But the citizens must uphold the law
and there can be no deviation, for pure water
can never be drawn once the well has been fouled.

—Aeschylus, *The Oresteia*

Like Szondi’s inaugural address, *Die Ermittlung* (The Investigation), Peter Weiss’s theatrical representation of the Frankfurt or Auschwitz trial, solicits and draws its momentum from the simultaneity of collective reception. When the play was first staged on October 19, 1965, its premiere took place in sixteen theaters simultaneously, including four theaters in West Germany (West Berlin, Essen, Cologne, and Munich), eleven theaters in East Germany (Altenburg, East Berlin, Cottbus, Dresden, Erfurt, Gera, Halle, Leipzig, Neustrelitz, Potsdam, and Rostock), and one, under the direction of Peter Brook, in London.1 Weiss’s script was able to absorb a wide range of directorial approaches. While seven directors produced it in the form of a recitation, the nine others ventured often highly stylized theatrical

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performances that ranged from minimalist and undramatic presentations to more pathos-laden interpretations of the script.

Given this high-profile set of simultaneous premieres, *The Investigation* is a hybrid that has as much in common structurally with public speech as it does with theatrical performance: having convinced his publisher, Peter Suhrkamp, to release the work’s copyright to the public domain for one day, Weiss staged a carefully orchestrated premiere that effectively disavowed the divide between socio-political reality and the domain of culture and art that by the 1960s had long been seen as characteristic of European capitalist society at least since the mid-nineteenth century. *The Investigation* thereby subverts a set of conventional boundaries separating the real trial from its representation on stage: the boundary between history and drama, between the public sphere of social activity and the more narrowly defined literary sphere of art, and finally between political resistance and aesthetic practice. By delegitimizing the institutional base of the theater, Weiss’s documentary play not only departs from the traditional understanding of what the status and properties of the medium of theater and perhaps of literature in general ought to be, but, more crucially, subverts the institution of the theater from within. Hence the present chapter expands this book’s scope of inquiry: extending the notion of politics to a cultural site of social interaction, it examines the perceived and actual limits of what has so far been delineated as an emerging counterpublic of discursive conflict and deliberation.

The premieres of *The Investigation* saw a range of experiments designed to bear out the idea of documentary theater, and many arrived at ironic reversals of theatrical conventions. One production opened with the announcement “Court in Session: Please rise,” while another featured displays indicating that applause was deemed inappropriate. *The Investigation* was a spectacle that integrated art and political resistance, theater and public speech. To be sure, Weiss here released some of the tension that is reflected in the antithetical title of his major novel, *Ästhetik*

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2. As a form of public speech, *The Investigation*, however, eschews any traces of classical judicial or forensic rhetoric. It is significant, for example, that Weiss dispenses with the *plaidoyers* that concluded the hearing of the evidence, some of which were published in book form shortly after the trial. See Hans Laternser, *Die andere Seite im Ausschwitz-Prozess 1963/65: Reden eines Verteidigers* (Stuttgart: Seewald, 1966).

3. See Peter Bürger, *Theory of the Avant-Garde*, trans. Michael Shaw and foreword by Jochen Schulte-Sasse (Minneapolis: University of Minnesota Press, 1984). Contrary to Weiss’s play *Marat/Sade* (1963), which exemplifies what Peter Bürger has defined as the art of the neo-avant-garde that emerged after 1945, *The Investigation* is more closely associated with the historical avant-garde, whose tenets Weiss here revisits and renews by negating the category of individual reception and by striving toward the abolition of autonomous art (Bürger, 53–54).

4. See also Daniel K. Jernigan, who claims that “the stage setting in *The Investigation* creates the postmodern impression of an immediate event by suspending historical referents and minimizing the difference between stage and house.” Daniel K. Jernigan, *Drama and the Postmodern: Assessing the Limits of Metatheatre* (Amherst, MA: Cambria Press, 2008), 214.

des Widerstands (The Aesthetics of Resistance, 1975–81)—the genitive construction proposing a dialectical tension that at once casts aesthetic practice as a form of resistance and deems political resistance to be potentially aesthetic. For the duration of the gripping media event of the staging of The Investigation, these two poles coincided in an unprecedented intervention—a “collective manifestation” in the words of Peter Brook—that took place in the theater but had a much larger and more general audience in mind: Germany’s public sphere broadly conceived. And so although Weiss’s theater audience epitomizes the Habermasian bourgeois public sphere, which is secluded from the political or “representative” sphere, it is potentially here, “in the institutions of art criticism, including literature, theater and music criticism, [that] lay opinion of the mature public or the public considering themselves as such organizes itself.” Depending on a public sphere in which individuals would debate contemporary issues and thus regulate civil society through constructive criticism, The Investigation bears directly on the political reality—it is indeed constructed to speak out against a major branch of the political sphere—namely, West Germany’s jurisdiction in legal matters. By rejecting the illusionistic stage of classical theater, Weiss appeals to the theater audience to participate in the “investigation” and the process of judgment, for the legal issues negotiated during the “Criminal Case against Mulka et al.” (as the Auschwitz trial was officially termed) should not be confined to the court. Instead, Weiss insists, they call for Germany’s lay audience, considering that it shared some culpability or Mitschuld (shared guilt) with the Nazi regime.

Just as the defendants are indicted for legal crimes but also accused of moral transgressions, the general public is thereby implicated in their indictment. The abbreviation “et al.” of the “Criminal Case against Mulka et al.” could be extended to the entire German citizenry. Still, according to Weiss, Germans had not been suitably scandalized by the dreadful information that had been revealed during the Frankfurt proceedings. As a result, The Investigation emerges as an ambitiously multilayered project that embraces culture, justice, and history. By involving the theatergoing public in Germany’s legislation and by working toward a public

sphere that would be more actively involved in and consequently also more influential with regard to political matters, Weiss addresses the question of guilt, foregrounds a contemporary legal case, and simultaneously exposes a political crisis. For, as the play reveals, the Auschwitz trial was an ethical, political, and juridical failure. An endeavor conceived to help shape political reality, The Investigation actualizes, indeed it might be appropriate to say it corrects, the real-life trial by mirroring it and by putting on a second-order trial conceived to mobilize an ersatz Öffentlichkeit—the kind of counter-public sphere Buber, Celan, Bachmann, Arendt, Johnson, and Szondi had already begun to envision.

The present chapter reads the play as both a highly politicized response to the problems that characterized the process of West Germany’s democratization and a historically significant and in key instances technically precise recapitulation of the judicial proceedings of the Frankfurt trial. As a comparative reevaluation of Weiss’s play and the transcripts of the trial (derived from the original audio recordings) suggests, testimonial evidence played a substantial role in the Auschwitz trial. Contrary to the Nuremberg prosecution, which had virtually shunned the testimony of survivors and based its case exclusively on documentary evidence and expert witnesses, the hearings in Frankfurt made extensive use of cross-examinations and testimonial evidence. The prosecution thus presented the testimony of over four hundred eyewitnesses, most whom were either former SS men who had served in Auschwitz or survivors of the concentration camps. Needless to say, the extensive and probing cross-examinations produced enormous tension in the courtroom. As Weiss noted after attending several sessions of the trial, “The confrontations of witnesses and the accused, as well as the addresses to the court by the prosecution and the replies by the counsel for the defense, were overcharged with emotion” (IN, 5). For witnesses like Dr. Konrad Morgen, a former SS judge, it took considerable strength of character to testify against former comrades and superiors. As for the survivor-witnesses who were confronted with their tormentors and torturers, the hearings may have seemed like a continuation or repetition of their traumatic experiences. Overwhelmed by their memories, these witnesses often found it very difficult to articulate experiences they had never shared with

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10. In the 1990s, Rolf Bickel and Dietrich Wagner discovered audio recordings of the Auschwitz trial. Although the West German Strafprozessordnung (federal criminal procedure) prohibits the transcription of criminal procedures, the testimonies were audiotaped with the purpose of supporting the court’s memory. Owing to the intervention of survivors, the tapes were not destroyed after the trial and were released once the protective time limit of thirty years had expired. A compilation of these audiotapes has been published as Rolf Bickel and Dietrich Wagner, Der Auschwitz-Prozess—Tonbandmitschnitte, Protokolle und Dokumente, ed. Fritz Bauer Institut, Frankfurt am Main und dem Staatlichen Museum Auschwitz-Birkenau (Berlin: Directmedia, 2004); and Bickel and Wagner, Verdict on Auschwitz: The Frankfurt Trial 1963–1965 (Frankfurt a. M.: Hessischer Rundfunk, 2005), DVD. Contemporary scholarship on the subject of trials and witnessing, as well as history and memory, has generated increased scholarly interest in these tapes. See, for instance, Friedrich Hoffmann, Die Verfolgung der nationalsozialistischen Gewaltverbrechen in Hessen (Baden-Baden: Nomos, 2001); and Kerstin Freudiger, Die juristische Aufarbeitung von NS-Verbrechen (Tübingen: Mohr Siebeck, 2002).
anyone, not least because their statements were given in a German court and before a German public. This difficulty was compounded by the fact that the defendants denied their culpability until the very end, showed no sign of repentance, and never articulated a genuine word of compassion. As presiding judge Hans Hofmeyer asserted in his closing statement, “For the most part, the defendants kept silent or lied about and denied everything.”

Weiss tackles a variety of political and ideological issues in *The Investigation*, but it is his highly perceptive approach to the status and function of testimony in particular that makes the play an accurate interpretation of the Auschwitz trial. As with a good portion of Szondi’s address, the text of *The Investigation* was not, strictly speaking, written by Weiss. Rather, he assembled a large number of citations taken verbatim from the Frankfurt proceedings, some of which he had transcribed himself in 1964 (Weiss was invested in seeing the procedures in person, rather than reading about them in the newspaper or seeing them represented in photographs).

In a move diametrically opposed to that of Szondi, who quoted extensively from literary prose in his inaugural address at the Free University, Weiss takes testimony from a public trial to be recited in the space of the theater. If, in Szondi’s text, literary citations supplant commentary and scholarly exegesis, historical documentation in *The Investigation* takes the place of literature and imagination. Weiss, as it were, developed his own brand of Dokumentartheater (documentary theater), a genre in which historical material is adapted for dramatic and usually political ends. According to Weiss’s definition, the documentary theater “abstains from any kind of invention, it adopts authentic material and presents it on the stage without any modification of its content.” In Weiss’s case, this means that the play is not merely based on, but actually consists of, unaltered dialogues and authentic snippets from the trial. And yet Weiss never denied having selected, rearranged, and manipulated the documentary materials. The result of an elaborate artistic process that involved selection and collage, *The Investigation* is of course an aesthetically enhanced, Dantesque “Oratorio in 11 Cantos” (hence the play’s German subtitle) that self-reflexively exposes its own constructedness and thereby openly reveals itself as a work of fiction.

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But Weiss nevertheless regarded the documentary form as a device for showing a more objective truth. The literalism of the recited testimonies was to counter the way in which historical reality was distorted during the trial, while the accuracy of the citations was directed against the defendants’ lies and rhetorical ambiguity. This does not, however, mean that the play is predicated on the positivist generalizations of historiography, as some critics have argued. As with Szondi’s montage of Benjamin citations, Weiss’s Auschwitz inventory, albeit premised on the power of testimony, openly acknowledges its legal and hermeneutic fallacies (they are indeed so significant and substantial that they lead to the failure of the trial). What makes this montage effective then is not the expressivity of the compiled testimonies, but the fact that the characters of the play are devoid of personal idiosyncrasies and that show no sign of emotional investment. As Weiss specified in the annotations to the play, “The variety of experiences can at most, be indicated by a change of voice or bearing” (IN, 5). The language that is recited on stage is monotonous and void of punctuation, accents, or dialects. And while it retains a maximum of descriptive and graphic precision, it is neither rhetorically colorful nor psychologically evocative. As in Szondi’s inaugural address, the citations in Weiss’s play are not performed but quite simply recited. Thus the present chapter casts light on a significant formal parallel between Weiss’s theatrical representation of a trial and Szondi’s inaugural address: both take recourse to an array of citations that exemplify the problem inherent in survivor testimonies—namely, the gap between what was seen and what can then be said about such facts.

The present comparative analysis of Szondi’s and Weiss’s opposing approaches to evidentiary issues also examines their shared thematic concern with the repressed Nazi past. Like Szondi, whose Berlin speech anticipates the antirestorative thrust of the imminent student revolts, Weiss refuses to accept the denial and repression of the memory of Auschwitz in postwar Germany. But while both writers are early

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that his play was but a mediated representation of the real event: “Instead of showing reality in its immediacy, the documentary theater presents an image of a piece of reality torn out of its living context.” Weiss, “Notes on Contemporary Theater,” 296. See also Christian Rakow, who considers the tension between its factualness and self-referentiality to be the essence of Weiss’s documentary theater. Christian Rakow, “Fragmente des Realen: Zur Transformation des Dokuments in Peter Weiss’ ‘Die Ermittlung,’” Weimarer Beiträge 50, no. 2 (2004): 274–76.

16. Led by Lawrence Langer, the first generation of critics criticized the “factualism” of Weiss’s documentary play, as well as its “endless cataloguing” (Rosenfeld) of “mere factual truth,” stated “in the language of history” (Langer). Weiss was also accused of relying “uncritically on the Nazis’ own bureaucratic rhetoric” and denying the incommensurability of the victims’ real, lived experience. To some critics, this “rhetoric of fact” (James E. Young) revealed Weiss’s “dispassionate” attitude toward their perspective. For a summary of these points, see Cohen, “The Political Aesthetics of Holocaust Literature,” 51. See also James E. Young, Writing and Rewriting the Holocaust: Narrative and Consequences of Interpretation (Bloomington: University of Indiana Press, 1988), 78.

17. In an earlier version of the play, a fragment titled “Frankfurter Auszüge,” Weiss instructs the actors to fully replicate the witnesses’ emotional reaction, as, for example, their bursting into tears. Weiss, “Frankfurter Auszüge,” 153.
advocates of political change who effectively write against the repression of the Nazi past, Weiss’s play is clearly more confrontational than Szondi’s address. The Swedish playwright reaches to new experimental registers for the utmost provocative effect. No playwright before him had explored the hidden repercussions of Auschwitz in contemporary German society. Although the 1960s saw an explosion of plays that were inspired by trials against Nazi criminals and sought to represent Nazism and the Nazi genocide naturalistically, none of these plays were set in present-day Germany and none actually collided with the limits and exclusions imposed on them by hegemonic views of justice and history. This is what guarantees the exceptional status of the 1965 productions of The Investigation among other contemporary plays: they demonstrate how theater as a discursive and social field can directly affect the public sphere by representing alternative actions poised at great distance from institutional authority.

Public Theater

Between December 1963 and August 1965, the Federal Republic witnessed the first and largest trial against Nazi criminals ever handled by German authorities. The “Criminal Case against Mulka et al.,” otherwise known as the “Auschwitz” or “Frankfurt trial,” targeted some of the key personnel of the Auschwitz concentration camp, including prison guards, SS commanders, medical staff, and members of the so-called Politische Abteilung (Political Section). Preceded by a five-year investigation during which over 1,400 Auschwitz survivors had been interrogated, the proceedings were an attempt to put the Nazi system as a whole on trial. Given

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20. The analysis in this chapter is largely informed by Hermann Langbein’s and Bernd Naumann’s historical documentation of the Auschwitz trial, as well as by recent research conducted by Imtrud
that it was covered in all the major newspapers (Bernd Naumann provided daily reports in the *Frankfurter Allgemeine Zeitung*), the trial also resulted in the long-overdue dissemination of extensive information about the Holocaust in the post-war period. Indeed, the Auschwitz trial was the only trial against Nazi criminals that had a significant impact on the public imagination in Germany. Whereas the Nuremberg (1945–49) and Eichmann (1961) trials had been received with a combination of indifference and antagonistic sentiment, the Auschwitz trial marked a historical watershed because it radically transformed German awareness and understanding of Nazi crimes.\(^{21}\)"}

Although a variety of larger and smaller trials in and outside of Germany had already paved the way for the proceedings in Frankfurt, the “Criminal Case against Mulka et al.” was a notable judicial event in that it coincided with the reinstatement of a German tribunal. During the Allied occupation, Nazi perpetrators had been tried by foreign authorities because the Allied Control Council Laws prohibited German courts from prosecuting crimes other than those “committed by persons of German citizenship or nationality against other persons of German citizenship or nationality, or stateless persons.”\(^{22}\) The Nuremberg trials, for instance, were conducted by an international tribunal and in accordance with the Allied jurisdiction. In the West Sector alone, 5,866 individuals had thus been put on trial by foreign administrations prior to 1955, when the sovereignty of the German judiciary (and with it the German penal code of 1871) was fully restored. After the foundation of the Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung nationalsozialistischer Verbrechen (the West German Central Office for Prosecuting Nazi Crimes) in 1958, the Federal Republic initiated a series of investigations against former war criminals who had not yet been indicted by the Allied forces. In this

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22. See Allied Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, Crimes against Peace and against Humanity, art. 2(a), December 20, 1945, 3, *Official Gazette Control Council for Germany* 50–55 (1946). It is only after 1958 that the prosecution of war crimes committed by German nationals was entrusted to German courts. See Adolf Schönke, *Strafgesetzbuch: Kommentar* (Munich: C. H. Beck, 1959), Vorbemerkung par. 3–7 II,1, “Nach dem Territorialprinzip.” Unless otherwise noted, all quotes refer to the 1959 version of the *Kommentar*. 
context, the Auschwitz trial takes on extraordinary significance insofar as it marks the institution of a sovereign West German judicial system. As historian Rebecca Wittmann notes, “The newly independent, democratic West German government [was] to demonstrate that it was capable on its own of coping with Nazi crimes.”

Around the time of—and almost certainly in reaction to—the Frankfurt trial, Weiss made a note in his diary of the imperative to compel the German public to acknowledge the Nazi genocide. Shortly thereafter, Weiss resolved to draw additional attention to the already highly visible and momentous Auschwitz trial by restaging it in the theater. In so doing, he set out to confront the theatergoing public with a representation of events that had interested but not significantly altered the public sphere, which Weiss understood to function in a fundamentally restorative or stabilizing way: “In a country where there have transpired such monstrous, gruesome events, there must exist a collective trauma. This has hardly been touched upon. If one were to truly bring it to light, it would lead to a national crisis, a collapse.”

Like the Auschwitz trial itself, the theater premiere of Weiss’s play received much attention from the media. It also drew a large number of spectators into the theaters—and provoked many to cancel their subscriptions in reaction to what would prove to be an upsetting experience. In fact, it is safe to say that no other play in the German postwar era caused as much controversy or was met with as much repugnance as The Investigation. In addition to having to cope with the unexpectedly gruesome subject matter, which was presented in literally unheard-of detail, the audience was confronted with a play that radically subverted the formal conventions of theater. In most productions, there was hardly any stage set, and the play completely shunned any “characters” with whom the audience might identify. Stripped of individuality and emotions in Weiss’s script, the actors abstained from performing naturally. Hence the productions seemed to most viewers both shocking and monotonous, offensive and dull. Ultimately, many spectators were unable to aesthetically assimilate this extremely difficult and demanding piece. In an effort to counteract their disapproving reaction, guests of the Freie Volksbühne

24. Anticipating a question asked by the generation of 1968—“Was habt ihr getrieben?” (What where you doing?)—Weiss once noted the following in his notebook: “In this question there still lies a huge task, which so far has at best been neutralized by the notion of Vergangenheitsbewältigung—.” Weiss, Notizbücher, 1:252; my translation. Weiss envisioned his documentary theater as “a critique of cover-ups . . . falsifications of reality . . . lies.” See Weiss, “Notes on Contemporary Theater,” 295.
26. See Klaus Wannemacher, “’Mystische Gedankengänge lagen ihm fern’: Erwin Piscators Uraufführung der Ermittlung an der Freien Volksbühne,” Peter Weiss Jahrbuch 13 (2004): 96–99. Christoph Weiß analyses the different reception of the play in East and West Germany, which he finds to be consistent with the distinct ways in which the respective countries instrumentalized the Nazi past. Weiß, Auschwitz in der geteilten Welt, 228–334.
premiere were handed flyers kindly requesting that they stay until the end of the play.

It is true that the play’s German title, Die Ermittlung, underscores the cognitive, indeed hermeneutic, dimension of a performance that is based on a trial. More than the English “investigation,” the notion of Ermittlung places an emphasis on the scrutiny of facts and the active, rational attempt to uncover the truth of the matter at hand. And this also reflects the “inquisitorial” nature of the German court system, where the judge is an investigator rather than a referee who adjudicates disputes between opposing parties. In The Investigation, the only kind of judicial “speech” materializes in the form of unprompted speaking, specifically in the witnesses’ and defendants’ responses to the questions asked by the judge:

JUDGE: Did you see anything of the camp
2ND WITNESS: Nothing
I was just glad to get out of there
JUDGE: Did you see the chimneys
at the end of the platform
or the smoke and glare
2ND WITNESS: Yes
I saw smoke
JUDGE: And what did you think
2ND WITNESS: I thought
those must be the bakeries
I had heard
they baked bread in there day and night
After all it was a big camp (IN, 10)

By way of simulating the Auschwitz trial on a theater stage, the play confronts a lay audience with a set of legal predicaments that are specific to West Germany’s juridical system. For instance, The Investigation situates the judge at the center of the trial, which is in accordance with German penal procedural code. Presiding over the proceedings, a German judge heads the investigation, initiates testimony, and evaluates the evidence as a disinterested officer of the court. Given that German criminal law is based on an inquisitorial (rather than antagonistic) legal system, it is the court and not the prosecution that gathers evidence and decides which evidence is or is not relevant to a case. In the majority of German trials, it is also the judge and not (as in the Anglo-Saxon legal system) a jury who passes judgment on the accused. Accordingly, the judge embodies the law. As the only nonpartisan figure in the context of the trial, he serves as what Derrida calls “a witness of

the witness”—a witness, that is, of the eyewitnesses who testified during the court proceedings.  

Lending his ears to the witnesses and encouraging them to elaborate on their testimonies and clarify their statements, the judge in *The Investigation* holds the play together and occupies its center. But while this emphasis on the judge is consistent with the organization of a regular German court, it is significantly at odds with the exceptional structure of the Auschwitz trial, since on that occasion, the regional court had created a *Schwurgericht* (temporary jury court) consisting of three professional judges and six lay jurors to better cope with the size and importance of the charge. By contrast, Weiss collapses these three judges into a single character and eliminates the jurors altogether. Moreover, *The Investigation* never reaches a final verdict but ends brusquely in midsentence:

**ACCUSED #1:** Today

when our nation has worked its way up  
after a devastating war  
to a leading position in the world  
we ought to concern ourselves  
with other things  
than blame and reproaches  
that should be thought of  
as long since atoned for

[Loud approbation from the Accused] (*IN*, 270)

With this abrupt ending, the authority of the judge is annulled, and Weiss leaves open the question of how many defendants were convicted and of which crimes. Thus Weiss aims at a “realistic” depiction and yet conceals details that everyone was familiar with—the play was, after all, staged only two months after the Auschwitz trial had ended. Weiss alters, indeed eliminates, the trial’s conclusion and omits a verdict because formally it would have created an ill-founded sense of stability and consistency, and thematically it would have provided a falsely redemptive resolution. Weiss’s ending also suggests that it is the audience—an alternative, displaced jury of sorts—and not the judge who must pass judgment in the case. Indeed, when compared to the unfolding of the real trial, the trajectory of *The Investigation* generates a significant shift in agency away from the judge to the audience, a shift that echoes the transfer of agency from the speaker to the listeners in Szondi’s inaugural address. But Weiss also makes an emphatic point about the judgment per se

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by raising a number of critical questions: Are the sentences that were imposed in Frankfurt just, and what do they tell us about Germany’s penal code? Has the case against “Mulka et al.” really been concluded? And, most importantly, what is and what ought to be the stance of the audience and the East and West German publics with respect to the trial and its verdicts?

**Drama and Law**

In presenting the Auschwitz trial to a theater audience, Weiss calls upon a long-standing structural affinity between drama and legal proceedings. Not only are their forms and themes similarly structured around dialogue that is completed by a witnessing third party, such as a judge or jury, as well as the audience, dramas in the Western tradition have often taken trials as their subject matter, which is an important reminder that dramas and trials fundamentally sustain one another.\(^{31}\) In the Greek tragedy *The Eumenides* (458 BCE) by Aeschylus, Athena establishes the first known jury in ancient literature when she requests that a group of citizens sit alongside the gods in judgment of the Erinyes’ case against Orestes.\(^{32}\) By enacting the passage from archaic blood feuds and superstitious tribalism to the institutionalization of law and mercy, the tragedy establishes the formal structure of a democratic tribunal while simultaneously educating the citizenry about the meaning and implications of law.

From its inception, ancient tragedy sanctioned the legitimacy of the legal procedures of Greek democracy and served as a source of knowledge about those procedures for a theatergoing public. Taking its place in a tradition in which the practice of drama has acted as a model and testing ground for the ideal of a democratic judiciary, *The Investigation* likewise enacts the institution of West Germany’s independent legal system rather than reflecting on it. What is decisive for Weiss’s representation of the Auschwitz trial then is the novelty of a West German tribunal based on a judge. By taking recourse to both ancient and modern, Greek and German forms of trial and positing the audience as a jury while placing the judge at the center of its formal investigation, Weiss interrogates the democratic order in which justice is distributed in postwar Germany, while challenging the foundation and the very idea of legality in view of a Holocaust trial.

By omitting the judgments that ended the Frankfurt trial in August of 1965, Weiss explores the conditions of possibility of a political, if not revolutionary, form of documentary theater. Instead of staging an illusory drama for passive onlookers, Weiss’s play appeals to the theater audience to revisit and critically assess the

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verdicts by literally withholding them. Weiss thereby compels his audience to consider the possibility of a fairer, more adequate trial by presenting, in the tradition of the experiments associated with Bertolt Brecht’s epic theater, a world that is precisely not immutable but inherently veränderbar (alterable). 33 What is at stake in The Investigation then is Weiss’s refusal to exclude his viewers from his representation of a highly significant contemporary matter. 34 In breaking the imaginary “fourth wall” at the front of the theater stage by presenting a completely dedramatized, hyperliteral, and issue-oriented performance that is further emphasized by the bareness of the stage, Weiss clearly works in the tradition of Brecht. 35

There are other connections between Weiss’s concept of documentary theater and Brecht’s dramatic theory. For example, instead of provoking the audience to empathize and identify with its characters, The Investigation produces a twofold disidentification. As in Brecht’s epic theater, the actors in the play are to dissociate themselves from their roles and stay permanently out of character (“The actor speaks his part not as if he were improvising it himself but like a quotation”), while the audience is to stand back from the action on stage and adopt a new, more reflective attitude toward the theater. 36 Furthermore, in both epic theater and documentary theater, a didactic potential is achieved by way of “alienation effects,” which make the language recited on stage seem conspicuous, and encourage audience and actor alike to judge the social issues they invoke. 37

There is, however, a significant difference between the uses to which Brecht and Weiss put their respective techniques of estrangement. Brecht’s epic theater is marked by frequent and sudden interruptions that can occur in the form of captions, songs, political speeches, the Brechtian “gestic” language, or even a character’s direct address to the audience. 38 All of these elements serve to bring the action to a momentary halt in order to provoke Befremden (astonishment) in the spectator. As Brecht explains, “The epic theater’s spectator says: I’d never have thought it—That’s not the way—that’s extraordinary, hardly believable—it’s got to stop.” 39 Although Weiss also actively works against the illusory character of theater, he

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34. The exclusion of the spectator from the events on stage is a crucial characteristic of what Szondi dubbed “absolute drama.” See Szondi, Theory of the Modern Drama, 7–11.
35. As Brecht notes, “It is of course necessary to drop the assumption that there is a fourth wall cutting the audience off from the stage and the consequent illusion that the stage action is taking place in reality and without an audience.” Bertolt Brecht, “Short Description of a New Technique on Acting,” in Willett, Brecht On Theatre, 136–47, here 136.
37. Ibid., 136.
38. As Brecht notes, “It is possible for the actor in principle to address the audience direct.” Brecht, “Short Description of a New Technique on Acting,” 136.
employs estrangement effects in a different manner: in *The Investigation*, estrangement is not based on the principle of interruption or momentary breaks in continuity. Rather, the thought-provoking nature of Weiss’s play is achieved without any apparent break in the play’s cohesive texture or narrative consistency. While *The Investigation* is marked by hair-raising strangeness and a self-conscious—as well as ironic—relationship to the laws and principles of theater (after all, this is a play with neither a proper ending nor a beginning nor a development), here it is not estrangement effects that punctuate the play but rather the “strange” documentary elements themselves that dominate the performance as a whole through Weiss’s antiperformative, unrhetorical language and dedramatized mise-en-scène.

In this way, Weiss relocates the site of disruption from the stage to an extra-theatrical space—namely, the two Germanys’ public spheres. By allowing two different registers—reality and fiction—to coexist, the theater ceases to function as an institution where politics are taught and reflected on, a Brechtian politische Anstalt (political institution). Instead, it gives shape to an *event* during which everyone (voluntarily or not) partakes in politics. By arranging a performance that is virtually coterminal both temporally and spatially with a real-life political event, Weiss all but eliminates the divide between illusion and reality, art and politics. Benjamin’s statement on the leveling of spectator and spectacle in Brechtian theater has now acquired new significance: “The stage is still elevated. But it no longer rises from an immeasurable depth: it has become a public platform.” As a result of this “direct” intervention on a “public” stage, the theater then begins to function as the very site of the political, generating the audience’s recognition and active recollection. While theater evokes “astonishment” in the spectator, this astonishment is not an end in itself. It serves to transform the spectator’s interest into an “expert one.” After all, any “surprise” expressed by spectators upon hearing the truth about the concentration camps would belie that they had long been—or should have been—familiar with the historical reality. Instead of exonerating them of their repressed guilt (and thereby aligning them with the defendants, who keep denying that they have witnessed or consented to executions), *The Investigation* forces the audience to acknowledge—finally—that the barbaric events that were fully divulged in the

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Frankfurt courtroom had indeed transpired in the recent past and on German territory—and this would expand their horizon of experience in relation to the experiences their victims suffered. In that way, Weiss’s play is prefigured by Benjamin’s famous reflection on the normality and pervasive acceptance of the state of exception. As Benjamin wrote in his Theses on the Philosophy of History, “The current amazement that the things we are experiencing are ‘still’ possible in the twentieth century is not philosophical. This amazement is not the beginning of knowledge—unless it is the knowledge that the view of history which gives rise to it is untenable.”

Contrary to Brecht’s allegorical theater then, which takes up a current affair by transposing it onto historical events (as in the role of the Thirty Years’ War in Mother Courage or the Italian Renaissance in Life of Galileo), Weiss’s play is openly and directly about a contemporary issue, even if the words “Auschwitz,” “Germany,” and “Jew” are not mentioned at any point in the play. And while Brecht often displaced his plays to remote settings (for example, Man Equals Man and The Good Person of Szechwan are set in colonial India and China, respectively), The Investigation insists on the geographic immediacy of the action displayed. In Brecht as in Weiss, the audience is familiar with the events represented on stage; however, Weiss’s spectators are not asked to decipher the meaning of a political parable but to confront political reality in its unadorned, most literal condition. As an essential dimension of both Brecht’s epic theater and Weiss’s documentary theater, their involvement (through “discussion and responsible decisions”) is the condition sine qua non for “the mass of spectators [to] become . . . a coherent whole.”

The simultaneous premiere of The Investigation in different locations plausibly suggests the invasion of the public sphere by contemporary politics and the critical involvement of the German nation in a contemporary crisis that is as profound as it is acute. By compelling the theater audience to attest to the event of the performance, the play is a political intervention that seeks to reconstitute an omitted and repressed reality through the creation of alternative sites of discursive practice. “If I want anything from an audience,” Weiss once explained, “it’s that they listen very carefully and be completely awake, not hypnotized, absolutely alive, answering all the questions in the play.” But answering the questions raised by The Investigation is not a private matter. Rather the issues must be resolved collectively, which is why Weiss appeals to the audience either to publicly sanction or to veto the institution.


45. Brecht writes: “Perhaps the incidents portrayed by the epic actor need to be familiar ones, in which case historical incidents would be the most immediately suitable.” Bertolt Brecht, “The Question of Criteria for Judging Actors [Notes to Mann ist Mann],” in Willett, Brecht On Theatre, 51–56, here 56.


of a legal system as it is being tested for the first time. What is at stake in this trial is not just the respective judgments but the very legality of the legal system that has issued them. By effectively putting West German democracy on trial, *The Investigation* itself becomes a trial. In other words, the play represents—is—itself. That said, it is also a drama par excellence: the drama that marries the institution of law with the invention of a new form of (documentary) drama.

In Athens, the Theater of Dionysos, commonly known as the birthplace of Greek tragedy, was adjacent to the court of justice, the “Areopagos,” which had been host to the Erinyes’ historic acceptance of the law. The Auschwitz trial likewise took place inside an actual theater, as the court was moved from the Römer (the Frankfurt city hall), to the much larger Haus Gallus (a civic auditorium), so that overflow crowds could be accommodated. Even if it was, strictly speaking, not planned as such, this alternative locality may have sensitized Weiss to the “theatrical” implications of a trial when he was himself attending sessions of the Frankfurt proceedings as an “audience-member” and “witness.” Another layer of “drama” was added by the physical position of the judges who were seated on the stage of this modified theater, where they were dramatically framed by velvet drapes. Through a twist of fate, this new location of the Frankfurt court came to function as a symbolic reminder of the fundamental affinity between drama and law.

**Matters of Definition(s)**

Much of the scholarly debate on *The Investigation* has focused on the question of whether Weiss’s representation of the trial does justice to the experience of the victims and survivors. Linked to the broader question of whether it is at all possible to bear witness to and aesthetically represent the experience of the Holocaust, this debate fails to do justice not only to the play’s most urgent concern but also to its most innovative aspect. At the center of *The Investigation* is the investigation itself, and not the crimes that were under investigation or the historical event that gave rise to them.  

To reiterate, *The Investigation* does not take Auschwitz or the unrepresentability of Auschwitz as its subject matter, but rather it engages the status and legitimacy of modern democracy with respect to this judicial and ethical burden. Working within a Marxist framework, the play combines a revolutionary impetus like that of Kluge and Negt with a profound commitment to get to the bottom of the disturbing legacy of the “final solution.” As far as the obvious mediatedness of Weiss’s documentary theater and his much-criticized attempt to “aestheticize” the

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Holocaust is concerned, it must not be forgotten that the Frankfurt trial was likewise a highly mediated event—it was indeed a Schaugericht (show trial) in the eyes of some critics.\textsuperscript{49} It simply does not make sense to speak of authentic, unmediated testimony with regard to the Frankfurt proceedings, since the statements were the result of tedious cross-examinations and were recorded only once the judge had received permission from each witness. Moreover, the testimonies were hemmed in by the public, indeed theatrical, character of the trial on the one hand, and the rigorous legal structure of the proceedings on the other.

Hence by making his play look like “reality,” Weiss reveals the trial as a fiction that is made up of theatrical signs. The use of testimonies from the actual trial in the play does not in fact increase the realism of the performance but rather makes the reality of the theater bear witness to the external world, which seems completely out of touch with the reality of the witnesses. In other words, there is significant tension between the formal facticity of the testimonies (i.e., the fact that they are taken from reality)—what Christopher R. Browning calls the “authenticity of the survivor accounts”—and the way in which their status as truth is constantly subverted.\textsuperscript{50} For even if the referential status of the witnesses’ statements is beyond doubt, the truth value of their testimonies is not irrefutable. This is because the numerous witnesses who had been examined in the course of the Frankfurt trial sink into anonymity as soon as they are given a voice on the theater stage. Represented by only nine actors in the play, they function as the mouthpieces for many others. To quote from Weiss’s stage directions, “Inasmuch as the witnesses in the play lose their names, they become mere speaking tubes. The nine witnesses sum up what hundreds expressed” (IN, 5). This reduction in the number of witnesses is, however, consistent with the relatively small percentage of witnesses who actually testified during the Frankfurt trial. Just as nine actors represent over four hundred witnesses in the play, the latter had represented the approximately fifteen hundred potential witnesses who had come forward during the extended pretrial phase. The Frankfurt court selected only a fraction of applicants for a number of reasons, including the reluctance of many survivors to come forward for fear of SS organizations that were undoubtedly still active. Other witnesses felt they were incapable of facing a court because of the lasting effects of their traumatic experience. Finally, it is important to remember that the search for survivors had to fail on at least one level: Who could testify for those witnesses who did not live to see the Auschwitz trial? How was it possible to account for the millions of victims who could no longer bear witness?\textsuperscript{51}

\textsuperscript{49} On the notion of a show trial, see Arendt, \textit{Eichmann in Jerusalem}, 4.

\textsuperscript{50} Christopher R. Browning, \textit{Collected Memories: Holocaust History and Postwar Testimony} (Madison: University of Wisconsin Press, 2003), 38.

\textsuperscript{51} On the inherently reductive nature of the play, see Weiss, \textit{Notizbücher}, 1:271.
Given that not all potential witnesses could testify in court and that not all witnesses who testified could be represented on the stage, Robert Cohen aptly calls the anonymity of the witnesses in the play the “equivalent, in the literary sphere,” of the dehumanizing effect of the concentration camps, where prisoners were tattooed with a number and deprived of distinguishing features such as their clothes, hair, and proper names. In a broader sense, the nature of Weiss’s literary adaptation suggests that a sense of realism persists precisely in its seeming “incongruousness.” Being a prisoner in Auschwitz meant to be bereft of one’s individuality. Hence it makes sense that in the play, the testimonies are void of personal agency and lacking in emotional and psychological substance. Submitted in the form of anonymous scraps of language, they are severed from the subjects who uttered them and who are in turn deprived of their status as reliable witnesses. It is precisely their unreliability then that presents another telling structural similarity between the actual trial and Weiss’s documentary play. By desubjectivizing the witnesses in the play, Weiss points to the particular legal implications of testimony during the Auschwitz trial. The prosecution in Frankfurt often cast testimonies into doubt, arguing that the witnesses had fading memories and often lacked insight into the larger events that were unfolding in the concentration camps. And it is true that by holding them prisoner in barracks and restricted areas and by incarcerating them without timepieces or calendars, the SS had indeed made it difficult, if not impossible, for them to identify the locations and dates of individual crimes:

5TH WITNESS: When I look at their faces
   I find it hard to tell
   whether I recognize them or not
   But that man there
   looks familiar to me (IN, 14)

Another significant intervention by Weiss pertains to the impeccable German that is spoken by the witnesses in the play. During the Auschwitz trial, the majority of testimonies had to be translated into German from no less than nineteen different languages, and although the court provided simultaneous interpretation, it often proved challenging to offer adequate translations of each individual testimony. By eliminating the multilingual dimension of the trial, Weiss seems to suggest that the philosophical and ethical problem of witnessing—more precisely, the challenge of giving testimony to the unspeakable—greatly transcends
the (linguistic, communicative) problems commonly associated with the process of (literary) translation. The question of unanswered guilt and purposeless suffering cannot be reduced to a simple problem of miscommunication. At stake were arbitrary oppression and willful genocide, not linguistic fallacies and verbal misprision.

But there is another effect of reducing the trial’s multiple languages to that spoken by the (German) perpetrators. Weiss has the witnesses reiterate the so-called *Lagersprache* (camp-speak), a language of euphemisms that by virtue of its bureaucratic blandness and sanitized technicality conceals the object of suffering. As the following quote shows, the absurd innocuousness of terms such as “crew” and “final search” neutralizes the acts of savagery they designate. 54

7TH WITNESS: Each Special Commando was destroyed
after a few months
and replaced by a new crew (IN, 247)

... The Clearance Detail came in with hoses
and washed the corpses down
Then they were pulled
into the freight elevators
and taken up to the ovens (IN, 256)

... Before cremation
men of the Special Commando
conducted a final search (IN, 257)

By thus having the witnesses and the defendants employ the same language, and yet relentlessly contradict each other, the play exposes a fundamental contradiction of testimony that affected the outcome of the trial: while both parties adhered to their own subjective version of truth, their competing accounts of reality were linked by an oddly sympathetic language:

3RD WITNESS: We called [Boger]
the Black Death

ACCUSED #2: I’ve had a lot of nicknames besides that one
We all had nicknames
That doesn’t prove anything (IN, 172)

Does this mean that the possibility of communication and consensus persevered on at least a linguistic level? Or does it not rather expose the semantic gap

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between language and subjectivity, between personal experience and its divulgence and interpretation by an impassive court? Witness 5 unwittingly articulates this recurrent dilemma. Describing the atrocities she suffered in Auschwitz, she repeats seven times that such crimes were not deemed exceptionally cruel because they had become a function of everyday life: “It was normal . . . that was normal” (IN, 41–42). Such statements tend to cast significant doubt on the witnesses’ credibility because it confounds the difference between victims and perpetrators, between crime and “normality.” The problem of testimony is further underscored by citations that allude to the double bind mentioned in the previous chapter, a double bind according to which the survival of a witness is taken as proof that his testimony cannot be legitimate.55 Asked about the practice of torture in the camp, Witness 8 describes how he was tormented with the “Boger’s swing,” a notorious torturing machine used by the “political section.” In response, the defense attorney remarks that the witness himself is living proof that the torture could not have been too severe:

COUNSEL FOR
THE DEFENSE: Were you subjected to a session on that swing too
8TH WITNESS: Yes
COUNSEL FOR
THE DEFENSE: Then it was possible to survive it after all (IN, 82)

COUNSEL FOR
THE DEFENSE: It has been stated by the witness that no one could survive the swing
From all appearances this claim would seem to be exaggerated (IN, 88)

Another key modification undertaken by Weiss was to eliminate testimonies from the trial that were given by legal experts, historians, and eyewitnesses who were neither Nazi criminals nor Auschwitz survivors. Of even greater significance is that the prosecution in Weiss’s play presents no written, printed, or photographic evidence, even though the jury in Frankfurt had access to a significant amount of additional evidentiary material in various media, including film footage documenting the liberation of the concentration camp through the Red Army, death indexes

55. As Lyotard explicates this dilemma, “[For a Holocaust denier], the only acceptable proof that [a gas chamber] was used to kill is that one died from it. But if one is dead, one cannot testify that it is on account of the gas chamber.” Lyotard, The Differend, 3.
from the camp’s registry, transport permits for Zyklon-B that had been signed by Mulka, a collection of photographs documenting the construction of the crematorium, and drawings and photo albums documenting everything that transpired at Auschwitz.  

The main reason then why testimonies break down in the context of the play is that they are hopelessly overdetermined, while any other documentary evidence is copiously omitted. In its withholding of crucial evidence, the play accentuates a grave judicial problem encountered during the Frankfurt trial. Contrary to the mock trials performed by National Socialist “special courts,” the prosecution in Frankfurt had to establish the guilt of the defendants through a complicated legal procedure and due process in accordance with West German law. Hence conviction depended on lawful evidence, even though the latter proved difficult to recover. As Judge Hans Hofmeyer acknowledged in his closing statement, the prosecution had limited access to evidence other than testimony, yet it was forced to regard testimonial evidence as subordinate:

In the experience of criminology, witness testimony is not among the best means of proof, particularly if the testimony of witnesses concerns events that took place more than twenty years ago and [are] seen by them in a setting of unbelievable unhappiness and suffering. Even the ideal witness who wished to speak only the truth and tries hard to search his memory is sure to suffer lapses after twenty years. He runs the danger of projecting things he himself experienced onto others and things others described very vividly in that setting as his own experience. Thus he may err in fixing the time and place of his own experiences.

The elimination of nontestimonial evidence from the text and the staging of *The Investigation* emphasizes that the eyewitness testimonies, albeit insufficient as proof, were to perform the burden of the evidentiary work. For Weiss, it is a foregone conclusion that the witnesses would then not be able to give coherent testimony under this immense pressure. Ultimately, there is only testimony, which, independent of material evidence, accomplishes little.

As the machinery of the trial churns on, so the play suggests, the participants’ statements are crushed under a convoluted indictment resulting from years of systematic research and hours of nitpicking cross-examinations. According to Weiss’s retelling of the Auschwitz trial, the legal establishment buried the basic human experiences (an alternative form of historical evidence, so to speak) beneath the

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Avalanche of bureaucracy that arose from the dense administrative process, thereby repeating the act of objectification and dehumanization. In the end, a case that some had thought to be self-evident seemed in fact almost impossible to prosecute under German law. But if it was true that the seemingly gratuitous intricacies of the legal debates and the procedural codes invoked by them did overwhelm the frail personal testimony of the survivors, the bureaucracy of the West German judiciary had to be cut from the same cloth as the Nazi bureaucracy. This was an appealing claim for Weiss and some of his contemporaries on the left.

Cruelty

During a roundtable discussion with director Peter Palitzsch, state attorney Fritz Bauer, as well as a number of critics and intellectuals, a discussion that took place in Stuttgart shortly after the play premiered, Weiss articulated the following critique of the Auschwitz trial: “The judge and the other assessors are no longer able to manage the facts of this trial in a judicial manner; as a result they have to assign punishment in the same way that this is done for an ordinary safecracker, which stands in no relation to the true events.” Resulting in what fits Ernst Bloch’s notion of “scandalous acquittals or short sentences handed to Nazi murderers”—namely, seven convictions for murder, ten for aiding and abetting murder, and three acquittals—the trial seemed a failure to Weiss, a perfect mirror indeed of the vicissitudes and contradictions of history. And it is true that with its excessively lenient verdicts, the trial effectively signified a series of legal and judicial setbacks in contrast to the groundbreaking proceedings in Nuremberg and Israel. Clearly, the political climate of postwar Germany had ceased to be conducive to further Nazi trials. The Cold War had produced a significant shift in the political agendas of the day, forcing the Allies to curtail the denazification process, a decision that the West German government of Chancellor Adenauer was quick to adopt. As Prosecutor General of Hesse Fritz Bauer declared, the stakes of the Frankfurt proceedings were thus less legal than symbolic and political. And the East German government, whose cultural policies and responses to Nazi trials in the West were grounded in a Marxist analysis of Fascism, simply regarded the trial as further proof that Fascism was a necessary historical consequence of capitalist development.

And yet the complications of the Auschwitz trial were more than just the by-product of conflicting ideologies. More significant than the political agendas of the

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62. See on this Bickel and Wagner, Verdict on Auschwitz.
Cold War were a number of specific legal restrictions concerning the indictment of Nazi perpetrators in Germany, restrictions that Weiss’s play successfully brings to the fore. Indeed, Weiss has not been adequately credited for the political insightfulness and critical precision of his Auschwitz play. His intervention on the level of choosing and arranging the materials from the trial makes significant headway in the analysis of the precise legal restrictions that negatively affected the trial. For instance, it is significant that the play, rather than concluding with the announcement of the verdict or a particularly persuasive testimony, culminates in Mulka’s final attempt to establish his innocence through an argument that encapsulates the legal dilemmas the prosecution faced throughout the proceedings. First, Mulka refutes the possibility of defying the rules and routines of the concentration camp: “I was an officer / and I knew military law” (IN, 269). By thus stating that he had no choice but to follow orders, Mulka has recourse to the Befehlsnotstand (defense of superior orders), a legal principle according to which a person is not guilty of a crime if in committing it he merely “obeys orders.” How then is it possible for a tribunal to try a war criminal who is oblivious to his wrongdoings and who vehemently denies his culpability? How does one judge potentially legal actions that are at the same time immoral or unethical? How does one prosecute a crime that embodies not a violation of, but rather conformity to, the “law” of a totalitarian state? As Arendt observed in her account of the Eichmann trial, the “defense of superior orders” subverts the very notion of culpability because it casts mass murderers as dutiful agents of a regime that was at the time considered legitimate. Accordingly, Arendt writes, “[Eichmann’s] guilt came from his obedience, and obedience is praised as a virtue.”

Even more critical for the outcome of the case than the “defense of superior orders” was that contrary to the precedent-setting Nuremberg trials, which had instituted the jurisprudential concept of “crimes against humanity,” the Auschwitz trial was restricted to pursuing “ordinary” crimes committed by individuals who were said to have followed personal, rather than ideological, motives. For

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63. Although both the trial and the play were fraught with these questions, several witnesses successfully challenged the “defense of superior orders” by naming SS men who had refused to execute or torture prisoners without being punished as saboteurs. And this is precisely why the judge pithily refutes the “defense of superior order”: “each one of the men in charge / could take a stand / against conditions in the camp” (IN, 58).


65. Setting down the laws and procedures by which the Nuremberg trials were to be conducted, the “Charter of the International Military Tribunal” included a paragraph that outlawed the “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.” See par. 6.a (“Crimes against Humanity”), in “The Charter and Judgment of the Nürnberg Tribunal,” ed. United Nations Secretary-General—General Assembly (New York: International Law Commission, 1949).
although in 1954 a statute against Völkermord (genocide) had been introduced into the German penal code (StGB § 220 a), the latter was superseded by a broader Analogieverbot (ban on retroactivity) (StGB § 2), which prohibited retroactive conviction for actions that became illegal only after they had been committed.66 This then is the equivalent of the basic legal maxim nullum crimen, nulla poena sine praevia lege poenali (penal law cannot be enacted retroactively). Given that genocide had not been defined as a crime during the Third Reich, Nazi perpetrators could not be indicted for actions that had been legal—or rather, that had not yet been defined as illegal—when committed. Hence the Auschwitz trial did not provide for charges against organized state-sanctioned murder, and Nazi perpetrators were instead indicted on the basis of the existing murder statute instead of the newly established genocide statute. Pointing to the fact that the former had been in effect throughout the Nazi period, war criminals were thus tried for specific instances of “regular” murder. In the context of trials concerning the mass killings that took place during the Third Reich, these were, however, much harder to prove than industrial mass murder. To quote Arendt, “What the old penal code had utterly failed to take into account was nothing less than the everyday reality of Nazi Germany in general and of Auschwitz in particular.”67

The difficulty in applying the murder charge stemmed from its dependence on the cruelty clause (StGB § 211 “Mord”), which stipulates that the subjective motivations that have led to the crime are central to the murder indictment: “A murderer is, whoever kills a human being out of murderous lust, to satisfy his sexual desires, from greed or otherwise base motives, treacherously or cruelly or with means dangerous to the public or in order to make another crime possible or cover it up.”68 Thus, in order to convict a defendant of murder, the prosecution had to prove that his actions had been inspired by base motives such as greed or Mordlust (bloodthirstiness), which in the case of SS commanders would have resulted from unrestrained racial hatred or anti-Semitism. In addition to demonstrating a defendant’s cruelty, the prosecution had to lay unequivocal evidence of his murderous intention before the court. For paragraphs 16 and 46, on “Irrtum” (Mistake about Circumstances of the Act) and “Strafzumessung” (Principles for Determining Punishment), respectively, stipulate that the murder indictment depends on whether or not the defendant’s actions are based on intent and subjective mental reasoning. Paragraph 46 states, “Consideration shall be given in particular to . . .
Hence an action that results in someone’s death is defined as unlawful only if its agent gives sufficient indication of his awareness that it fulfills the definition of a crime. At the same time, he must be proven to have been in a position to judge and to consciously choose between lawful and unlawful conduct.

The defendants make use of such legal loopholes throughout The Investigation, but in the final portion of the play in particular these arguments effectively overpower the prosecution’s allegations. The irony of Mulka having the last word further highlights the defense’s eventual victory in the Auschwitz trial. Here then is how Mulka invokes the “cruelty clause” in his final statement:

ACCUSED #1: I can say now
that I was filled with revulsion (IN, 268)
. . . I almost broke down
The whole business made me so sick I
had to be hospitalized (IN, 269)

Mulka further maintains that his actions do not meet the criteria of intentionality with respect to the crime. Aware that according to German law, an action must be committed willfully in order to be judged a crime, Mulka stresses that he was ignorant of the true nature of the “final solution.” When the judge asks him, “You knew nothing / about the Extermination Program,” he responds, “Only toward the end of my time in the service” (IN, 268). Finally, Mulka invokes the guilt principle by denying that his actions were based on choice or sadistic behavior on his part. He claims that he was simply not aware that the mass murder committed in Auschwitz was unlawful, and that he assumed that it was linked to a secret war objective:

ACCUSED #1: We were convinced
that our orders
were all part of achieving some secret
military objective (IN, 269)

Wittmann has pointed to a paradox inherent in the fact that the prosecution “had to use and therefore validate Nazi orders and regulations to show that the defendants had acted above and beyond the orders of the SS.” Even more so, it was absurd that the prosecution of Nazi criminals relied on laws that leading Nazi jurists had introduced when they amended the 1871 penal code in the 1930s and 1940s. These changes included a substantial revision of the Tatbestandsrecht.

69. Schönke, Strafgesetzbuch, 90.
(definition of perpetration) in 1941, which essentially required an element of subjective intent and placed significant emphasis on the offender’s Gesinnung (fundamental moral disposition) to justify a murder indictment. As a result of this new version of the murder statute, crimes were judged according to the “moral” quality of the defendant’s motivations. Of course, in the context of the Nazi show trial cases, substituting täterbezogene (subjective) for tatbezogene (objective) determinants greatly facilitated the indictment of political opponents or unwanted citizens. The prosecution only had to argue that the defendant was by his very nature a Tätertyp (prototypical criminal). As the 1944 amendment ( = “Preliminary Remark to ‘The Doctrine of the Criminological Type,’” 1.II.2) states, “In some elements of an offense and other elements of the penal code the designated punishment is not based on a specific act, but on a specific idiosyncrasy of the offender, namely his ‘antisocial’ existence (Kohlrausch). . . . Such characters who are by their very nature felonious are referred to the criminological type.” What this means, however, is that the same law that was created during the Third Reich to legitimize the serious charges brought against often innocent individuals who were either considered Staatsfeinde (enemies of the state) or subject to racial persecution was now used to thwart the indictment of major Nazi offenders. Moreover, the focus on the defendant’s subjective motivations, which essentially depend on the attitude he displayed during and after the actions in question as well as his conduct during the trial, is intrinsically linked to the inherent problem of testimonial evidence. As Devon O. Pendas has pointed out, these motivational factors concern “internal states of affairs, [and] they can usually be demonstrated only on the basis of indirect evidence (e.g. laughing while killing someone or acting in excess of one’s orders), except for those rare cases where direct statements made by the perpetrators at the time of the crime are available.”

It seems dubious that witnesses who were subjected to intense psychological scrutiny would be taken seriously when making claims about the defendant’s internal, psychological, and, even more difficult to assess, moral dispositions. Again, they would face the seemingly impossible task of having to provide “hard facts” about the subjective state of an individual’s mind. How is it possible to determine, let alone “prove,” someone else’s feelings and personal experience, especially if this other person is so abysmally “other”? And how to prove what is merely subjective, especially when one’s own subjecthood was, and is again, disempowered? Weiss’s

71. Schönke, Strafgesetzbuch, 771. As Pendas writes, guilt thus assumed “a direct, causal link between free, subjective, individual decisions and behavioral outcomes in the world; motives, in this sense, are held to cause results.” Pendas, The Frankfurt Auschwitz Trial, 56.
72. See Schönke, Strafgesetzbuch, 8; my translation.
74. Pendas, The Frankfurt Auschwitz Trial, 58.
75. On the court’s attempt to infer the credibility of the witnesses from their personality and psychological disposition, see Langbein, Der Auschwitz-Prozeß, 16.
play is the first theatrical representation of the Auschwitz trial to engage this paradox. The Investigation submits that the survivors, obliged to use the language of those in power, were consigned to relinquish their own subjective perspective, while the defendants had legal recourse to the subjective to “prove” their innocence. According to Weiss, this biased but legally acceptable distribution of subjectivity and subjection took the place of justice in the Auschwitz trial.

Mulka’s final words are an allusion to the Verjährungsfrist (statute of limitation), which is yet another legal intricacy that had surfaced during the prosecution of former Nazis accused of having participated in mass extermination. Pursuant to paragraph 67 of the German penal code (StGB § 67 “Sequence of Execution”), individuals could not be charged with murders committed more than twenty years ago. With regard to the Auschwitz trial, this meant that after 1965, murder charges would have to be dismissed, an event that defendant Mulka confidently anticipates: “We ought to concern ourselves / with other things / than blame and reproaches / that should be thought of / as long since atoned for” (IN, 270). Although seven individuals were brought up on murder charges (Mulka was not among them), Weiss’s “incomplete” version of the trial suggests that the court failed to confront the machinery of genocide. As Mulka’s defense attorney recapitulates toward the end of the play, “In relation to this camp / not even the sum of 2 million dead / can be conclusively established” (IN, 267).

The play concludes with the defense’s claims that mass liquidation was not equivalent to cruel treatment, that cruel treatment was never intended, and that genocide never took place. In this way, The Investigation suggests that the gigantic legal mechanism set in motion to try Nazi criminals failed to bring justice to the victims and survivors. Too many laws contained in the 1871 penal code had been revised, suspended, or perverted by Nazi judges, and too many of these revisions had not been repealed after World War II. Given that the 1871 penal code had been operative—and abused—during the Third Reich, recycling and rehabilitating it was the wrong way to approach West Germany’s rebirth as a modern democracy, for the stakes of justice and historical responsibility would have been worth the effort of creating a novel, uncompromised, and improved judiciary system, one that would and could have been sanctioned by the German public. By embodying the institution of a legal system that would confront Nazi crimes, the Auschwitz trial is based on a tautology. In addition to having to try Nazi crimes according to Nazi rules, the indictment of Nazi perpetrators was assisted by former Nazi jurists—most notably Adolf Schönke, Nazi jurist and author of the primary commentary on the German penal code, titled Kommentar zum Reichsstrafgesetzbuch, of 1942, the postwar editions of which he supervised until 1952. Schönke and his National Socialist colleagues had created a legal setting that made it very difficult to call those who had tried to liquidate the entire Jewish race before a German court. And of course this, too, could be seen as a strategy by which the Nazi regime quite successfully planned to protect itself. For not only did the Nazis destroy evidence
and exterminate eyewitnesses of the camps; they also sanctioned the abusive regulations that would protect them in future Nazi trials where these amendments would be treated as legitimate laws.

Although Weiss’s play instigates a process by which the German legal system could potentially achieve a level of self-understanding, it is nonetheless extremely disapproving of the Auschwitz trial and utterly pessimistic about the future of West German democracy. Its critical potential lies in Weiss’s attempt to put the contemporary definitions of legality on trial before the public through the overtly ambiguous status of testimony. By further opting for the radical ellipsis of an open ending, Weiss appeals to the theater audience to question the legitimacy of the 1871 penal code, which, albeit amended by the Nazis, was held to be legal in postwar Germany and the Frankfurt tribunal. *The Investigation* is thus not only about the legality of one particular trial but more generally about the status and the very legality of West Germany’s entire legal system and by extension its moral system, which was itself on trial. The event-like nature of the play’s simultaneous performance in sixteen theaters allowed Weiss to usher the topic of the reestablishment of a defective judicial system onto the stage of public debate.

Even though the play ends without positively establishing the litigation against “Mulka et al.,” *The Investigation* nevertheless makes a coherent and authoritative claim that pertains to the Frankfurt proceedings as well. Indeed the distinction between a literary gesture and a political intervention is canceled out by the nature of the theater performance: for every single testimony that is uttered on stage is concurrently also imparted to the German public. In that sense, it does not matter that they are citations—not least because it was suggested that some of the testimonies given in court were themselves citations. What is significant is that these citations are absolutely referential—not in reference to another testimony, that is, but in reference to the historically contiguous context of their enunciation. Accordingly, *The Investigation* is marked by the use of testimonies that, albeit too frail to bring about justice, serve as concrete, powerful agents that are actively recited and publicly announced, sometimes by actors who were sitting among the spectators, and sometimes even by actors who were themselves concentration camp survivors, as was the case in some of the performances produced in the GDR.

Might an upset and indignant theater audience take action in response to this injustice that is, according to the conceit of the performance, unfolding in real time and right in front of them? Would such a counterpublic provide the political base to facilitate a reversal of the Nazis’ destruction of legality? And finally, could such a site act as a trigger for revolution? Weiss evidently takes the avant-garde position extremely seriously: the possibility of resistance persists in the space of rupture.

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76. In his closing statement, Judge Hofmeyer addresses the possibility that some witnesses may have unconsciously quoted the testimonials of other witnesses. Naumann, *Auschwitz*, 276.
Aphasia

Terminated without a criminal indictment, the trial staged in *The Investigation* fails because the witnesses are unable to prove the defendants’ subjective intentions but are nevertheless alone made responsible for providing the prima facie evidence of all facts essential to the case. By thus eliminating vital nontestimonial evidence, such as the printed, filmic, and photographic evidence that was presented during the real Auschwitz trial, Weiss poses the question of why the witness testimonies alone were not enough. During the Auschwitz trial, the defense easily repudiated testimonies because they were based on personal viewpoints and opinions (“We called [Boger] the Black Death”). But more than that, they were also able to successfully dispute the photographic evidence, arguing that the pictures taken in Auschwitz provided no proof that the SS officers had acted with premeditated malice. And it is true that these pictures, some of which showcase the bureaucratic selection process at Birkenau that served to implement the “final solution,” fail to show any obvious sign of cruelty or murderous intent. As Harun Farocki writes in reference to the Nazis’ protective strategy of erasing the traces of mass executions, “In their anticipated post-war future, the Nazis could have displayed these images; while here in the camp, there would be not a single kick, not a single dead person, to be seen—the extermination of the Jews would have the appearance of an administrative measure.”

Thus, even though *The Investigation* is stripped of nontestimonial evidence, the play lays no claim to the primacy of oral testimony. Rather it establishes a parallel between two kinds of evidence, one spoken and personal and hence grounded in perception and memory, the other documented in writing or print or even photographed by a camera—but both far from irrefragable. Weiss is not invested in pitting one form of evidence against another so as to test how the outcome of the case could have been affected through the employment of different kinds of proof. His approach to the question of testimony is more conceptual, indeed experimental: using eyewitness testimonies that are delivered by a number of “impersonators” who alternate between different “roles,” *The Investigation* makes a case against the traditional assumption that spontaneous spoken language reveals essence and veracity. Aligning the witnesses’ accounts with written, rehearsed text that is recited by anonymous performers, rather than with “spontaneous” utterance, the play accentuates the written-down, premeditated character of testimony. This is no longer the kind of drama that classical aesthetic theory had described as the literary genre closest to the visual arts because it translates the arbitrariness of verbal signs into corporeal existence and speech acts and thereby raises the genre’s linguistic status to that of “natural” communication. For Weiss’s avant-garde aesthetic effectively
denaturalizes the spoken language of theater and thereby underscores its intellectual, rational, and cognitive properties. Evidently, the testimonies recited on stage are not meant to affect our senses but to galvanize our ability to judge and evaluate.

That language is the archetypal medium of rationality and intellect is a point Weiss also makes in his *Laocoon or the Limits of Language*, a speech he gave in acceptance of the Lessing Prize in 1965, the same year in which *The Investigation* premiered. In addition to evincing Weiss’s intellectual autobiography, this speech contains a response to G.E. Lessing’s essay *Laokoon oder Über die Grenzen der Malerei und Poesie* (*Laocoön: An Essay on the Limits of Painting and Poetry*, 1766), a compelling and influential critique of the ancient Greek sculptural grouping known as the “Laocoon group.” Weiss reiterates Lessing’s contention that the literary, “temporal” arts such as music, poetry, and dance and the pictorial, “spatial” arts such as painting, sculpture, and architecture are incommensurable and inherently different: verbal description represents movement and narrative, while pictorial representation freezes time. As Lessing argues, literary texts unfold in the course of time and thus cannot be perceived or “taken in” all at once, while paintings and sculptures present themselves in their entirety to the beholder and hence they signify simultaneity and temporal stasis.

In his Lessing Prize address, Weiss goes beyond the deferential bow to the legacy of Lessing, a standing convention of this literary institution. Revisiting Lessing’s claim that the Laocoon sculpture depicts the pregnant moment just before the climax of agony, and hence leaves the beholder without resolution, Weiss associates its static condition even more poignantly with death and aphasia: “[Laocoon’s] mouth, and the mouth of the youngest son, are half open, not in a final scream but in a final exertion before wearing down. They have given up their voices. . . . They form nothing but a monument to their own demise. Never again will they make a sound” (*LL*, 180). Weiss’s reading of the ancient sculpture offers a structure of paralysis that corresponds to what Lessing has defined as the stasis of visual representation, but at the same time it complicates Lessing’s dichotomy between linguistic and pictorial art. Strangled by a giant sea snake, Laocoon and his younger son are figures of despair and defeat, for they are physically immobilized by their pain and verbally muted by their fear of the abject. The third figure in the sculpture, however, Laocoon’s older son, embodies a different kind of response to the horrid spectacle. Although he is caught up in the same irreducible event, he has not yet collapsed under the destructive force of the constriction:

Only the oldest son indicates through his gestures that he is still capable of speaking, of communicating his “self.” Contrary to Laocoon and his younger son, who

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78. Peter Weiss, “Laokoon oder Über die Grenzen der Sprache” (1965), in Weiss, *Rapporte*, 1:170–87; my translation; hereafter this work is abbreviated as *LL*.

are completely wrapped up in the process of perishing and are thus unable to make themselves noticed by anyone, the older son still refers to the event. He can survey it. . . . Posturing toward the outside world, he announces his intention to escape the embrace. [He] is still part of a living world, he breaks away from the statuary so as to give a report to those who might come to his rescue. (LL, 180)

By alluding to the possibility that the elder son might break away from the attack, Weiss puts pressure on Lessing’s distinction between painting and poetry. In his view, the sculpture exceeds the corporeality of three human bodies by taking action (or the potential of it) as its object. Weiss indeed proposes that the Laocoon group possesses a communicative openness that belies the specificity of the visual arts. By suggesting that it is possible to escape and bear witness from inside the event, he effectively aligns the work with verbal expression and, by extension, narrative and literature. As Weiss contends, the medium of language will allow the elder son to draw near the psychological limit situation he is suffering without, however, reducing and belittling its intensity. Although Weiss here ostensibly describes the experience of a sculptural figure, his argument applies to the beholder of the sculpture as well. According to Weiss, pictorial art is perceived instantaneously and thus ultimately contemplatively, while textual and verbal forms of expression direct our thoughts away from musing and imagination toward explanation and definition. There is a continued invocation of dichotomies in Weiss’s speech, and in particular the dichotomy between perception and reception, which are equated with seeing and speaking, respectively. According to Weiss, only the act of speaking—and writing—enables us to actively tackle a trauma, for contrary to images, words are retained, elaborated upon, and ultimately dissolved into a series of distinctive signifiers that clearly identify and trace the origins of pain: “Words orbit around the components of images and render them to pieces. Images content themselves with the pain, words want to know of the origin of pain” (LL, 182). Hence while visual forms of expression are apt to illustrate the general condition of trauma, language serves to painstakingly analyze every aspect of it, draw causal connections, and reflect on its significance.

Weiss’s reference to the therapeutic character of language resonates with Freud and Breuer’s assertion that language has the power to “cut the residues” of past traumatic experiences and thereby release the trauma that they may have caused. Here then is another speech that doubles as a “talking cure”: stressing the importance of articulation and communication for traumatized individuals, Weiss proposes that there is but one way to overcome a personal tragedy or a traumatic experience—namely, by speaking about it, by listening and responding. “Speaking, writing,
within the traumas of contemporary history, as our ability to listen through the departures we have all taken from ourselves.” C. Caruth, ed., Trauma: Explorations in Memory (Baltimore: Johns Hopkins University Press, 1995), 11.

81. Yet according to Caruth, trauma can never be fully understood: “The trauma is repeated suffering of the event, but it is also a continual leaving of its site. The traumatic event thus carries with it what Dori Laub calls ‘the collapse of witnessing,’ the impossibility of knowing that which first constituted it. And by carrying that impossibility of knowing out of the empirical event itself, trauma opens up and challenges us to a new kind of witnessing—the witnessing, precisely, of the impossible.” Caruth, Trauma, 10.
sense of biographical unity as the locus of subjective meaning. The final sentence of Weiss’s Lessing Prize address, by contrast, marks the final and decisive split between the subject of enunciation and the subject of utterance. As in Arendt’s phrase “I so explicitly stress,” Weiss here cues us to perceive the nervous (and ultimately hostile) interplay between the grammatical first-person and its ever-elusive autobiographical subject: “But the writer whose experiences are the subject of my account was void of any sense of coherence” (*LL*, 185). Drawing attention to the absence of coherence between the “I” and “the writer,” this sentence both shows and says what it does.

Arendt presented the experience of loss as the loss of identity; her speech was organized around the question posed to Nathan: “Who are you?” In contrast, Weiss—whose speech bears the title *On the Limits of Language*—figures loss as a loss of language, a problem less existential and universal perhaps, but infinitely more poignant for an aspiring literary artist. A point Weiss emphasizes in his speech is how the entirely unknown and alien language of National Socialism invaded and overpowered his native German tongue: “The meaning of the words is shifting. Uncertainty takes hold. New words appear overnight, everyone repeats them without comprehending, they no longer possess the words, the words possess them” (*LL*, 175). Weiss continues to describe how he abandoned his native language when, after emigrating to London in 1935 and to Prague in 1937, he again emigrated to Stockholm, where he was forced into the speechlessness of exile: “Only a minority were able to flee. They left the space from where every one of their words had once emerged and ended up in territories where they were overcome by speechlessness” (*LL*, 176). As a result of this alienating and disparaging experience, Weiss chose to forsake his native tongue and immersed himself in the study of Swedish. Crucially for Weiss, the loss of his native German was linked to a complete loss of subjectivity—the equivalent of the “undoing of the self” in trauma. For Weiss, this meant that he experienced a radical reconfiguration, even disruption of life: “Being outside of language signified death” (*LL*, 182–83). Weiss’s autobiographical account raises a problem that is familiar to trauma theorists: trauma occurs when a person is unable to register and assimilate certain events, events that consequently also exceed his linguistic faculties and hence elude thematization and iterability. In Weiss’s case this results in a double bind: the very thing that has caused his trauma—the loss of language, of his mother tongue—is also that which prevents him from overcoming it. The loss is therefore inscribed in the process of coming (or not) to terms with it, while language in its very elusiveness is both the medium and the object of representation.

82. As Garloff has pointed out, Weiss in his notebooks “draws an analogy between the situation of the witnesses and that of the returning exile, who is subject to the same discursive strategies of scrutiny and denial that devaluate the witnesses’ voices.” Garloff, “Peter Weiss’s Entry into the German Public Sphere,” 50.
Weiss’s autobiographical account is exact in some ways, but omissive in others. One important aspect of his trajectory that is absent in the speech is the fact that Weiss, who was trained as a painter, turned away from the visual arts and immersed himself in the production of literature despite his linguistic exile. As a matter of fact, Weiss wrote his first prose work Från ö till ö (From Island to Island) in Swedish—the work was published shortly after he was married to the Swedish painter Helga Henschen in 1943—and then, in 1950, switched back to his native German tongue with his first produced play, Der Turm (The Tower). Replicating the logic of Weiss’s autobiographical account, the Lessing Prize address is a speech about language, not visual imagery, despite its apparent focus on the Laocoon sculpture. As a matter of fact, the speech endorses a process of identification away from Laocoon’s paralysis, from the bondage with a reality he cannot bear, toward the elder son and the possibility of bearing witness—through literature. As Weiss points out, he is himself Laocoon’s elder son, and thus he eschews the static world of the sculpture for the temporal reality of narrative: “He was Laocoon’s oldest son. He was yet granted a grace period, but he and his family were entangled in the event. He saw what happened next to him and what could happen to him any instant” (LL, 184). Comparing himself to Laocoon, who is about to bear witness, Weiss tells his own story, a story that revolves around the loss of his German mother tongue before and during his exile from Germany. Paradoxically however, Weiss employs an eloquent and connected prose style to describe an existential crisis that allegedly left him in a speechless limbo. The speech abounds with evocative and indeed poetic passages like the following: “Everywhere mouths are moving, emitting words, everywhere ears are fluttering and catching the words, as if that was the easiest thing in the world” (LL, 170). As in Hugo von Hofmannsthal’s A Letter (1906), in which a fictitious “Lord Chandos” explains to his friend the philosopher Francis Bacon why he is supposedly no longer able to write, but does so in a prose that is both graceful and highly articulate, Weiss here pairs linguistic skepticism with rhetorical eloquence. But Weiss makes a rhetorical move that allows him to circumvent the paradoxical problem of testifying, in German, to the alleged loss of his native tongue: he adopts the viewpoint of a third-person narrator. As in Szondi’s inaugural address, Weiss’s Lessing Prize address thereby testifies to the absence of a dead person, yet this person is not a friend or an intellectual predecessor like Walter Benjamin, but Weiss’s own former self, a young Jewish art student who was forced to relinquish his mother tongue, his country, and his German citizenship (and identity). In contrast to Szondi’s attempt to resuscitate Benjamin’s person by lending him his living voice, Weiss thus stages his own linguistic

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suffocation. For not a single utterance announces the survival of his original self; not one word identifies the victim with the voice of the speaker. Thus the logic of ventriloquy described above is completely reversed: while Szondi ventriloquized Benjamin to afford him a voice, and while the actors on Weiss’s theater stage ventriloquized eyewitnesses who had fallen into a silence that lasted for twenty years, Weiss now uses self-ventriloquy to communicate the agony of being silenced and draw attention to the mutilating effect of verbal exile.

In view of the space given to myth and the precise political function it seems to fulfill, did Peter Weiss deliver a funeral oration in honor of Peter Weiss? The speech is certainly not a traditional epideictic address designed to publicly and ritualistically affirm a mainstream historical narrative. For Weiss scorns his listeners in Hamburg, intimating that they are complicit or perhaps, in effect, identical with those who are responsible for “his” traumatic fall from the German language. As a public speaker and recipient of the Lessing Prize, Weiss is (or pretends to be) radically disconnected from Germany’s cultural landscape and the domain of the German language. To repeat the passage cited before, “But the writer whose experiences are the subject of my account was void of any sense of coherence [with the German language and culture]” (*LL*, 185). Hence Weiss’s Lessing Prize address is organized as a double distancing act. In addition to refusing to personally address his audience throughout the speech, the speaker thematizes the seeming “abyss” that separates him and them. Indeed Weiss simultaneously dissociates his former self from his present “I,” suggesting that “he who is the subject of this speech” is by no means identical with the “I” who delivers this public speech (*LL*, 174). Having been erased from the German geopolitical map, the former “he” has returned to haunt the autobiographical discourse of the expatriate, who comes to function both as his own ventriloquist and as the witness of a witness from beyond. If it is true that, as W.G. Sebald notes, “all of [Weiss’s] work is designed as a visit to the dead,” this implicit elegy to himself might indeed be considered a central node of Weiss’s entire œuvre.85

Enacting the conflict within Weiss’s linguistically fractured mind, the Lessing Prize address is an experiment located on the nexus between language and identity, death and witnessing. Weiss proposes that he will testify—for he is the elder son—by passing through death and aphasia. However, he also claims to speak on behalf of himself, even though his undeniable corporeal presence on the speaker’s podium of course belies this effort at concealing what is so ostensibly there. Given these contradictions and the speaker’s reluctance to solve or even acknowledge them, Weiss’s Lessing Prize address is arguably without the therapeutic value Weiss attributes to the act of witnessing. Despite Weiss’s eloquence, nothing is said but the unsayability

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of his personal experience, which keeps ramifying the harder he tries. The speech is thus a symbolic representation of unspeakability; it is, like the Laocoon group, an aesthetic “object” that thematizes the theoretical possibility of testimony without, however, actualizing this vital potential.

Weiss thus speaks from a displaced, indeed shifting, Archimedean point that allows him to navigate the boundaries between different psychological states and identities as he confronts the difficult task of confronting postwar Germany’s public sphere. Like Buber in 1953, or Arendt in 1959, Weiss can speak neither as a native German nor as a foreigner, neither as the prodigal son nor as a neutral arbiter of history and collective memory. Taking on an ambiguous subject position that is situated beyond the psychological status quo of German society, but still within its moral and legal parameters, Weiss eschews the rhetorical constraints involved in a high-profile award ceremony and the arguably hypocritical implications that arise from it, as well as the futility of speaking about a calamity that he and millions of others failed to prevent from happening.

Needless to say, from such an arcane perspective, neither Weiss nor any public speaker for that matter could possibly alter the course of history or “move the Earth,” as Archimedes had proclaimed. And yet the theoretical possibility and practical necessity of such an aporetic stance is intertwined with another equally ambiguous and receding space, which is located not in Germany but within what the Nazis termed the *Eingegliederte Ostgebiete* (Incorporated Eastern Territories): Auschwitz, as the Germans called Oswiecim, in Poland, was a place that was visible but not seen, concealed yet sufficiently evident. For Weiss, who had fortuitously escaped the concentration camps, it reportedly represented the sole “firm position in the topography of [his] life.” What Weiss (like the other figures discussed in this book) understood was that denying the existence of Auschwitz was hardly empowering. For it is only from this impossible space and from the radical break it marks that we can begin to imagine the possibility of a counter-public sphere that valorizes rather than vilifies the witness-survivor.

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