifies the divide. Therefore, tension within the group of Auschwitz-survivors is noticeable, dividing those in favor of forgiveness and those who find forgiveness detrimental or consider themselves unable to forgive.

The media does, in this controversy, not seem to have taken a distinct stand siding with either one of the opinions, but rather provides a platform on which the varying opinions are reported but not evaluated in-depth (Spiegel Online, 27.04.15), with. It is sometimes pointed out that a trial may not be the right environment in which to stress forgiveness, and that it “may be one of the last opportunities for the German judiciary to react to ‘the hell Auschwitz’, with the means of a constitutional state\textsuperscript{19}” (Friedrichsen, 27.04.15). The same commentary, however, acknowledges that Eva Kor is at liberty to strive towards forgiveness if she wishes to do so (ibidem). While the timing of her gesture—and especially her deeming the trial unnecessary—

\textsuperscript{15} “The victims of the Holocaust sat in the corner and were angry at her, said Kor.” Own translation
\textsuperscript{16} Own translation
\textsuperscript{17} He uses the English term here, and only refers to the German “Überlebende” once.
\textsuperscript{18} Own translation
\textsuperscript{19} Own translation; “the hell Auschwitz” (“die Hölle Auschwitz”) is a semi-common expression used in reference to Auschwitz
is judged decisively, and the opinion of other victims on it recognized favorably, the gesture itself is not.

A similar tendency can be observed in the forgiveness-discourse. While forgiveness is discussed in the media (Dehoust, 01.07.15; Die Welt, 21.04.15b), this is usually done in distance to the trial. While the trial is taken as a starting point, and discussions on memory culture are controversial at times, this is done in opinion pieces specifically, and no “sides” are taken as far as the witnesses, their experiences, and their opinions on the matter are concerned. The question as to how significant Holocaust-memory should be in Germany today is discussed in a similar manner; e.g. in the format of two deliberately opposing opinion-pieces (Löbbert and Öhler, 05.05.15). It criticizes that fading memory and denial are often equated, and that the vagueness of Holocaust-memory renders it uncritical, chaotic and vague. Tying this discussion back to Eva Kor, this text is one of the few in which her forgiveness-driven statements are regarded as a constructive move forward (ibidem).

This conflict of opinions on forgiveness could be understood in the light of collected and counter-memory. On one hand, the survivors are a minority that has previously been harmed by the majority. As such, they are in a disadvantaged position and have an opportunity to make their voices heard during the trial; however, Holocaust-survivors are arguably among the most-recognized victim-groups with a relatively strong voice and large audience. At the same time, it becomes clear that they are not a homogenous group but rather one that deals with memory, and perhaps also remembers, variedly. Nevertheless, there is an expectation to consider the entire group of survivors when speaking about individual experiences/opinions. There are further concerns on how memory can be used in a constructive manner rather than being maintained just for its own sake.

7.1.2 Witnesses’ Relation to the Media

As the court itself did neither record nor protocol the proceedings (Huth 2015:7), and seating in the courtroom was limited (Huth 2015:67), journalists were the main people to inform the public about developments and details of the trial. With the trial being an significant event for the perception of guilt, responsibility and dealing with Germany’s Nazi-past, media reports on it are consequently a crucial component to these developments. In this sense, the court produced the discourse which the media reproduced for its consumption by the public, and which the decision by Peter Huth (2015) to publish the protocols further reflects.
Reports of the trial frequently draw from witness statements in their discursive practice (Klormann, 12.05.15; Die Welt, 28.04.15; Hinrichs, 28.04.15; Spiegel Online, 28.04.15), often quoting particularly striking or memorable lines in their headlines; from German history (Klormann, 26.05.15; Broder, 21.04.15); or from personal and professional opinions of journalists or experts writing for the media outlet in question (Friedrichsen, 15.07.15; Delius, 15.07.15).

Many of the lawyers speak favorably of the media-treatment their clients received (Rothmann in:Huth 2015:214; Feld in:Huth 2015:195). Positive experiences with German society are mentioned as well. Angela Orosz-Richt, explicitly explained that she only made a decision to appear in court after having seen media coverage of the trial thus far (Orosz-Richt in:Huth 2015:120). Heinrich Rothmann, her lawyer, states the contribution the media made to working through “the outrageous Auschwitz-crimes” (Rothmann in:Huth 2015:214). He explains that his client was surprised at the interest taken in herself and her personal experiences, and took it “as a symbol of a ... new Germany” (ibidem). It appears that she was wary of a treatment akin to a “second victimization” as mentioned by Thomas Walther, but that the witness-representation in the news was able to dissipate her doubts.

Here the media took on two functions: It represented the trial, German society, and other survivors in court to her, and thus convinced her that Germany had changed enough as to make her appearance in the trial worthwhile. In turn, it portrayed Angela Orosz-Richt as she appeared as a witness (Hinrichs, 03.06.15). Simultaneously, the trial may have served not only to condemn Nazi-crimes, but presented an opportunity for survivors to re-enter (although a generationally different) Germany on better terms and, akin to establishing the networks of trust described by Borneman, be reconciled with it somewhat.

7.1.3 The Contribution to Remembrance by the Perpetrator

A further recurring theme is the question which group Oskar Gröning belongs to. Naturally, whether he belongs to the group of criminal Nazis is the controversy at the heart of the trial. However, other groups/classifications are brought up in relation to Gröning, his past role in Auschwitz, and his present role as somebody with a Nazi-past. The media seems somewhat

---

20/"I See a Man I Feel Pity For." Own translation
21/"I Did Not Let Go of My Soul." Own translation
22/"An SS-Man Had More Might than God." Own translation
23/"Survivors Testify in the Auschwitz-trial: 'Shaved Bald and Stark Naked.'" Own translation
24 Own translation
25 Own translation
torn about this question; especially *Die Welt* skips back and forth between referring to Gröning as an “SS-man” (ex. Hinrichs, 21.04.15; 22.04.15) and a “former SS-man” (ex. Die Welt, 21.04.15; 22.04.15; Hinrichs, 29.04.15) in their headlines. *Die Welt*, moreover, describes Gröning as “a fossilized pars pro toto” when receiving the sentence; he is seen as embodying not only himself but those *like* him (Delius, 15.07.15). The article briefly draws from scholarship on Holocaust-memory in Germany throughout time, and finds that Oskar Gröning has “overcome the discourse” as his verdict finally acknowledges the “wounds, traumata, and shock-induced paralysis” permeating German culture. Finding him guilty is making what has generally been regarded as a crime officially criminal (Delius, 15.07.15), and therefore conciliates guilty conscience and legal reality.

In the witness-statements, too, perspectives on whether he still is a perpetrator, rather than a *former* perpetrator tried belatedly, are present. Irene Weiss concluded her statement by expressing that the trauma she suffered in Auschwitz still affects herself and her impression of Oskar Gröning (Weiss, in:Huth 2015:148). While this does not give any indication as to whether he should indeed be considered a Nazi today, it underlines the continued significance of his perpetration, and that while his perception of himself may have changed, the same should not be expected of the witnesses. Overall, Gröning is regarded as representing perpetrators like him.

There is a shift in the perception of Oskar Gröning to the extent that he is considered a possibly redeemed Nazi. The lawyers, the attorney, the verdict, and the judge all acknowledge that Oskar Gröning has made a contribution insofar that it is unusual for a former SS-man to speak about his experiences without denying their knowledge of Auschwitz (ex.Lehmann/Walther in:Huth 2015:152/153). After reading the verdict and its justification, the presiding judge held that “[Gröning’s] conduct deserves respect” and acknowledged the

__________________________________________________________________________

26 Own translation
27 Own translation
28 Own translation
29 “…if he [Oskar Gröning] were sitting here in an SS-uniform today, I would be shaking. . . For this 13-year-old girl, every person in uniform embodied terror and how low humanity can sink – regardless of what function they fulfilled. And today, at the age of 84, I still feel this way.” [own translation]
30 “The person of the accused, however, is less important [than, relating to his sentence, Auschwitz as a whole], as he stands for many accomplices who were not accused. This dereliction of the past could be rectified at least marginally by this trial.” (Goldbach in: Huth 2015:216); own translation
31 Own translation
hardships as well as possible benefits of the trial for Oskar Gröning\textsuperscript{32} (Kompisch in:Huth 2015:250,251), thus expressing the hope that Oskar Gröning can come to terms with his past. It is brought up that, had he kept as quiet as other perpetrators, the investigations against him would not have been resumed (Landesgericht Lüneburg 2015:18). Moreover, he turned to the public to speak explicitly against Holocaust-revisionism (Mayer in:Huth 2015:227), and could be regarded as contributing to the preservation of Holocaust-memory. Though several of the expert witnesses and lawyers suspect that his personal involvement may still be downplayed (Landesgericht Lüneburg 2015:29-30), his involvement raises the question whether a former Nazi can be an advocate against National Socialism, and to what extent people guilty of a violation should be involved in shaping its memory.

Some of the media offers a critical perspective on Gröning’s role in Holocaust-memory. As has been done in the trial as well (Rothmann in:Huth 2015:212ff), his apology is thought spurious and downplaying his guilt. Similarly, his taking on the role of a witness is criticized as “Gröning seems ... to have comfortably settled into his role of a sincere contemporary witness\textsuperscript{33} who is speaking out in order to escape his own responsibility (Spiegel Online, 27.04.15a; Mayer in:Huth 2015:228). His role in shaping collective memory is further acknowledged by the victims. Several witnesses urge Gröning to speak about his experiences, especially in regards to modern-day antisemitism (ex.Kor in:Huth 2015:19; Lynn in:Huth 2015:231). That his voice is unique, and that sharing his experience important for Holocaust-remembrance, is made clear, as is the fact that he “has the privilege of knowledge to the question ‘what really happened’” (Walther in:Huth 2015:169), and possesses Auschwitz-information the victims do not, and consequently cannot share. While victims-recollection is dominant in Holocaust-remembrance, the perspective of perpetrators is rare but, to an extent, a desired addition to Holocaust-focused collective memory, as the absence of knowledge and individual memory of the dominant group in the memory-discourse leaves certain questions unanswered.

It thus seems that while Gröning is being tried as an SS-man with explicit criminal responsibility, and his mindset questioned in regards to his choice of words and some of the anecdotes\textsuperscript{34} he reiterated (Walther in:Huth 2015:157), he is, in spite of the criticism uttered

\textsuperscript{32} That you appeared and persevered [is what deserves respect]. You have suffered, faced your responsibility, grappled [with the subject matter]. ... I hold the hope that with this decision, you can draw a line [under his past], too” (Kompisch in: Huth 2015:250,251), Own translation
\textsuperscript{33} Own translation
\textsuperscript{34} Such as that of his shock and complaint to a supervisor upon seeing an SS-guard smash a baby against a truck at the Auschwitz-ramp (Huth 2015:13).
against his self-conception as a “‘decent’ SS-man” (Walther in:Huth 2015:166), simultaneously put into the role of, if not a ‘good,’ a ‘better Nazi.’ Thus, while the perception of his involvement has shifted toward recognizing it as criminal, tendencies to separate the criminal “cog in the wheel” from high-profile perpetrators are still evident.

7.2 Younger Generations

7.2.1 Postmemory

A new element is the appearance of witnesses born to Holocaust-survivors. Several of the witnesses testifying on behalf of a relative were born to Auschwitz-survivors after their liberation, while one was born in captivity, but was too young at the time to remember Auschwitz (Orosz-Richt in:Huth 2015:120ff). A slight variation can be observed in the discursive practices of these witnesses, as their statements draw from, though marginally, different dispositions. While Judith and Ilona Kalman each speak of the death of the same half-sister, Judith Kalman puts a stronger emphasis on struggles she has faced and experiences with seemingly unrelated trauma, such as her husband’s mental-health-struggles (J.Kalman in:Huth 2015:47ff,59), Ilona Kalman focuses on bridging family-history and history delivered to the public (I.Kalman in:Huth et al 2015:72ff). Henriette Beck, whose father remained in Germany, further draws from her father’s experiences in post-war Germany (Beck in:Huth 2015:90f).

The reason of surviving is discussed frequently, as are conflicting/confusing feelings about dead relatives, and the implications of growing up with a “shadow family” (J.Kalman/I.Kalman/ Beck in:Huth 2015:55/82/90). Survivor’s guilt is a prevalent issue. In this context, the children of Holocaust-survivors appear to be considered survivors themselves, though they may not consider themselves victims; the psychological effects of having loss family members before their birth links their struggles to the Holocaust itself rather than their parents’ experiences. While they speak on behalf on their relatives, their

---

35 Judith Kalman and Ilona Kalman (sisters), Henriette Beck
36 Angela Orosz-Richt
37 “I only survived for one reason: I have a mission. I have to speak for those who can no longer speak. I have to tell the story of my mother and the murdered Jews.” (Orosz-Richt in: Huth 2015:120), own translation
38 “I found an answer that only makes sense to a child . . . if we were meant to be here, it followed that Evike [her late half-sister] and her world were not. It was as simple as that.” (J.Kalman in: Huth 2015:57).
39 “...the feelings of guilt of the second generation ... the inherited guilt” (J.Kalman in: Huth 2015:58), own translation
40 “My voice is not that of a victim.” (J.Kalman in: Huth 2015:62), own translation
41 “I was asked to talk about the effects of the Holocaust on myself, about what harm it inflicted on me.” (I.Kalman in: Huth 2015:81), own translation
own trauma is given an explicit place in the trial, which perhaps would not have been the case in earlier trials, or trials dealing with murder outside of the context of administrative massacres. In this light, the harm of the Holocaust and its delayed legal consequences are considered in a wider scope than would be the case for ‘normal’ crimes; the law is thus applied in a way that influences Holocaust-focused collective memory overall, rather than just condemning an individual crime.

Henriette Beck further explains how Holocaust-memory and Germany history have influenced her relationship to German society42. Notably, she puts an emphasis on the grief experienced by her father and her awareness of being “only the second daughter43.” Both, an influence stemming from Jewish history in Germany as such, and more explicitly family history, become evident in her statement (Beck in:Huth 2015:89,90). Halbwachs’ notion of the shaping of new experiences by collective memory ingrained through societal influence is apparent.

The younger witnesses’ memory is primarily shaped by memories passed on within the family, but extends beyond that: The witnesses draw from seemingly unrelated experiences and put them in the Holocaust-context, which holds perhaps more than historical significance to them but is not personal experience and gets its defining features from the testimony of others. This is somewhat akin to the “historical memory” described by Halbwachs. Their memory is shaped by history in the context of formal education as well, as both Judith and Ilona Kalman have made publications on their family history respectively, Ilona Kalman from the perspective of a historian (J.Kalman in:Huth 2015:60f). Postmemory as well as historical memory thus have a distinct place in the Lüneburg trial, and is considered relevant, accurate, and authentic.

7.2.2 German Generations

As Connerton points out, collective memory is subject to change as it is passed on between generations. While the experiences of post-survivor generations, and thus postmemory, have an explicit place in the trial, the relationship of younger German generations to German history is manifested as well. While this is not acknowledged as explicitly, it is nevertheless inherent to a trial conducted in Germany, and touched upon within the trial and the media.

---

42 “We are people capable of love. My life will always be influenced by this history. Not negatively, one sees the human as human. I live in a Germany that is alright.” (Beck in: Huth 2015:89), own translation
43 Own translation
In a few instances, it appears that the plaintiffs’ lawyers explicitly speak as Germans, e.g. when Heinrich Rothmann states that he perceived some of the “collective/overall shame” that he himself felt, in everyone listening to the witness-testimonies (Rothmann in: Huth 2015:212), or when Mehmet Daimagüler speaks of “the guilt we Germans have put on ourselves” (Daimagüler in: Huth 2015:221-223). In these parts, the lawyers make the connection to their own sentiments, and use their identification with German history and current German society. Moreover, the relationship between younger generations and their responsibility is touched upon, thus addressing how Holocaust-remembrance ought to be practiced and memory passed on today.

The media engages with both of these topics as well. One article explicitly examines the role of presiding judge Franz Kompisch as a “bridgebuilder between past and present”, stating that the questions asked about Oskar Gröning’s responsibility are really “…one generation [asking this] another, and ultimately one generation putting another generation, not just Oskar Gröning, to trial (George, 1.5.15). The article’s title, “The Judge Who Leads a Voyage Into Dark Times” (ibidem) suggests a clear divide between present and past, as it does not appear to regard the two as particularly interlinked, and supports the view of Third Reich- and younger generations as separate. As Halbwachs points out, certain events may “create a great chasm between generations,” and this effect of the Holocaust on German generations is visible.

With a younger generation trying its seniors, it is altering the current understanding of history as well, and uses the courtroom as the environment in which to affect this change. The media justifies this decision by repeatedly pointing out that murder is not statute-barred and that the trials may be too late but are neither futile nor wronging the accused (Friedrichsen, 15.07.15; Ramm, 07.07.15; Wefing, 22.04.15; Hinrichs, 20.04.15). In this regard, a change of collective memory has taken place between generations and is visible in the different discourse employed: While Oskar Gröning continues to make the distinction between moral
and legal responsibility\textsuperscript{53}, the generation trying him comes to a different conclusion and draws from a changed understanding of history.

Apart from the expression of German memory in relation to the trial, the relationship between the perception of the trial and Holocaust-memory is approached as well. One article features both observations made by the reporters in the courtroom, concerning the reactions of the audience to Oskar Gröning’s statements and witness-testimonies, and furthermore the reflections of the audience on witnessing the trial. Audience members generally speak about wondering what they would have done, the trial touching them more than expected, and being unsure to what extent to sympathize with Oskar Gröning while clearly feeling emotional about the witness-testimony. Statements such as “I notice how close everything still is\textsuperscript{54}” further indicate that the audience’s connection to history remains strong, and that they continue to feel a connection to it (George, 23.04.15). Thus, the practice of listening to witness-testimony and the re-evaluation of one’s own connection to an issue is evident.

However, the continued importance of Holocaust-focused collective memory is also discussed when the alternative sources of memory are addressed, i.e. the problem that those who lived during the Third Reich might be detrimental to shaping its remembrance. History is seen as in need of rectification “as long as the myth that the German could actually live rather honestly, decently and faithfully through the NS-time prevails;\textsuperscript{55}” a conception usually resulting from older relatives’ anecdotes (Löbert and Öhler, 05.05.15). In this context, it appears that Holocaust-memory in Germany is perceived as more fragile than the description of the trial-audience indicates and a continuous concern the trial might counteract.

### 7.3 Re-appraisal of History and the Law

In the course of the trial, the re-visitation of periods of German history takes place. This happens particularly in regards to past failure of the German judiciary to try Nazi-perpetrators. It becomes clear that the understanding of this area has changed, and a responsibility that was neglected at the time is acknowledged now. Relating to this, the application of the law is re-evaluated. The narrative dominant in post-war-Germany, is now understood as one that needs to be not only revised but also condemned.

\textsuperscript{53}“There is, for me, no question that I have become morally complicit. I ask for forgiveness. You have to decide on the question whether I am criminally liable.” Own translation

\textsuperscript{54}Own translation

\textsuperscript{55}Own translation
Fritz Bauer, attorney during the Frankfurt-Auschwitz trials more than 50 years earlier, is named the “spiritus rector” of the trial (Nestler in:Huth 2015:174). While his intentions of regarding Auschwitz as one overarching crime did not prevail originally, that they were ahead of their time is stressed now, as is the fact that the current approach is not new, but rather one that had been ignored previously (Walther in:Huth 2015:177ff). Thus it becomes evident that the understanding of the Holocaust has changed in relation to how grave, morally as well as criminally, participation in it was.

The court and media alike display a critical engagement with the past failure of German judiciary. While the workings of Auschwitz and the witnesses’ experiences during “Operation Hungary” are elaborated on specifically, their lawyers also draw from the experiences their clients made after their liberation, regarding the German authorities, courts, and society (ex. Beck in:Huth 2015:89,90). Cornelius Nestler, one of the plaintiffs’ lawyers, clearly puts the emphasis on the failure of the judiciary, not the law, when stating that “[t]he law was always the same56,” and that only its application has changed for the better (Nestler in:Huth 2015:189). He explains the process of the “atomization” of Auschwitz, and outlines the courts’ continued failure up until the Demjanjuk-trial (Nestler in:Huth 2015:171-191). The explanation of this development is not connected to Gröning specifically, neither is it important for arguing that his involvement in Auschwitz was criminal. Rather, he is providing an overview of German legal history, a lesson directed here by the lawyers (ibidem) and akin to the “legal story-telling” referred to in Osiel. It is also reminiscent of Burke’s assertion of a “history of history” as to how history is studied and interpreted at different times. In recent years, a shift in how Germany’s perception of its dealings with the Holocaust has occurred – thus, the German’s history of dealing with its history is critically examined. The other lawyers voice their support for Nestler’s long explanation, and Gröning’s defense condemns the prolonged failure of the law as well (Holtermann in:Huth 2015:232). The media reflects this criticism, pointing towards the “easing” effect of the trial (Klormann, 13.05.15), and continuing problems regarding Nazi-trials, such as their lacking documentation (Klormann, 26.05.15). Moreover, the survivors’ continued need of a trial is described (von Salzen, 22.04.15).

As the lawyers take the opportunity to delve into German legal history, it is upon the media to deliver this content to the public. This is done extensively, suggesting the recognition that not only must the perception of what is criminal change among those applying the law, but ought

56 Own translation
to reach the average population as well, especially since the guilt of Nazi-Germany’s average population -the many cogs in one all-embracing wheel- is determined.

Thus, a change in discourse is visible. There is a re-interpretation of the law based on a re-interpretation of the past, as a reconsideration of Germany’s legal responsibility following World War II and the critical examination of its judicial past have led to a changed understanding of legal responsibility, according to which a different application of the law has been considered. The “atomization” of Auschwitz is seen as a failure of the judiciary today, thus the reciprocal relationship between what is remembered as a rights violation, and how the law is applied, is evident. This change of perspective appears to be led by the lawyers – by those who made the decision to re-open investigations, as well as by those whose changed understanding ultimately lead to the decision to pursue a new application of the law, and to look upon its past application more critically.

7.4 Interpretation of the Present Based on the Understanding of the Past

As elements of German history and legislation are re-evaluated based on the present interpretation of history, so current events within Germany and Europe, are re-evaluated. This connection is primarily established by the lawyers, many of whom refer to current issues concerning antisemitism, racism and Islamophobia. Regarding the discursive practice underlying their final pleas, they draw upon the witness-statements of their clients to some extent, but also draw upon current events. Some of the witnesses refer to modern-day antisemitism and related issues as well, such as antisemitic hate-crime (ex.Orosz-Richt in:Huth et al 2015:120).

In regards to the discursive practices, Mehmet Daimagüler stands out, as he mentions his own connection to the ongoing trials against members of the National Socialist Underground (NSU) terrorist group, thus creating the connection between trials of Nazi-criminals and trials of neo-Nazi-criminals. Daimagüler therefore draws not only of his clients’ experiences but, although subtly, from his own connection to the NSU-trial (Daimagüler in:Huth 2015:222). His experiences with neo-Nazi terrorism partially inform his plea in the trial, and

57 “Today, Europe is a dangerous place for Jews again . . . there is antisemitism again, everywhere and openly. The world is watching again.” (Orosz-Richt in:Huth 2015:120), own translation
58 Between 1999 and 2011, the cell committed “nine racially motivated murders, several bombs in Cologne and over a dozen bank robberies.” The term “Döner Morde” (Doner Kebab Murders) frequently used in press-coverage was criticized for being racist itself, and German authorities were criticized for their inadequate investigations. The trial began in 2013 and is ongoing (McGowan 2014:196ff).
the importance of Holocaust-memory for approaches toward National Socialist terrorism becomes evident.

Referring to neo-Nazism in Germany, the question is voiced how Germany should be capable of adequately dealing with it whilst struggling to put Holocaust-offenders to trial (Daimagüler in: Huth 2015:220-224). The responsibility of Germany in contemporary Europe is brought up (ibidem). This part of the trial stands out in that not only Germany is targeted. While all of Europe is mentioned throughout, especially Hungary is criticized for how it deals with its past of persecuting Jewish people, and in reference to the relative acceptability of antisemitism today (ex. Daimagüler in: Huth 2015:220ff). Again, this understanding of Germany’s role within Europe displays features of Halbwachs’ “historical memory,” as the Holocaust is clearly regarded as a defining period of German history with continued significance today, but is remembered by the society that defines itself by it overwhelmingly due to witness-testimony, not personal experience.

In the media, the purpose of the trial is understood two-dimensionally: as acknowledging the victims and the failure of the German judiciary, and on a broader scale as “general prevention,” thus expressing the goal to prevent the repetition of history (Wefing, 22.04.15). It is notable that details pertaining to the current situation in Europe are left largely uncommented. Thus, it could be questioned as how relevant the explicit articulation of Holocaust-memory is truly considered to be in order to grasp current crises appropriately.

As has been elaborated on earlier, the articulation and reception of witness-testimony ought to be put to means that render it ‘useful;’ i.e. memory ought to serve a purpose greater than maintaining itself. To acknowledge current wrongs and attribute significance to the past may therefore stress this aspect of the victims’ experiences, and provide a context in which ‘more’ than the criminality of participation in Auschwitz is established, which the trial confirms but does not newly establish.

7.5 Change and Reconstruction of the Memory-narrative

During his testimony, Oskar Gröning briefly fell back into the dispassionate and technical language commonly used by SS-guards to describe their work at the time (Gröning in: Huth

---

59 E.g. in regards to the animosity faced by many refugees as well as to modern-day manifestations of Islamophobia and antisemitism.
60 Own translation, German: “Generalprävention”
61 “This [the arrival of people at Auschwitz] worked best when there was order. This way one could take care of [German: “versorgen”] 5000 people in 24 hours.” Own translation

Generally, as also visible in the victim and survivor distinction discussed above, the issue of language-use is a recurring topic in the trial as well as the media. However, most language-focused criticism is not directed towards Gröning’s return to once-familiar terminology, but deals with language commonly used in modern-day Holocaust-discourse. The most prevalent criticism focuses on expressions such as Ausrottung (extermination\(^{62}\)), Häftling (detainee, prisoner) and Entmenschlichung (dehumanization). Criticism on these expressions, still encountered today, is passed e.g. due to their having roots in NS-language that are not sufficiently acknowledged, as is the case for the term Ausrottung (Rothmann in:Huth 2015:213). The critique of referring to the victims as “detainees” has similar roots\(^{63}\) and accuses the term of being a remainder of the palliative and dissociating language employed during the Holocaust (Rückel in:Huth 2015:206). This criticism is similar to the backlash Oskar Gröning’s reference to “taking care” of the arriving Jews received; however, it addresses contemporary society specifically, and is thus targeting a group habitually using the expression, that did not acquire it by practicing what it is associated with. To talk about the “dehumanization” of the victims is regarded as a misattribution; it is argued that the perpetrators were the ones rendered less human, whereas the victims maintained their humanity in spite of not being treated accordingly (Daimgüler in:Huth 2015:221).

Apart from language used to refer to aspects of the Holocaust, language used to talk about it more abstractly is criticized for creating too much of a distance to it as well, such as the reference to “crimes in a German name” where to speak of “a crime committed by Germans against their neighbors\(^{64}\)” would be a more accurate, though less comfortable, description (Daimagüler in:Huth 2015:221-223). It is stressed that responsibility for the Holocaust is not limited to an elite group\(^{65}\) (Rückel in:Huth 2015:202). In this context, Goldhagen’s Hitler’s Willing Executioners\(^{66}\) is referenced, and Daimgüler speaks consistently of “our mothers and

---

\(^{62}\) Alternatively: “eradication.” The German term has a negative connotation; one would usually encounter it in the context of ridding oneself of vermin or a disease.

\(^{63}\) “These were not detainees! Why does one use that word? This is a euphemistic word for deportation, contempt for mankind, abduction and serious criminality in the name of the state, the German Reich.” Own translation

\(^{64}\) Own translations

\(^{65}\) “[The survivors are witnesses of a suffering] which not a so-called Führer or a small clique bear responsibility for.” Own translation

\(^{66}\) Similarly to Christopher Browning’s earlier published Ordinary Man, Goldhagen’s book (1996) studies the German Reserve Police Batallion 101 and its execution of Jewish people in Poland specifically, and draws the overall conclusion that the German population had not only been willing rather than coerced in its abidance to
fathers and many of our grandparents,” thus pushing against the dissociation of older relatives from the Holocaust, and employing an already existing notion in the discourse to re-enforce itself, i.e. using discourse condemning low-profile Nazis to support his condemnation of them (Daimagüler in:Huth 2015:221-223).

All in all, it appears that survivors and their lawyers strive towards a new terminology and re-claim their own narrative. To speak of the Holocaust in euphemisms is a habit developed within Germany, and even though the terminology may be used for the purpose of remembrance, and thus does not ignore the Holocaust as a crime or relativize it per se, it is not the language of the witnesses. However, by asking “who do we want to be?” and suggesting that the trial poses the opportunity of accountability for the past (Daimagüler in:Huth 2015:219), the possibility to re-shape Holocaust-memory and the consequences drawn from it is present as well. An intentional attempt to change this narrative can therefore be observed among the witnesses as well as in German society.

8 Discussion of the Findings

It is the aim of a discourse analysis to leave the micro- and consider an event on its macro-level, i.e. to consider the results revealed through the analysis of discursive practices in their socio-cultural context. The dominant discourse tends to be determined by the dominant group in a society, which reproduces and maintains it, therewith reproducing and maintaining the prevailing notions the particular discourse establishes. As has been pointed out previously, how human rights violations are remembered shapes the understanding of human rights law. In turn, the application of the law significantly influences what is considered a violation. In relation to the power of discourse, it therefore appears that the dominant group’s understanding of the law as well as a violation is the determining factor. Concepts such as counter-memory and collected memory challenge this dominant position of one memory-narrative, but are –stemming from minorities and marginalized sub-groups- in an inferior position, and are themselves divided into further, possibly conflicting groups. While Holocaust-survivors may not be a disadvantaged victim-group as such, the German state is in control of who is tried for past offenses against them.
The previous research and background to the 2015 trial have illustrated the German judiciary’s failure to prosecute Nazi-crimes, among other reasons caused by the unwillingness of German post-war society to try its own members, supported by the high numbers of Nazi-officials in the court and the prioritization of other political goals. Thus, while the understanding of Auschwitz as a crime was clear, to function as “a cog in the wheel” was not understood as a criminal violation, and led to the negligent application of the law to low-profile perpetrators, which in turn confirmed the prior assumptions.

What the discourse analysis in this thesis illustrates is that a change in collective memory has happened. As has been shown throughout the analysis, a shift has occurred in that any contribution to the Auschwitz-machinery is now understood as criminal; this is both seen in the application of the law and emphasis put on the change within its application specifically rather than the law itself, as well as in the execution of the trial itself and its preceding investigations. The discourse reproduced in the media – delivering the news of the trial to the public, as well as a justification for it – further reflects this understanding. While the condemnation of the Holocaust is, as the widespread institutionalization of its memory suggests, not new, a shift has occurred in that low-level involvement is no longer remembered simply as moral misconduct but as something for which individual criminal responsibility exists. The time-delay of 70 years also entails the responsibility to try not only these crimes and rectify the false assumption pertaining to criminal liability, but to condemn the past failures of the judiciary and instill an understanding that these were not in accordance with the law – perhaps to the extent as to create an understanding of not trying Nazi-perpetrators of the likes of Gröning constitutes a violation in itself. The trial therefore acknowledges not only Gröning’s personal criminal involvement, but corrects past assumptions as well. In this, the generational differences become evident; post-war generations are in charge of investigations and trials today, and actively push for a change in Holocaust-memory and memory of the post-war period. On the platform thereby created, the survivors do this as well, e.g. by articulating the need for another rhetoric.

9 Conclusion and Suggestions for Future Research

At the beginning of this thesis stood the assessment that the memory of violations and the application of the law to them are reciprocally connected. Collective memory theory was used in a critical discourse analysis to explore this relation in greater depth, and was thus applied to Oskar Gröning’s 2015 trial in Lüneburg and the surrounding media-discourse. By identifying
recurring manifestations of collective memory, using key-concepts relating to group-identity and changing perspectives on history and the law, in the material, the first question, pertaining to how Holocaust-focused collective memory is evident in dealings with modern-day Nazi-trials in Germany, was answered. An emphasis was put on the discourse on German history, the application of the law, and the significance of one for the other. It was illustrated that the trial made the condemnation of previous trials a distinct focal-point, that the law is perceived as unchanging whereas the societal context within which it is interpreted is flexible, and the relationship of both survivor-generations to current German society, as well as of current German society to its history was addressed. Thus, there is a clear shift in German collective memory, evident in the changed perception of the Holocaust as not merely morally deplorable but criminal, and the correct application of the law is understood as an obligation, neglecting which constitutes a separate wrongdoing. Of this previous wrongdoing, collective memory is rudimentarily established as well. Therefore, both research questions have been answered in this thesis. For the field of human rights, this indicates that as the memory of a violation changes over time, and the application of the law changes in accordance with it, there is a wider time-frame for trying grave crimes. While impunity may be upheld due to an unstable political situation or the misunderstanding of a crime as a moral wrong, to counteract it at even a significantly later point is possible. As moral abhorrence is evidently not perceived as sufficient, the findings further underline that the application is necessary to bring in line the moral and legal understanding of a violation.

Further research ought to be done in relation to collective memory and belated trials of Nazi-perpetrators. As has been approached in the background information, Rebecca Wittmann (2015) takes a critical look upon the Demjanjuk-trial in that she asserts that by trying a non-German, non-voluntary SS-guard, German courts used Demjanjuk as an “other” Nazi, thus allowing them to engage critically with German history while simultaneously distancing themselves from German guilt. In the 2015 trial, a recurring emphasis was put on the cooperation of the Hungarian police and military in the deportation of the Jewish population, as well as on Hungary’s failure to engage with its past and current antisemitism appropriately (ex.Ebert/Daimagüler in:Huth 2015:199/220). In this regard, possible research could concern to what extent German trials do or should condemn non-German complicity in the Holocaust, and how the understanding of German responsibility is handled in relation to the aim to prevent discrimination and persecution not only in Germany but internationally.
10 Bibliography

10.1 Dictionary Entries


10.2 Books


Flick, Uwe (2009), An Introduction to Qualitative Research Methods, 4th edition (London: SAGE Publications).


**10.3 Book Chapters**


10.4 Journal Articles


**10.5 Court Material, Law, Resolutions etc.**

German Criminal Code (StGB), in English (Michael Bohlander trans.) available at: [http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html](http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html).

Landesgericht Lüneburg 07/15/2015, 27 ks 1191 js 98402/13 (9/14).


10.6 News Articles

10.6.1 No Author Indicated

“Auschwitz-Komitee kritisiert Vergebungsgeste von Eva Kor,” *Zeit Online*, April 27, 2015. [“Auschwitz-Committee criticizes Eva Kor’s forgiveness-gesture”]

“Auschwitz-Prozess: Revision verzögert sich,” *Norddeutscher Rundfunk*, January 20, 2016. [“Auschwitz-trial: Revision delayed.”]

“‘Buchhalter von Auschwitz’ vor Gericht,” *Die Welt*, April 6, 2015. [“‘Bookkeeper of Auschwitz’ on trial”]

“Früherer SS-Mann Gröning bittet um Vergebung,” *Die Welt*, April 21, 2015. [“Former SS-man asks for forgiveness”]

“‘Ich habe mir die Seele nicht nehmen lassen,” *Die Welt*, April 28, 2015. [“I have not let go of my soul”]


“SS-Funkerin wegen Beihilfe zum Massenmord angeklagt,” *Zeit Online*, September 21, 2015. [“SS-radiowoman charged with aiding and abetting”]

“SS-Mann will nur drei Mal an der Rampe gewesen sein,” *Die Welt*, April 22, 2015. [SS-man claims to only have been at the ramp thrice”]

“Unsere Gäste,” *Günther Jauch, Das Erste*, April 26, 2015. [“Our guests”]


“Überlebende streiten über Versöhnungsgeste,” *Spiegel Online*, April 27, 2015. [“Survivors fight over forgiveness-gesture”]

With Author

---

67 All translations added in brackets are the author’s. While they were done in good faith, they generally take on the literal rather than implied meaning of certain headlines, and are therefore unlikely to convey their meaning to the full extent. They are meant to help along the orientation of the reader first and foremost.

Dargent, Ralph (2015), “‘Ich weigere mich, Opfer zu sein’,” *Die Welt*, April 27, 2015. [“I refuse to be a victim”]


George, Carolin (2015), “‘Ich merke, wie nah noch alles beieinander liegt’,” *Die Welt*, April 23, 2015. [“I notice how close everything still is”]

George, Carolin (2015), “Der Richter, der die Reise in finstere Zeiten leitet,” *Die Welt*, May 1, 2015. [“The judge leading the voyage into dark times”]


Hinrichs, Per (2015), “Er mag alt sein – das sind die Überlebenden auch,” *Die Welt*, April 20, 2015. [“He may be old – so are the survivors”]


Von Salzen, Claudia (2015), “Späte Gereichtigkeit,“ Zeit Online, April 22, 2015. [“Late justice”]