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TRANSITIONAL JUSTICE AND THE CONSTRUCTION OF COLLECTIVE MEMORY

A Comparison of the Holocaust and the Rwandan Genocide

Author: Chiara Pallagrosi

Supervisor: Anita Ferrara

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To my Mom.

Abstract

This thesis examines how transitional justice mechanisms contribute to the production and public legitimisation of collective memory in post-genocide societies. To address this question, the research compares two well-documented cases of twentieth-century genocide, the Holocaust and the Rwandan genocide, in which radically different transitional justice mechanisms were adopted. The comparative analysis demonstrates that such mechanisms shape different regimes of collective memory, while also revealing common structural patterns. In both cases, processes of memorialisation were marked by exclusion and selectivity, with official narratives reflecting the interests of dominant political actors and systematically excluding uncomfortable aspects of their own past. The research further shows that, once institutionalised, collective memory tends to become a political resource mobilised to legitimise power and shape collective identities. At the same time, competing memories persist at the margins of the official narrative, resisting complete suppression. This thesis therefore concludes that the challenge facing post-conflict societies is not to replace oblivion with a single authoritative memory, but to preserve the coexistence of competing memories while preventing any one of them from monopolising public understanding of the past.

Keywords: Transitional Justice; Collective Memory; Comparative Analysis; Holocaust; Rwandan Genocide; Post-Conflict Societies; Memory Politics.

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Abbreviation	Full Definition
ICTR	International Criminal Tribunal for Rwanda
IMT	International Military Tribunal
IWM	Imperial War Museum
RPF	Rwandan Patriotic Front
UN	United Nations
UNSC	United Nations Security Council
USHMM	United States Holocaust Memorial Museum

Introduction

"What is at stake is not memory against oblivion, but memory against memory."

-Elizabeth Jelin-

In the aftermath of genocide or mass atrocity events, societies are confronted with a question that admits no simple or direct answer: how should what happened be remembered? In what terms should the past be narrated? Whose voices should be preserved and who bears the responsibility of transmitting this memory to future generations? The mechanisms of transitional justice established to respond to these atrocities are commonly assessed according to their capacity to punish perpetrators, establish truth and promote reconciliation. Yet they also perform a function that has received comparatively little systematic attention in scholarly literature: the active production and transmission of collective memory, shaping the terms through which entire societies understand, narrate and transmit their experience of violence.

However, as Elizabeth Jelin observes, there is never a single memory, a single narrative. What is at stake in post-conflict societies is rather a struggle between rival interpretations of the past, embedded in present relations of power.¹ Only certain narratives acquire public legitimacy, coming to dominate the public sphere, while others are consigned to its margins. The starting point of this research is the assumption that transitional justice mechanisms actively contribute to the formation of collective memory, and its main research question is:

How do transitional justice mechanisms shape and publicly legitimate different regimes of collective memory in post-genocide societies?

In order to answer this question, the present research sought to analyse two very well-documented cases of genocide: the case of the Holocaust and the Rwandan genocide. The selection of these two cases was not arbitrary but guided by specific methodological and analytical considerations.

¹ Elizabeth Jelin, *State Repression and the Labors of Memory* (Judy Rein and Marcial Godoy-Anativia trs, University of Minnesota Press 2003).

The Holocaust and Rwandan genocide are among the most extensively documented and studied cases of genocide of the twentieth century, offering a rich body of scholarly literature upon which this research could draw. More significantly, despite sharing the extreme nature of the violence perpetrated, the two cases are defined by the adoption of radically different mechanisms of transitional justice: retributive international criminal proceedings on the one hand, and a hybrid community-based mechanism rooted in popular participation on the other. This structural opposition, which also reflects a broader contrast between international and local scales of operation, makes them particularly valuable for examining how the internal rules and structures of each mechanism generate different forms of collective memory. A further reason that informed this choice is the profoundly asymmetrical global reach of the memory regimes they produced: while Holocaust memory has acquired global moral authority, becoming a universal framework through which subsequent atrocities are interpreted, the memory of the Rwandan genocide has remained largely confined within national boundaries. Understanding the reasons for this disparity will be a focus of this research.

Finally, while there is a significant amount of research on the relationship between institutional mechanisms and collective memory, there has been little examination of how contrasting transitional justice models, such as retributive international trials versus hybrid community-based mechanisms, create different forms of collective memory. This thesis seeks to address this gap by examining how different models of transitional justice generate different processes of truth production, participation and recognition, and how these, in turn, contribute to the formation and public legitimization of distinct regimes of collective memory. By comparing the Holocaust and the Rwandan genocide, the analysis further explores the broader political consequences of these memory-making processes, including their vulnerability to political instrumentalisation and their unequal ability to acquire global moral authority.

Methodology and structure

The present research employs a qualitative approach grounded in critical analysis of secondary literature, drawing primarily on peer-reviewed academic monographs, journal articles and edited volumes in the fields of transitional justice, collective memory studies, Holocaust studies and Rwandan post-genocide scholarship. Sources were selected for their scholarly authority and direct relevance to the research question, with particular attention to works engaging explicitly with the

relationship between institutional mechanisms and memory production. Legal instruments and institutional documents, including UN Security Council resolutions and trial records, were consulted where necessary to contextualise the analysis. The theoretical framework developed in the first Chapter, drawing on foundational scholarship in collective memory studies, informed the analytical lens through which the two case studies were examined.

The thesis also adopts a comparative methodology to analyse and compare the mechanisms used in Europe and Rwanda to address the legacy of genocide. The comparison between the Holocaust and Rwandan Genocide is grounded in the structural opposition between the institutional responses each society adopted in the aftermath of genocide: international criminal proceedings based on retributive logic on the one hand, and the Gacaca courts, a hybrid community-based mechanism rooted in popular participation, on the other. The choice of two cases that represent distinctly different institutional responses to genocide enables an analysis that highlights the transitional justice mechanisms in shaping collective memory. It is important to acknowledge that these cases vary across many dimensions, which this research does not aim to control for. This research is limited in scope in two important respects. First, it does not seek to offer a comprehensive historical comparison of the two genocides or of the political and social conditions that produced them. Its focus is strictly limited on the transitional justice mechanisms adopted in their aftermath and the collective memory these generated. Second, the research relies exclusively on secondary sources and does not incorporate empirical fieldwork, survivor testimonies or archival research. Future research could benefit from empirical fieldwork that would complement and enrich the documentary analysis developed here.

The present research is structured in four Chapters. The first establishes the theoretical framework through which the two case studies are subsequently examined. Drawing on foundational scholarship in collective memory studies, it defines the latter, traces its political implications and examines the role of transitional justice mechanisms in its production. The Chapter concludes by further examining the two principal instruments of transitional justice, criminal proceedings and truth commissions, identifying their respective contributions to memory production as well as their structural limitations. These limitations, the Chapter argues, have prompted the emergence in some post-conflict societies of hybrid mechanisms that integrate features of both models, of which the Gacaca courts in Rwanda present a particularly significant example.

The second Chapter examines the case of the Holocaust, and it focuses on the Nuremberg Trials as the main mechanism of memory production outlining their proceedings and the type of memory they constructed. The Chapter also examines the Eichmann Trial, to show the different memory implications of this trial in comparison to the Nuremberg trials. The Chapter then proceeds to examine the institutionalisation of Holocaust memory and how it has been used by various States to promote their own identities. Finally, the Chapter identifies some significant limitations and exclusions that the collective memory produced marginalises, such as the silence over the crimes committed by the victorious powers or the marginalisation of the non-Jewish victims. These same limitations invite a comparison with the case of Rwanda, where a completely different approach was implemented.

The third Chapter presents the case of Rwanda. After briefly describing the ICTR, it identifies the main criticisms levelled against it by the government and the Rwandan population itself and presents Gacaca as a possible solution to the limitations identified in the analysis of the ICTR. The Gacaca courts, analysed through the work of Phil Clark, are thus presented as an instrument very different from a traditional criminal court, based on popular participation, confession and confrontation between victims and perpetrators. The Chapter thus examines the type of memory this institution generated: locally negotiated, embodied in the community's testimonies and heavily dependent on the perpetrators' confessions. Nevertheless, the Chapter highlights how even this more popular and bottom-up mechanism constructed an extremely exclusive and selective memory, marginalising Hutu victims and silencing the crimes committed by the government during the genocide. In fact, considerable attention is given to the government's political use of memory to promote a single narrative capable of reconciling the different parts of the community and legitimising the party's power.

The fourth Chapter proceeds to a comparative analysis of the two case studies. It therefore compares the two instruments of transitional justice and the resulting types of truth produced, highlighting the main differences between them. Despite the differences identified, the Chapter highlights how the collective memory constructed by the two instruments is exclusive and selective, particularly by failing to incorporate the crimes committed by the victors' powers. While there is symmetry in their limitations, the effects of this selectivity have been significantly asymmetrical. As the Chapter illustrates, the Holocaust has acquired global moral authority,

becoming a frame of reference through which subsequent genocides have frequently been interpreted. The Chapter shows how collective memory becomes the object of political instrumentalisation by institutions seeking to promote their own interests. The final section of the Chapter outlines the implications for post-conflict societies that must decide how to address mass atrocities. It raises the question of whether it is possible to avoid creating a narrative that excludes and silences essential aspects of the past.

1. TRANSITIONAL JUSTICE AND THE PRODUCTION OF MEMORY

1.1 Theoretical approaches to collective memory

In order to understand how memory is constructed, institutionalised and mobilised within transitional justice processes, it is first essential to clarify what collective memory is and what this concept entails.

The notion was first developed by Maurice Halbwachs, a French sociologist and philosopher, in the early 1920s.² Halbwachs was the first to attribute memory not solely to the individual, but to a collective dimension, arguing that memory is not a given but rather a constructed notion.³ The author argued that individuals form their memories through their participation in creative and social processes, to the extent that even our autobiographical memory is a social construction shaped through communication with others.⁴ Individual experiences, even the most intimate and private, can be recalled only through social interaction. From this perspective, human memory cannot be understood merely as an imprint stored in the individual mind and retrieved at will; instead, it is shaped through processes of socialisation and communication, which influence not only what is remembered, but also how it is remembered.⁵ Therefore, if memory draws its strength from a cohesive social group, then it follows that a society contains as many collective memories as there are groups and institutions within it.⁶ One of Maurice Halbwachs's most significant contributions was his emphasis on the fundamental role of social groups in reinforcing collective memory.⁷ The group can reinterpret its own past in ways that tend to maintain its coherence or exclude change. It is precisely for this reason that the same event can be remembered through deeply contrasting narratives put forward by different groups. Memory thus emerges as inherently multiple and differentiated and "yet specific; collective, plural and yet individual".⁸ It is precisely

² Maurice Halbwachs, *On Collective Memory* (University of Chicago Press 1992) 1-46.

³ Ibid, 46-51.

⁴ Ibid

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid 52.

within this perspective that an initial distinction between memory and history emerges, which will be later explored and radicalised by Pierre Nora.⁹ Indeed, Halbwachs emphasises that history aspires to be universal and objective, detached from particular identities, and thus stands in contrast to the various collective memories, which are subjective and linked instead to specific groups.¹⁰

Whilst Maurice Halbwachs's approach successfully situates memory within social and collective frameworks, it does not, however, clarify the ways in which this memory is transmitted across generations and preserved over time. It is precisely this limitation that the work of the German scholar Jan Assmann seeks to address.¹¹ Assmann proposes to subdivide the concept into cultural memory and communicative memory in order to emphasise that memory is shaped not only by social frameworks, but also by cultural ones.¹² The author defines communicative memory as non-institutionalised, in that it is not formalised through material symbolic supports, but is instead rooted in everyday interactions between contemporaries.¹³ Due to these characteristics, it predominantly relates to the recent past, often has limited duration and is generally transmissible over the course of three or four generations.¹⁴ Cultural memory, on the other hand, refers to more distant and less recent events. It is symbolised and externalised through institutionalised forms of preserving the past, such as documents, rituals and symbolic practices.¹⁵ In this process, the past is not simply preserved, but reworked and shaped, often through symbolic figures that guide its interpretation, to the extent that the distinction between myth and history becomes increasingly blurred.¹⁶ Memory, therefore operates through a process of reconstruction and reorganisation, in which groups reinterpret the past in the light of present-day values and conditions. In this sense, Assmann emphasises the bidirectional relationship between memory transmission and the present: memory does not only reconstruct the past, but also organises present experience and orients future action.¹⁷ His work thus shifts the focus of the discussion from the subject of memory to the modes

⁹ Pierre Nora, 'Between Memory and History: Les Lieux de Mémoire' (1989) *26 Representations* 7-18.

¹⁰ Halbwachs, *On collective memory* 1-46.

¹¹ Jan Assmann, *Cultural Memory and Early Civilization: Writing, Remembrance, and Political Imagination* (Cambridge University Press 2011) 1-70.

¹² Ibid.

¹³ Aleida Assmann, 'Re-framing Memory. Between Individual and Collective forms of Constructing the Past' in Frank van Vree, Karin Tilmans, and Jay M. Winter, (eds), *Performing the Past: Memory, History and Identity in Modern Europe*, (Amsterdam University Press 2012) 35-51.

¹⁴ Assmann, *Cultural Memory and Early Civilization: Writing, Remembrance, and Political Imagination* 35-37.

¹⁵ Ibid 37.

¹⁶ Ibid.

¹⁷ Ibid 15-70.

through which memory is transmitted and preserved.¹⁸ It is precisely this author, who is central to the present research, who problematises the question of how to appropriately and respectfully preserve the personal memories of Holocaust survivors and crystallise them into a cultural memory that can be passed on to future generations.¹⁹

As memory becomes progressively institutionalised and removed from the immediate realm of social interaction, it is necessary to consider the specific ways in which it is fixed and made visible in the public sphere. It is within this perspective that the work of Pierre Nora is situated, as he focuses his work on how memory, once crystallised, becomes embedded in the material and symbolic places designated for its preservation.²⁰ Indeed, in order to introduce the concept of *lieux de mémoire*, the author draws a sharp distinction between memory and history. Memory is described as alive, fluid and mutable, rooted in the social groups that produce it and constantly reshaped over time. History, by contrast, aspires to reconstruct the past in accordance with factual reality, without distorting it. In this sense, history is even described as “suspicious of memory, and its true mission is to suppress it and destroy it”.²¹ *Lieux de mémoire* comes into play precisely when living memory begins to disappear, ceases to be spontaneous and therefore needs to be artificially preserved and thus protected.²² With regard to their nature, places of memory can be “simple and ambiguous, natural and artificial, at once immediately available in concrete sensual experience and susceptible to the most abstract elaboration”.²³ Their purpose is, indeed, to halt the passage of time, to prevent significant events from being forgotten and falling into oblivion through the establishment of archives, anniversaries and commemorations. In particular, Nora makes a distinction that is extremely relevant to this research. Indeed, in order to highlight how collective memory too is subject to power dynamics, he distinguishes between “dominated *lieux de mémoire*”²⁴ and “dominant *lieux de mémoire*”.²⁵ The former are places “of refuge, sanctuaries of spontaneous devotion and silent pilgrimage, where one finds the living heart of memory”.²⁶ In contrast, the dominant *lieux de mémoire* are imposed from above, generally by the state or the

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Nora, 'Between Memory and History: Les Lieux de Mémoire' 8-25.

²¹ Ibid 9.

²² Ibid.

²³ Ibid 18.

²⁴ Ibid 23

²⁵ Ibid.

²⁶ Nora, 'Between Memory and History: Les Lieux de Mémoire' 23.

authorities, and are manifested through solemn ceremonies and commemorations. Institutions and legal bodies, in fact, play a fundamental role in helping to shape society's collective memory and its understanding of the past. Schudson emphasises that they select, narrativise and codify a society's collective memory through shared social processes and cultural formats.²⁷ Collective memory can thus be channelled into established *lieux de mémoire* such as museums, murals and libraries, which help to preserve a society's collective conscience and pass it on to subsequent generations²⁸.

The approaches described so far focus primarily on the ways in which collective memory is constructed, institutionalised and transmitted over time. However, they do not explain how traumatic and radical events can disrupt these processes. It is precisely within this gap that Marianne Hirsch introduces the concept of *postmemory*²⁹ to describe the relationship that subsequent generations establish with the past, particularly with traumatic events that they have not experienced directly.³⁰ Hirsch develops this concept to highlight the importance of collective historical trauma and how it profoundly undermines the transmission of memory.³¹ The ruptures it produces "inflect intra-, inter- and transgenerational inheritance".³² Indeed, the profound ruptures caused by traumatic events may not be easily integrated into coherent and constructive narratives, thereby undermining the linear transmission of memory. *Postmemory* thus can be understood as a form of an indirect yet deeply internalised memory, through which individuals who did not personally experience the traumatic event nevertheless inherit accounts and representations of it, to the point of perceiving them as part of their own lived experience.³³ What emerges, therefore, is a form of collective memory that is not only plural across different groups but also fragile, subject to disruption and divergent interpretations.

The analysis clearly highlights that there is no single collective memory, it can take various and often competing forms depending on the groups that perform it. In this sense, collective memory

²⁷ Michael Schudson, *Watergate in American Memory: How We Remember, Forget, and Reconstruct the Past*, (Basic Book 1993) 205-220.

²⁸ *Ibid.*

²⁹ Marianne Hirsch, *The Generation of postmemory: Writing and Visual culture after the Holocaust* (Columbia University Press 2012) 29-55.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.* 33.

³³ *Ibid.*

takes the form of a space of negotiation and conflict where different narratives compete for recognition and institutionalisation. This conflictual dimension becomes particularly evident within societies that have suffered massive violence and collective trauma, where the construction of even a minimal core of shared truths proved deeply problematic. Memory does not merely reflect the past but helps to shape it, by selecting and legitimising certain interpretations of events.

1.2 Collective memory and its political implications

In order to understand why a State's own institutions are concerned in playing an active role in shaping collective memory, it is useful to begin with the work of Iwona Irwin-Zarecka.³⁴ The author identifies two main functions that collective memory serves for individuals. On the one hand, it imparts "moral imperatives"³⁵ that form the basis of a society's normative order, offering a framework through which individuals guide their own behaviour and judge that of others. On the other hand, it contributes to the construction of identity, enabling individuals to attribute meaning to past events within a shared social framework.³⁶ In this sense, collective memory also serves the crucial function of preserving memories of events that might otherwise be lost or misrepresented, particularly in contexts of mass violence, where a shared narrative framework can help victims of genocide or mass violence develop a common understanding of what has happened.³⁷ This research, however, in line with the work of Jeffrey Olick,³⁸ argues that collective memory does not merely shape understandings of the past but also has fundamental implications for political action in the present. Focusing particularly on the German context, the author demonstrates the influence that memory exerts on contemporary political choices, producing enduring effects on public discourse.

Olick identifies two distinct ways through which collective memory shapes political behaviour: "by proscription, through taboos and prohibitions; and by prescription, through duties and requirements".³⁹ Taboos and prohibitions thus represent two different forms of cultural constraint. The former defines what is absolutely unacceptable within society, whilst the latter define what is

³⁴ Iwona Irwin-Zarecka, *Frames of Remembrance: The Dynamics of Collective Memory* (Transaction Publisher 1994) 3-23.

³⁵ Ibid 9.

³⁶ Ibid 47-67.

³⁷ Ibid.

³⁸ Jeffrey K. Olick, *The Politics of Regret: On collective memory and historical responsibility* (Routledge 2007).

³⁹ Ibid 40.

considered necessary or absolutely required.⁴⁰ On the one hand, Olick defines taboos as forms of absolute prohibition that operate according to a mythical logic.⁴¹ They do not necessarily follow a strictly rational structure but are instead based on moral principles and definitions of identity that are presented as unquestionable. As such, they elicit strong emotional reactions through ritualistic forms. Prohibitions, on the other hand, operate according to rational and instrumental logic.⁴² They are linked to practical interests and are, in fact, abandoned over time once they are no longer functional. Alongside these constraints, Olick highlights the existence of prescriptions, which can be differentiated between duties and obligations.⁴³ These indicate what is absolutely necessary within a society, thereby imposing, guiding and controlling the actions of individuals within it. The analysis of the impact of the Holocaust on post-Nazi German politics provides a clear example of how collective memory directly structures political action.⁴⁴ The dominant interpretation of the Holocaust has contributed to the construction of a specific image through which Germany defines itself, consolidating a highly ritualised public policy of remorse. In this sense, the Holocaust stands as a unique historical burden, which has given rise to exceptionally strong cultural constraints. It is sufficient to note that, immediately after the war, anti-Semitism was not explicitly identified as a central cause of the Holocaust; rather, it became a taboo, often dismissed by political leaders as a “minority view, an aberration, now eliminated, that did not warrant serious consideration in other than general terms”.⁴⁵ In this way, the Holocaust delimits the boundaries of what can and cannot be publicly articulated within public discourse. Nevertheless, the author concludes that collective memory should not be understood as a static cultural constraint, but rather as an ongoing process of constant renegotiation between the present and the past. Rather than simply reflecting historical events, collective memory structures the political reality.

The case of the Holocaust, which will be further examined in the following Chapter, illustrates how collective memory interacts directly with the social present to shape political action and legitimising specific forms of institutional order. Precisely for this reason, the processes through which collective memory is constructed require closer analytical scrutiny.

⁴⁰ Ibid 37-55.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid 37-55.

⁴⁵ Ibid 47.

1.3 Transitional justice and the production of memory

Transitional justice mechanisms represent one of the main institutional sites for the construction and transmission of collective memory. To properly examine the relationship between collective memory and transitional justice, it is first necessary to briefly define the latter. Although there is no single, precise definition of the concept, Kofi Annan frames transitional justice as “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation”.⁴⁶ It is precisely within these societies, marked by violence and mass atrocities, that the construction of a shared collective memory can play a vital restorative function.⁴⁷ Victims and survivors of such crimes require not only recognition, but also the opportunity to collectively process what happened through the formulation of an institutional shared understanding of the past events. In this sense, the pursuit of justice is also structurally linked to the production of moral validation, aimed at publicly acknowledging the harm suffered and the right to reparation.⁴⁸ Collective memory does not merely preserve a shared representation of past horrors but also serves as a guiding force for processes of reconciliation within society. For such a process to take place, a new shared narrative must emerge, one that incorporates, at least in part, the common understanding of the victims while remaining politically acceptable within the broader society. In this sense, a society’s collective memory can therefore be defined as the “informal, widely accepted perceptions of past events in which the collective identity of people is mirrored”.⁴⁹

However, the formation of collective memory in transitional societies is always a deeply conflictual process, in which memories are fragmented, divergent and subject to constant negotiation. As Osiel points out, following an administrative massacre, defined as the “large-scale violation of basic human rights to life and liberty by the central state in a systematic and organised

⁴⁶ United Nations, *The rule of law and transitional justice in conflict and post-conflict societies: report of the Secretary-General*, UN Doc S/2004/616 (23 August 2004) para 8.

⁴⁷ Rachel López, 'Legalising Collective Remembrance after Mass Atrocities' in S. Elizabeth Bird and Fraser M. Ottanelli (eds), *The Performance of Memory as Transitional Justice*, (Intersentia 2015) 23.

⁴⁸ Ibid.

⁴⁹ Heribert Adam, 'Divided Memories: How Emerging Democracies Deal with the Crimes of Previous Regimes' in Susanne Karstedt (ed), *Legal Institutions and Collective Memories* (Bloomsbury Publishing Plc 2009) 80.

fashion, often against its own citizens, generally in a climate of war”,⁵⁰ the moral solidarity that holds society together is profoundly compromised.⁵¹ In this context, transitional justice emerges as one of the key avenues through which to establish a minimum of shared truths and common understanding.⁵² Legal and quasi-legal procedures, as well as criminal trials, emerge as “particularly strong institutions when struggles about power are not yet fully resolved and they are capable of contributing to power shifts by giving voice to hitherto unheard-of memories and testimonies”.⁵³ Moreover, legal mechanisms help establish accountability, thereby reinforcing a shared understanding of past injustices. The first scholar to attribute a central role to law as a force capable of actively contributing to the formation of a collective conscience was Emile Durkheim.⁵⁴ According to Durkheim, legal institutions can play a crucial role in connecting individuals to society by creating a vital public space in which collective norms are expressed and reinforced.⁵⁵ He further maintained that every legal rule is linked to social solidarity, insofar as any action can be considered a violation of it when it elicits a collective reaction.⁵⁶ Building on this Durkheimian perspective, in societies undergoing profound political transformation, such as those emerging from mass violence, the role of justice goes beyond merely punishing the individual perpetrator.⁵⁷

How, then, can transitional justice mechanisms contribute to the formation of collective memory? First, transitional justice mechanisms fulfil a crucial archival function. By collecting, producing and safeguarding documents that would otherwise be destroyed, these institutions ensure the survival of traces of past violence.⁵⁸ In this sense, their “unintended role as archives”⁵⁹ ensures that these institutions have a direct and significant impact on the formation of collective memory. In addition to this archival function, these instruments also perform a revelatory function.⁶⁰ By revealing previously suppressed or concealed accounts of violence, they bring to light the hidden dimensions of past atrocities, transforming victims’ testimonies into recognised public narratives.⁶¹

⁵⁰ Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (Transaction Publisher 1997) 9.

⁵¹ López, 'Legalising Collective Remembrance after Mass Atrocities' 29-30.

⁵² Susanne Karstedt, *Legal institutions and Collective Memories*, (Hart Publishing 2009) 1-24.

⁵³ *Ibid* 7.

⁵⁴ Émile Durkheim, *The elementary forms of religious life*, (Free Press 1995).

⁵⁵ *Ibid*.

⁵⁶ *Ibid*.

⁵⁷ Ruti G Teitel, *Transitional Justice* (Oxford University Press 2000) 38-82.

⁵⁸ Karstedt, *Legal institutions and collective memories* 1-27.

⁵⁹ *Ibid* 17.

⁶⁰ *Ibid* 1-27.

⁶¹ *Ibid*.

This is particularly significant in contexts where regimes, such as Nazi Germany, attempt to destroy all evidence of the horrors they have committed. Finally, they contribute to the creation of a collective memory through a deterrent function.⁶² The public preservation and recognition of past atrocities help to build a shared moral framework, capable of preventing their recurrence.⁶³ For this reason, Osiel emphasises that criminal proceedings in transitional societies are not only directed towards the past but also towards the future.⁶⁴

At the same time, it must be acknowledged that the process of constructing memory through transitional justice mechanisms is never neutral.⁶⁵ Although the main issues will be explored in greater depth later, legal or quasi-legal proceedings in transitional societies are also inherently political in nature. They actively participate in selecting and legitimising particular narratives over others. In an attempt to establish a shared truth and common past, such instruments risk producing selective versions of history, which reflect prevailing and institutional narratives.⁶⁶ This makes them particularly vulnerable to forms of political influence and narrative appropriation.⁶⁷ It follows that the collective memory that emerges from these processes is never entirely unambiguous, but rather the result of an ongoing negotiation between divergent actors, interests and interpretations. This tension raises a crucial question: if the production of post-traumatic memory is always mediated by legal and political institutions, it becomes necessary to examine how different mechanisms of transitional justice shape collective memory in distinct and sometimes conflicting ways.

1.4 Trials, Truth Commissions and the institutionalisation of memory

Whilst the previous section has demonstrated that transitional justice mechanisms play a central role in the construction of collective memory, it is now necessary to examine which specific mechanisms have fulfilled this function and how. The academic debate has primarily focused on two main instruments: trials and truth commissions.

⁶² Teitel, *Transitional justice* 38-82.

⁶³ Ibid.

⁶⁴ Osiel, *Mass Atrocity, Collective Memory, and the Law* 13-24.

⁶⁵ Teitel, *Transitional justice* 38-82.

⁶⁶ Karstedt, *Legal institutions and collective memories* 1-27.

⁶⁷ Ibid.

Mark Osiel has consistently defended the vital role that trials can play in the construction of collective memory.⁶⁸ According to Osiel, a society traumatised by the violence it has suffered can certainly benefit “from collective representations of the past, created and cultivated by a process of prosecution and judgment, accompanied by public discussion about the trial and its result”.⁶⁹ This is because a criminal trial is, first and foremost, a forum for public debate, in which opposing parties contest historical accounts of recent catastrophes and, through these, the nature of memory that will be transmitted within society. In this sense, the adversarial nature of the trial is central: it does not produce consensus, but rather stages disagreement. It governs the way in which the parties engage with one another, allowing different narratives of the past to compete and seek legitimation: “a criminal trial is one useful way to begin a discussion with an initially unwilling interlocutor”.⁷⁰ Osiel argues that criminal proceedings do not foster social solidarity in the manner envisaged by Durkheim, but rather through a logic of dissent.⁷¹ They become spaces where disagreement is addressed publicly and institutionally. In this perspective, Osiel defends the legitimacy of criminal trials designed for educational purposes, arguing that the construction of collective memory through such trials is neither intrinsically wrong nor morally indefensible.⁷² It is in this direction that the author develops his defence of so-called liberal show trials: proceedings that, while remaining within the limits of procedural fairness, are capable of acting as public spectacles, stimulating public discussions which promote “the liberal virtues of toleration, moderation and civil respect”.⁷³ The pedagogical dimension, therefore, does not represent a threat to the legal integrity of the trial, but rather an intrinsic necessity. As Osiel argues, insisting on rigid legal formalism in such contexts means preventing courts from cultivating the collective memory necessary for a process of democratisation. Along the same lines, Douglas argues that delivering justice is not the only objective that courts must pursue.⁷⁴ Major post-conflict trials and those dealing with atrocities have a moral obligation to teach a shared history of events, but they also have a duty to “teach history and shape collective memory”.⁷⁵

⁶⁸ Osiel, *Mass Atrocity, Collective Memory, and the Law* 36-59.

⁶⁹ Ibid 39.

⁷⁰ Ibid 46.

⁷¹ Ibid 36-59.

⁷² Ibid.

⁷³ Ibid 2.

⁷⁴ Lawrence Douglas, *The Memory of Judgment: Making law and History in the Trials of the Holocaust* (Yale University Press 2001)1-7.

⁷⁵ Ibid 3.

However, the very features that make trials potentially effective tools for the construction of shared memory also constitute the source of their principal limitations.⁷⁶ First, the attempt to use trials for pedagogical aims risks sacrificing the fundamental guarantees of fair trial, in particular the defendant's rights.⁷⁷ It is precisely this tension that Hannah Arendt openly contested in her analysis of the Eichmann trial, arguing that it was partly instrumentalised by Israel to foster a sense of national unity and justify its refusal to withdraw from the occupied territories, at the expense of the defendant's rights.⁷⁸ More broadly, trials can also distort the reality of past events rather than clarify it. As Osiel observes, the Nuremberg trials, while foundational, produced a selective narrative, insofar as the responsibility of the victorious powers was never taken into account, contributing to the creation of a selective and partial narrative.⁷⁹ Furthermore, the trial may be framed in terms that are either too narrow or too broad: focusing excessively on individual responsibility risks obscuring systemic and institutional accountability, while an overly expansive scope may compromise legal precision.⁸⁰ Finally, such trials may also demand from society a level of collective repentance and remorse that proves unsustainable within a given historical moment, generating resistance rather than reconciliation.⁸¹ As a result, even the most carefully planned process can influence collective memory in entirely unpredictable ways, producing unexpected and counterproductive narrative effects over the long term. It is precisely in light of these tensions that Osiel concludes his discussion of these obstacles by stating that, if collective memory can be created deliberately, "perhaps it can be done only dishonestly, that is, by concealing this very deliberateness from the intended audience".⁸² These considerations, identified by the author, do not suggest that trials are incapable of contributing to the formation of collective memory, but rather that such memory is complex, partial and at times selective.

Alongside criminal proceedings, truth commissions have emerged as an alternative instrument of transitional justice employed in post-conflict societies. Although there is no single, universally

⁷⁶ Osiel, *Mass Atrocity, Collective Memory, and the Law* 59-240.

⁷⁷ Ibid 59-79.

⁷⁸ Hannah Arendt, *Eichmann in Jerusalem: a report on the banality of evil* (Penguin Books 2006) 3-21,

⁷⁹ Osiel, *Mass Atrocity, Collective Memory, and the Law* 79-142.

⁸⁰ Ibid 142-166.

⁸¹ Ibid 166-209.

⁸² Ibid 8.

accepted definition of what a truth commission is, the definition proposed by Priscilla B. Hayner identifies a number of core features: it is

“(1) focused on the past, rather than ongoing events; (2) it investigates a pattern of events that took place over a period of time; (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; and (5) is officially authorised or empowered by the state under review”.⁸³

From this initial description, it is already clear how truth commissions differ entirely from trials. Criminal proceedings have far broader coercive and punitive powers. Furthermore, as Osiel points out, unlike trials, truth commissions are not adversarial in nature, lacking the necessary drama that he considers essential for stimulating public debate and building a collective and shared memory.⁸⁴ Truth commissions might therefore appear ineffective in addressing the horrors of the past in a transitional society. Nevertheless, precisely because of their broader mandate and less stringent procedural constraints, truth commissions can be relevant for the construction of collective memory. They are often able to capture the structural and systematic violence that has occurred in a given context, grasping dimensions that trials inevitably overlook. Martha Minow, while expressing scepticism towards any possible response to such atrocities, suggests that these instruments may be better suited to address the broader social and moral goals of post-conflict societies.⁸⁵ Above all, unlike criminal proceedings, they focus on the experience of victims.⁸⁶ Being able to recount what one has endured without being interrupted can be of immense help to those who have survived such events. Indeed, they are grounded in the assumption that the official recognition of victims’ testimonies contributes not only to individual healing but also to create a shared public account of past violence.⁸⁷ This is not only fundamental for the individual, but, as Minow observes, “an indictment of a social cataclysm can permit individuals to move beyond trauma”.⁸⁸ A further distinctive feature of these instruments lies in their goal of reconstructing as comprehensive an account as possible of what has occurred: they “undertake to write the history

⁸³ Priscilla B Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2nd edn, Routledge 2011) 6.

⁸⁴ Osiel, *Mass Atrocity, Collective Memory, and the Law* 13-24.

⁸⁵ Martha Minow, *Between Vengeance and Forgiveness :Facing History after Genocide and Mass Violence* (Beacon Press 1998) 52-91.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid 67.

of what happened as a central task”.⁸⁹ Unlike trials, which focus on the individual responsibility of perpetrators, the reports they produce will entail a narrative that encompasses the nation as a whole. In this sense, these reports are fundamental to the production of historical knowledge, shaping how past events are understood and remembered. In this way, they give life to the *lieux de mémoire* described by Nora. Nevertheless, these transitional justice mechanisms are also marked by important structural limitations. The first, identified by Minow herself, relates to the fact that, by focusing on the experiences of those who suffered injustices, these mechanisms contribute to framing history through the lens of victimhood.⁹⁰ This can be problematic when considering the political implications and consequences that memory has in the present. Furthermore, if the political and structural context in which these Truth Commissions operate has not changed, there may be bias between those who consider themselves victims and those who consider themselves responsible.⁹¹ This, in turn, suggests that the “truth” established by such instruments may be inherently selective and partial. This risk may have materialised in the case of the South African Truth and Reconciliation Commission: Emilios Christodoulidis and Scott Veitch, analysing the process of constructing collective memories carried out in this context, argue that the Commission sought to ignore the structural arrangements of apartheid, producing a selective narrative that excluded the systemic dimensions of violence.⁹²

It is precisely in light of these limitations that the distinction between criminal proceedings and truth commissions appears inadequate. In some post-conflict societies, hybrid transitional justice practices have emerged, integrating features of both models. A striking example is the Gacaca Courts in Rwanda. These are community courts which, whilst exercising judicial functions and entailing individual accountability, are based on the collective participation of the entire community. Although they will be examined in greater detail later, these courts differ from both criminal trials on the one hand and truth commissions on the other. The limitations identified through an analysis of these two tools have therefore highlighted how they contribute to the formation of collective memory, though never in a neutral or exhaustive manner. Whilst trials focus on individual responsibility, truth commissions prioritise the victims’ own recollection of events.

⁸⁹ Ibid 60.

⁹⁰ Ibid 52-91.

⁹¹ Emilios Christodoulidis and Scott Veitch, 'Reflections on Law and Memory ' in Susanne Karstedt (ed), *Legal Institutions and Collective Memories* (Hart Publishing 2009) 63-79.

⁹² Ibid.

Transitional justice thus structures the past in a selective manner, reflecting specific political interests and narratives. Law does not produce neutral memory, rather it actively shapes and organises it through processes of selection and interpretation. It is precisely this dynamic of exclusion-inclusion between official narratives and alternative memories ⁹³ that the case studies analysed below aim to examine and explore in greater depth.

⁹³ Elizabeth Jelin, *State Repression and the Labors of Memory* (Judy Rein and Marcial Godoy-Anativia trs, University of Minnesota Press 2003).

2.THE HOLOCAUST: TRANSITIONAL JUSTICE AND THE PRODUCTION OF COLLECTIVE MEMORY

2.1 Nuremberg Trial and the Foundations of Holocaust Memory

The International Military Tribunal (IMT)¹ constituted the first institutional attempt to construct a public narrative of Nazi atrocities, thereby shaping the framework through which societies would come to understand and remember the Holocaust. Although primarily established by the Allied powers to prosecute the role that Nazi leaders had played in launching and waging an aggressive war, the Tribunal also played a foundational role in defining and condemning the extermination of the Jews, especially through the creation of the category of crimes against humanity.² The decision to establish an International Tribunal was not immediate because of the competing visions of how Nazi crimes should be addressed. Indeed, British and Soviet authorities initially favoured summary executions of Nazi leaders.³ They believed that such a solution would prevent their conduct from being subject to judicial scrutiny and were also sceptical about the law's ability to adequately address crimes of this magnitude and gravity.⁴ The Americans, on the other hand, were firmly convinced of the need to establish a tribunal, not only as an opportunity to extend, apply, and reinforce principles of international law but also explicitly for the educational role that this tribunal would play.⁵

In this sense, the Tribunal was conceived not merely as a mechanism for punishment, but also as an institution capable of publicly demonstrating the law's potential to address heinous outrages.⁶ Prosecutor Robert Jackson himself was acutely aware of the historical significance of the proceeding, declaring that "we must never forget that the record on which we judge these

¹ The International Military Tribunal (IMT) was the first of the Nuremberg proceedings, held in 1945-1946 by the Allied powers, established to prosecute leading Nazi officials for war crimes, crimes against peace and crimes against humanity.

² Lawrence Douglas, *The memory of judgment: Making law and History in the Trials of the Holocaust*, (Yale University Press 2001), 1-7.

³ Ibid. 38-41.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

defendants today is the record on which history will judge us tomorrow”.⁷ This statement suggests that the Trial was framed not only as a legal arena but also as a site of historical memory-making. The indictment comprised three substantive charges, namely crimes against peace, war crimes and crimes against humanity, alongside a conspiracy charge intended to establish the existence of the defendants’ collective criminal plan.⁸ Among these, crimes against humanity are particularly relevant to this analysis, as they provided the legal framework through which the extermination and persecution of civilian populations, including Jews, could be publicly named and condemned.⁹ As Douglas observes, the category of crimes against humanity appears specifically designed to name and condemn the atrocities committed against the Jewish population under Nazism.¹⁰ However, when reading the text, it becomes clear that the scope of this Article was substantially restricted, since the Tribunal limited its jurisdiction to crimes committed in connection with the war.¹¹ As a result, the Tribunal reached the decision not to consider the atrocities committed against the Jewish population prior to 1939.¹² These limitations reflected the broader tensions confronting the Tribunal. While the unprecedented nature of Nazi crimes demanded an extraordinary legal response, capable of reflecting the gravity of these actions, the judges and prosecutors were concerned with preserving the legitimacy of the trial, which had already been accused of being political.¹³ Bloxham himself acknowledges that the Nuremberg prosecutors established themselves as historical authorities, exceeding the boundaries of legal precedent.¹⁴

These jurisdictional constraints had direct consequences for the ways in which the Holocaust was documented and presented before the Tribunal. In particular, the need to operate within a legally defensible evidentiary framework, combined with the enormous volume of documents compiled by the Nazi bureaucracy itself, convinced the prosecution of the need to rely as much as possible on written forms of evidence.¹⁵ However, the preference for documentary evidence, and thus the

⁷ Robert H Jackson, ‘Opening Address at the Nuremberg Trial (21 November 1945)’ (CVCE, 21 November 1945) http://www.cvce.eu/obj/opening_address_by_robert_h_jackson_nuremberg_21_november_1945-en-9a50a158_f2f7-468b-9613-b2ba13da7758.html accessed 30 May 2026.

⁸ Charter of the International Military Tribunal (8 August 1945) 82 UNTS 279, article 6.

⁹ Ibid.

¹⁰ Douglas, *The Memory of Judgment* 43.

¹¹ Charter of the International Military Tribunal (8 August 1945) 82 UNTS 279, article 6.

¹² Douglas, *The Memory of Judgment* 89-94.

¹³ Ibid.

¹⁴ Donald Bloxham, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory* (Oxford University Press 2001) 221-228.

¹⁵ Douglas, *The Memory of Judgment* 16.

legal framework within which the atrocities were framed, undermined the educational goal assumed by the Tribunal, “contributing to the serious shortcomings in the historical understanding of the Holocaust that emerged from Nuremberg”.¹⁶ Nevertheless, it must be acknowledged that, with regard to the “Final Solution,”¹⁷ the prosecution relied on evidence other than written documents to secure reliable representations of atrocities that were difficult to describe.¹⁸ A first example is the screening of the film *Nazi Concentration Camps* which provided a visual record of the extreme conditions and systematic brutality of the camps.¹⁹ In addition, survivor testimonies played a crucial role in supplementing the evidentiary record. Among the most significant was the testimony of Marie Claude Vaillant Couturier on conditions at Auschwitz and the gassing process, which provided the Court with details that became central to popular understandings of the Holocaust.²⁰

However, as Bloxham argues, the Tribunal’s reliance on documentary evidence, combined with what he describes as “failure of legal imagination”²¹ left the destruction and extermination of the Jews in the realm of the abstract.²² In this sense, the legal framework struggled to fully articulate the specificity and scale of extermination as lived experience.²³ The victims of the Holocaust are completely absent from the courtroom. Since they have no voice to draw attention to their fate, they had to rely on that of the prosecutors, who, as we have seen, had to balance various interests.²⁴ This not only led to their victimhood often being misrepresented but also resulted in little empathy towards the victims.²⁵ The transmission of Holocaust memory depends fundamentally on identification with the victims.²⁶ Yet the IMT, focused on prosecuting perpetrators rather than bearing witness to the suffering of the persecuted, systematically failed to provide such a space of identification, thereby restricting the emotional and experiential dimension of remembrance.²⁷ Beyond the absence of victims’ voices, the Tribunal’s representation of Nazi atrocity was marked

¹⁶ Ibid 66.

¹⁷ The Final Solution (*Endlösung*) refers to the Nazi plan for the systematic extermination of European Jewry.

¹⁸ Douglas, *The Memory of Judgment* 29-32.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Bloxham, *Genocide on Trial* 95.

²² Ibid 96-120.

²³ Ibid.

²⁴ Ibid 60-71.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

by a deeper interpretive distortion. The gravity of the committed crimes led the prosecution to frame Nazi crimes as acts “of atavism, horrific deeds committed in an orgy of primitive barbarism.”²⁸ Within this interpretative scheme, comparisons were repeatedly drawn between the Allies, a symbol of civilisation, and the Nazi leaders, atavistic monsters.²⁹ Although this interpretation is useful for educational purposes, it has been contested on numerous occasions. As Zygmunt Bauman argues in the work *Modernity and the Holocaust*, the Jewish genocide cannot be understood as an eruption of primitive barbarism, but rather as a product of modernity itself, rooted in bureaucracy and rationalisation.³⁰ Indeed, the author specifically sought to emphasise how civilisation’s technological rational advancements can be exploited for cruel atrocities.³¹ From this perspective, the narrative framework produced at Nuremberg generated a representation of the Holocaust that in part absolved modernity rather than interrogating it, with direct consequences for the collective memory that emerged from it.

Despite these limitations, it would be reductive to affirm Nuremberg failed to take the Holocaust into account. As Douglas argues, the proceedings established a foundational legal and narrative framework through which the Holocaust entered public consciousness for the first time.³² Indeed, towards the end of the proceedings, moments of genuine historical reckoning did emerge. The British chief prosecutor, Hartley Shawcross, in his closing argument, explicitly acknowledged the victims in a way that had been largely absent throughout the trial, placing before the Court what would become its most enduring moral imperative, the duty to remember.³³ However, this emerging recognition remained partial and structurally constrained. The absence of victims as central speaking subjects, the predominant use of documentary evidence, and the interpretation of Nazi crimes through categories of barbarism and atavism contributed to a representation of what had happened to the Jewish population that remained partial and incomplete.³⁴ It was only with the trial of Adolf Eichmann that survivor testimony came to play a central role in judicial

²⁸ Douglas, *The Memory of Judgment* 84.

²⁹ Ibid 85-89.

³⁰ Zygmunt Bauman, *Modernity and the Holocaust* (Polity Press 1989) 8-10.

³¹ Ibid.

³² Douglas, *The Memory of Judgment* 89-94.

³³ Ibid.

³⁴ Bloxham, *Genocide on Trial* 221-228.

proceedings, influencing not only the way the trial was conducted but also the very nature of Holocaust remembrance.

2.2 The Eichmann Trial: From Legal Accountability to Public Memory

The trial of Adolf Eichmann, held in Jerusalem in 1961, marked a fundamental turning point in the reconfiguration of Holocaust memory.³⁵ Unlike the Nuremberg Trials, where the extermination of the Jews was merely one aspect of the grave atrocities committed by the Nazis, the Eichmann Trial placed the Final Solution at the very centre of the proceedings, thereby contributing to its emergence as a paradigmatic reference within contemporary collective memory.³⁶ It is within this framework that Prime Minister Ben-Gurion's description of the trial as "the Nuremberg of the Jewish people" acquires its full significance.³⁷ The aim was, indeed, to establish a judicial process that, through the judgment of Eichmann, could provide a more complete historical account of the atrocities committed against the Jews.³⁸

The Tribunal followed the controversial capture of Eichmann by Israeli agents in Argentina in 1960, an operation that immediately raised intense international debate.³⁹ Critics questioned its legitimacy, some focusing on the retroactive justice under which Eichmann was to be tried, while others raised concerns regarding the possibility that Jewish judges might not be impartial.⁴⁰ These objections reflected a broader tension concerning who possessed the authority to narrate and publicly memorialise the extermination of the Jewish population.⁴¹ Within Israel, however, the Prime Minister Ben-Gurion firmly maintained not only the need to establish the Tribunal, but also the imperative that it be held on Israel soil, where it could serve a broader historical and educational function for Israeli society.⁴² In his view, the Eichmann Trial would have represented, a unique opportunity to educate the young about what happened to the Jewish people during World War II.

³⁵ Douglas, *The Memory of Judgment* 89-94.

³⁶ Ibid.

³⁷ David Ben-Gurion, cited in Donald Bloxham, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory* (Oxford University Press 2001) 13.

³⁸ Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (Penguin Books 2006) 3-21.

³⁹ Ibid.

⁴⁰ Deborah E Lipstadt, *The Eichmann Trial* (Schocken 2011) 1-18.

⁴¹ Ibid.

⁴² Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (Penguin Books 2006) 3-21.

He stated, “it is not an individual that is in the dock at this historic trial and not Nazi regime alone, but anti-Semitism throughout history”.⁴³ This explicitly pedagogical function attributed to the Trial was strongly criticised by Hannah Arendt, who considered the attempt to use the Trial to foster a sense of national unity to be profoundly flawed from both a moral and legal standpoint.⁴⁴ In her view, the primary function of a Court is to administer justice by determining individual responsibility and imposing an appropriate sentence.⁴⁵ According to Arendt, who saw Ben-Gurion’s influence behind the trial, the aim of the Prosecution was not limited to establish Eichmann’s individual responsibility, but to construct a public space through which historical consciousness could be actively shaped.⁴⁶ This viewpoint was echoed in the stance taken by the judges themselves, who emphasised the importance of ensuring a fair legal trial for the accused, while at the same time avoiding unnecessary harm to the Jewish public, thereby acknowledging the trial’s inescapably political dimension.⁴⁷

These two conflicting perspectives on the purpose of the proceedings are also reflected in the different attitudes towards the survivors’ testimonies. Unlike the Nuremberg Trials, where victims were largely absent or relegated to the role of abstract figures, the Eichmann trial placed survivor testimony at the centre of the proceedings.⁴⁸ This shift was by no means accidental but reflected a reconfiguration of the evidentiary and narrative structure of the trial, in which testimony became a fundamental instrument. The legal framework of the trial reflected what Arendt critically defines as the “passive-personality principle”⁴⁹, according to which criminal proceedings are effectively undertaken by the Israeli government on behalf of the victims, who were implicitly positioned as those entitled to seek justice.⁵⁰ In Arendt’s perspective, there is therefore a risk that the wrongdoer may be judged and punished not because their actions have disturbed the community, but rather to satisfy the victims’ desire for revenge. This concern is reflected in Hausner’s opening statement at the trial, in which he declared that he was not alone before the Court, for beside him stood “six

⁴³ Ben-Gurion cited in Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (Penguin Books, 2006) 19.

⁴⁴ Ibid 3-21.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid

⁴⁸ Lipstadt, *The Eichmann Trial* 25-29.

⁴⁹ Arendt, *Eichmann in Jerusalem* 260.

⁵⁰ Ibid.

million prosecutors”.⁵¹ To give concrete form to his statement, Hausner prepared a list of more than one hundred survivors.⁵² Their testimony was not primarily intended to prove Eichmann’s guilt, as the vast amount of evidence presented by the prosecution was more than sufficient.⁵³ Moreover, since they often had no direct connection to Eichmann, they were unable to accurately describe his role in the Final Solution.⁵⁴ Their testimony served instead the pedagogic purpose mentioned earlier: to articulate a narrative of the Holocaust that had not been fully articulated during the Nuremberg trials. While Arendt considered most of these testimonies marginal to the legal core of the proceedings, Haim Gouri emphasised its unprecedented capacity to describe the experience of genocide to the entire society.⁵⁵ Anita Shapira, in this sense, reads this divergence of opinions as emblematic of a broader interpretative tension within Holocaust historiography: “is the focus on the perpetrators’ deeds or on what victims suffered?”.⁵⁶ This procedural transformation also affected the structure of the trial. The presence of such a large number of witnesses made the trial more asymmetrical and procedurally complex than the Nuremberg Trial, particularly in relation to the scope afforded to the defence. Compared to the prosecution, the defence operated under more limited conditions in terms of evidentiary possibilities, particularly in terms of the scope and impact of witnesses’ testimonies.⁵⁷ This asymmetry contributed to structuring the narrative of the trial, reinforcing the centrality of survivor accounts.

Although the trial gave unprecedented visibility to the victims, it ultimately remained structured around the figure of Eichmann and the nature of his responsibility. In contrast to Nuremberg, where Nazi leaders were often portrayed as atavistic and monstrous figures, Eichmann emerges as a radically different type of criminal.⁵⁸ Arendt famously described him as an ordinary bureaucrat whose crimes did not stem from a deep hatred or ideological fanaticism, but rather from an inability to give precise meaning to his own actions.⁵⁹ This interpretation gave rise to the concept of

⁵¹ Gideon Hausner, ‘The Attorney General’s Opening Speech’ (Sessions 6-8, 17-18 April 1961) [Opening Statement | The Eichmann Trial](#) accessed 31st May 2026.

⁵² Lipstadt, *The Eichmann Trial* 51-55.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Haim Gouri, *Facing the glass booth: the Jerusalem trial of Adolf Eichmann* (Michael Swirsky tr, Wayne State University Press 2004) 123-127.

⁵⁶ Anita Shapira ‘The Eichmann Trial: Changing Perspectives’ in David Cesarani (ed), *After Eichmann: Collective Memory and the Holocaust since 1961* (Routledge 2005) 23.

⁵⁷ Arendt, *Eichmann in Jerusalem* 274.

⁵⁸ Ibid 250-252.

⁵⁹ Ibid.

“banality of evil”,⁶⁰ developed by Arendt, which relocates the explanation of mass violence, shifting attention away from the idea of exceptional monstrosity towards the ordinariness of bureaucratic participation in mass violence. This interpretation drew significant criticism. Yaacov Lozowick, for instance, argued that Eichmann actively worked on a daily basis to maximise the harm inflicted on the Jewish population, challenging the idea of a merely passive bureaucrat.⁶¹ Similarly, Christopher R. Browning argues that Arendt was misled by a broader defensive strategy, adopted not only by Eichmann but also by other Nazi officials, who consistently claimed that their responsibility was limited to following orders.⁶² Yet the difficulty of integrating Eichmann’s figure into established moral categories was not confined to academic debate. Deborah Lipstadt highlights how contemporary reactions, including a front-page of the New York Times that described Eichmann as “dull”⁶³ and not even “worth hating”⁶⁴, reflected this same broader difficulty.⁶⁵ However, the same author cautions against interpretations that risk underestimating Eichmann’s role in regard to the Final Solution, or at least his awareness of the gravity of his actions.⁶⁶ One of the most compelling pieces of evidence against this interpretation lies in the systematic destruction by Eichmann and other Nazi officials of the documentary evidence of their crimes; an act that thus seems to presuppose a degree of moral consciousness that complicates purely bureaucratic readings of their conduct.⁶⁷ Such criticisms do not necessarily invalidate Arendt’s argument. Rather, they reveal the broader difficulty of categorising a perpetrator who combined his active participation in and organisation of a genocide with the ordinary characteristics of a modern bureaucrat. It became difficult to understand how such unprecedented crimes could be reconciled with the apparent normality of the individual who committed them. Prosecutor Hausner himself sought to counter the image of bureaucratic normality by proving that Eichmann had at least once killed a boy with his own hands in Hungary, as if demonstrating a direct causal link between his actions and a single death might make his guilt more legible to those

⁶⁰ Ibid 252.

⁶¹ Yaacov Lozowick, *Hitler’s Bureaucrats: The Nazi Security Police and the Banality of Evil* (New York, 2002) 277-279.

⁶² Christopher R. Browning, *Collected Memories: Holocaust History and Postwar Testimony* (University of Wisconsin Press 2003) 2-8.

⁶³ Lipstadt, *The Eichmann Trial* 116.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid 151-155.

⁶⁷ Ibid.

who witnessed the trial.⁶⁸ This effort itself reveals the deeper difficulty identified by Arendt: the need to render Eichmann legible through familiar categories of criminality.⁶⁹ Eichmann's image as an ordinary bureaucrat finds further theoretical support in Bauman's analysis. As discussed in the previous section, Bauman describes the genocide carried out by Nazi criminals as the most logical outcome of modern bureaucratic rationality.⁷⁰ From this perspective, the Eichmann Trial inadvertently reinforced this interpretation. While Nazism had been presented at Nuremberg as a symptom of a regression to primitive barbarism, the Eichmann Trial made it impossible to sustain this interpretation: an ordinary man had organised the deaths of countless people from his desk.

It should therefore be emphasised that the Trial did not merely result in a legal verdict but contributed to the redefinition of a new regime of Holocaust memory, shaped by the centrality of survivor testimony and by a transformed representation of the perpetrator. By presenting for the first time an ordinary man as one of the architects of the genocide, the Trial made it impossible to confine the explanation of mass violence to the exceptional atavism of a few deviant individuals. In doing so, it rendered the mechanisms of genocide universally legible, capable of implicating anyone under certain structural conditions. However, this shift also generated new tensions which continue to inform scholarly debates, and which will be subject of analysis in the following sections.

2.3 Institutionalisation of Holocaust Memory

Although the Eichmann Trial took place sixteen years after the end of World War II, it marked a decisive turning point in the public perception of the Holocaust and in the role attributed to its survivors. In this sense, the trial not only contributed to its visibility but also to creating the framework through which it could be narrated and collectively remembered. As Shoshana Felman argues, the survivors who testified during the proceedings acquired a new "semantic authority"⁷¹ over both their own experiences and the public understanding of the Holocaust. This shift contributed to creating a more structured regime of public memory, in which testimony assumed a central legitimising function. Although there had already been commemorations remembering the

⁶⁸ Ibid 98-100.

⁶⁹ Amos Elon 'The Excommunication of Hannah Arendt' in Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (Penguin Books 2006) viii-xxiii.

⁷⁰ Zygmunt Bauman, *Modernity and the Holocaust* (Polity Press 1989) 8-10.

⁷¹ Shoshana Felman, *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* (Harvard University Press 2002) 127.

Holocaust, the historian Israel Gutman notes that the fact that the younger generations in Israel were hearing, often for the first time, what had happened to the Jewish people profoundly transformed society's perception of both the tragedy and its survivors.⁷² As Haim Gouri states, the Court legitimised the “disclosure of one's past: what had silenced and repressed gushed out and became common knowledge”.⁷³ This process contributed to a broader transformation in the role of survivors, who increasingly came to recognise the importance of their testimonies as a central vehicle for the construction of collective memory.⁷⁴ In the years following the trial, survivors began to record their memories, publish their personal stories, register relatives as Holocaust victims at Yad Vashem, and speak in schools and public institutions.⁷⁵ Their expanding public role and influence within the community also contributed to the establishment of museums, memorials and archival institutions dedicated to preserving Holocaust memory.⁷⁶ Within these spaces, collections of video and audio testimonies, now a fundamental part of Holocaust remembrance, could be preserved and displayed.⁷⁷ This process of institutionalisation reflects what Assmann has described as the transition from communicative to cultural memory, through which lived experience is transformed into a collectively transmissible heritage.

One of the most lasting effects of the Eichmann Trial was the broader public consolidation of the term “Holocaust” within international discourse.⁷⁸ Although the term had already been used before 1961, it “cemented into the lexicon of population when the Court translators used it throughout the trial”.⁷⁹ The widespread adoption of this term did not merely provide a universally recognisable name for the genocide but also contributed to the emergence and development of Holocaust studies as an academic field.⁸⁰ University departments, research programs and dedicated academic courses trace their origins to the moment when the Eichmann Trial made the Holocaust relevant not only

⁷² Lipstadt, *The Eichmann Trial* 188-200.

⁷³ Gouri, ‘Facing the glass booth’ 324.

⁷⁴ Ibid.

⁷⁵ Lipstadt, *The Eichmann Trial* 188-202.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid 188.

⁸⁰ Ibid 188-202.

to the Jewish community but to the entire world.⁸¹ As Leora Bilsky observes, thanks to this process, “the abstract knowledge became real, and history was transformed into collective memory”.⁸²

However, the institutionalisation of Holocaust memory has not developed uniformly across different national contexts. The term “nativization” of the Holocaust, coined by Isabel Wollaston, effectively captures the way in which museums and memorial institutions adopt “particular forms and have particular emphases depending upon their national context”.⁸³ Tim Cole’s analysis highlights how Holocaust memory varies significantly depending on the national context in which it is constructed and presented.⁸⁴ Cole develops this argument through a comparison of three major institutions: Yad Vashem in Jerusalem; the United States Holocaust Memorial Museum (USHMM) in Washington D.C.; and the Holocaust Exhibition at the Imperial War Museum (IWM) in London.⁸⁵ The latter two institutions place paramount importance on survivor testimony, “reflecting the significant changes brought by the Eichmann trial”.⁸⁶ At the same time, however, the Holocaust is here portrayed as an instance of absolute evil attributed to a “radical other”, positioned in contrast to the democratic values of the contemporary nation-state.⁸⁷ Although elements of self-criticism emerge, particularly regarding the role of passive spectators assumed by the United States and Great Britain, this reflection is nonetheless incorporated into a narrative that tends to reaffirm the legitimacy of the present-day nation.⁸⁸ In this sense, Holocaust memory risks being instrumentalised as a device for national and identity-based legitimisation, in which partial reflection on historical responsibility is accompanied by forms of symbolic self-reaffirmation.

This tension becomes particularly visible in the case of Yad Vashem in Jerusalem. The museum’s location on Israeli territory suggests a complex relationship between Holocaust memory and the construction of the State of Israel.⁸⁹ Its proximity to the national cemetery where the father of

⁸¹ Ibid.

⁸² Leora Bilsky, *Transformative Justice* (University of Michigan Press 2004) 111.

⁸³ Isabel Wollaston, ‘A War against Memory? Nativizing the Holocaust’ in John K. Roth and Elisabeth Maxwell-Meynard (eds.), *Remembering for the Future: The Holocaust in an Age of Genocides* Vol. 3, (Palgrave Macmillan 2001) 507.

⁸⁴ Tim Cole ‘Nativization and Nationalization: A Comparative Landscape Study of Holocaust Museums in Israel, the US and the UK’ in David Cesarani (ed) *After Eichmann: Collective Memory and the Holocaust since 1961* (Routledge, 2005) 130-145.

⁸⁵ Ibid.

⁸⁶ Ibid 140.

⁸⁷ Ibid 130-145.

⁸⁸ Ibid

⁸⁹ Ibid.

Zionism, Theodor Herzl, is buried, further reinforces this symbolic connection.⁹⁰ As Bartov suggests, visitors to the museum may leave with the impression that, had the State of Israel existed at the time, the genocide would never have occurred.⁹¹ Within this narrative, Jewish resistance is valorised but at the same time presented as insufficient in the absence of a homeland capable of protecting the Jewish people.⁹² The museum thus contributes to a redemptive narrative, one in which the Holocaust is framed as a founding moment that retrospectively justifies the creation of the State of Israel, positioning the latter as a historical and political response to the genocide. This narrative must be understood within a broader context in which the institutionalisation of Holocaust memory has generated two contradictory effects in Israel.⁹³ On the one hand, it has undoubtedly contributed to reinforcing a Zionist interpretation in which the establishment of the State of Israel appears as a historical necessity for the protection of the Jewish people and for the prevention of future catastrophes of this kind.⁹⁴ On the other hand, it has also reshaped the perception of the victims themselves: the earlier representations of Jews as passive “sheep to the slaughter” gradually gave way to a recognition that survival in Israel, rather than reflecting any inherent moral or cultural superiority was simply a matter of historical and geographical circumstance.⁹⁵ Embedded in both reactions, however, was the perception of Jews as eternal victims, forced to remain constantly vigilant regarding their own fate.⁹⁶

A preliminary analysis of the institutions established in the wake of the Eichmann trial already reveals the presence of structural tensions and limitations, which concern not only the legal dimension of the trial but also the broader regimes of remembrance that it helped to shape. It is precisely these unresolved dynamics that will be further examined in the following section.

2.4 Limits and silences within the Post-War Memory Framework

While the previous sections have demonstrated how the judicial institutions created to prosecute Nazi atrocities have contributed to the construction of a public and globally recognised narrative

⁹⁰ Ibid.

⁹¹ Omer Bartov, *Murder in Our Midst: The Holocaust, Industrial Killing, and Representation* (Oxford University Press 1996) 178.

⁹² Ibid.

⁹³ Lipstadt, *The Eichmann Trial* 188-202.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

of the Holocaust, it is now necessary to analyse their own internal limitations. As discussed previously, Osiel acknowledges that trials, by their intrinsic nature, often inevitably produce a partial and selective memory.⁹⁷ The Nuremberg and Eichmann trial have both been instrumental to the universalisation of Holocaust memory, transforming it into a global paradigm of absolute evil and upholding the political goal of ensuring that such atrocities could never happen again.⁹⁸ However, the memory that emerges through legal, testimonial and institutional mechanisms is always the result of processes of selection and exclusion.

A first and immediate limitation concerns the complete absence of crimes committed by the Allied powers themselves from the proceedings and from the collective memory they generated.⁹⁹ The systematic bombing campaigns against cities such as Dresden, Hiroshima and Nagasaki never fell within the scope of the Tribunal's jurisdiction, nor was the responsibility of the victorious powers ever subjected to judicial scrutiny.¹⁰⁰ As Minow observes, critics at the time argued that Nuremberg was merely "a front for the Allies' military power", an instance of "victors' justice, and sloppy at that".¹⁰¹ This dimension of the trial's legacy will assume particular relevance in the comparative analysis developed in the fourth Chapter, where a strikingly similar dynamic will be identified in the Rwandan context.¹⁰² A further dimension of this selectivity concerns the geographical scope of the Holocaust which was only partially represented by the IMT.¹⁰³ Since a large amount of documentation regarding the extermination camps in Eastern Europe had been collected by the Soviet Union and rarely circulated in the West, the extermination of Jewish communities in territories such as Lithuania, Estonia, Latvia and Belarus remained at the margins of the Nuremberg Trials.¹⁰⁴ In this sense, the Tribunal's selective focus helped to obscure both the massacres in Eastern Europe and the death camps within those territories.¹⁰⁵ Indeed, because trials

⁹⁷ Mark Osiel, *Mass Atrocity, Collective Memory, and the Law*, (Transaction Publisher 1997) 79-142.

⁹⁸ Alexandra Herfroy-Mischler, 'When the Past Seeps into the Present: The Role of Press Agencies in Circulating New Historical Narratives and Restructuring Collective Memory during and after the Holocaust Transitional Justice' (2016) 17 *Journalism* 823-844.

⁹⁹ Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Beacon Press 1998) 30.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ Bloxham, *Genocide on Trial*: 186-190.

¹⁰⁴ *Ibid.*

¹⁰⁵ David Cesarani and Eric J. Sundquist, *After the Holocaust: Challenging the Myth of Silence*, (Routledge 2012) 1-15.

are necessarily limited to the evidence presented before them, they risk excluding significant dimensions of the events they seek to reconstruct. The critique advanced by Bloxham reflects what Wilson has defined as the “partiality thesis”, according to which criminal trials, by their very nature are structurally ill-equipped to produce a comprehensive historical record.¹⁰⁶ Lost in “the morass of juridical and evidentiary detail”,¹⁰⁷ trials produce only a partial and selective truth, leaving an incomplete and impoverished historical record.¹⁰⁸

With regard to the Eichmann Trial, a different but complementary critique has been advanced by Yonatan Ratosh.¹⁰⁹ According to the author, the pedagogical and political framework of the trial encouraged an almost exclusive emphasis on anti-Semitism and Jewish suffering, while marginalising the broader ideological system underpinning Nazi violence and the persecution of other victim groups, including Roma communities, homosexuals, and political opponents.¹¹⁰ Ratosh describes this choice as “a crude distortion of history for the sake of the needs of the Jewish consciousness”.¹¹¹ His critique highlights how the pedagogical aim of the trial contributed to shaping a selective narrative of Nazi persecution, one in which certain categories of victims were foregrounded while others relegated to the margins of public memory. A further dimension of this selectivity concerns the very process through which Holocaust memory acquired its central position in public discourse. The extensive use of survivors’ testimonies during the Eichmann Trial transformed the Holocaust into a collectively recognised and morally shared experience.¹¹² However, it was precisely this central role attributed to testimony that rendered the Holocaust “the definitive model for the construction of memory, the paradigm for analysing recent events or for laying the groundwork for future historical narratives of events unfolding before our eyes that have not yet become history”.¹¹³ The Holocaust thus became the primary memorial and moral framework through which to interpret the atrocities occurring in the present day.

¹⁰⁶ Richard Ashby Wilson, *Writing History in International Criminal Trials* (Cambridge University Press 2011) 6.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Yonatan Ratosh, ‘Within a Very Limited Space’ *Davar* (1 September 1961).

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Wieviorka, *The Era of the Witness* xvi.

¹¹³ Ibid.

The historical and narrative implications of this focus have also been discussed by Hannah Arendt.¹¹⁴ In the concluding section of her work, Arendt argues that the trial failed to frame the extermination of the Jews as a crime against humanity in the most universal sense of the term.¹¹⁵ According to the author, the Eichmann Trial remained too closely anchored to an interpretation of the Holocaust as the outcome of a historically rooted antisemitism: “the oldest crime they knew and remembered”.¹¹⁶ As a consequence, it failed to recognise the emergence of a new form of modern mass violence that concerns humanity as a whole.¹¹⁷ Indeed, paradoxically, the subsequent evolution of Holocaust memory moved in precisely the opposite direction from what Arendt advocated. Rather than emphasising its universal implications as a crime against humanity, public and commemorative narratives increasingly stressed its singularity and exceptional nature, reinforcing a perception of the Holocaust as an absolutely unique and incomparable event. Its growing representation as a unique event risks transforming it into an occurrence that is simultaneously incomparable and in principle removed from any meaningful comparative analysis.¹¹⁸ As Agamben puts it, Auschwitz becomes a unique, unspeakable phenomenon, and therefore difficult to translate into ordinary categories.¹¹⁹ Although this interpretation remains primarily philosophical in nature, it nonetheless highlights a significant problem: attributing absolute uniqueness to the Shoah can limit our ability to recognise similar events occurring today.¹²⁰ A similar concern also emerges in Samantha Power’s analysis.¹²¹ In examining American society and its relationship to the Holocaust, the author argues that the Holocaust has set the bar so high that it becomes difficult for the public to recognise contemporary genocides.¹²² Michael Berenbaum similarly speaks of the “Americanization of the Holocaust.”¹²³ By this expression, the author refers to the transplantation of the Holocaust from the place where it occurred to the United States and to the cultural transformations this process entailed.¹²⁴ As he explains, the Holocaust has become deeply embedded in American public culture, representing what he terms “the

¹¹⁴ Arendt, *Eichmann in Jerusalem* 253-279.

¹¹⁵ Ibid.

¹¹⁶ Ibid 267.

¹¹⁷ Ibid 253-279.

¹¹⁸ Giorgio Agamben, *Quel che resta di Auschwitz: L’archivio e il testimone* (Bollati Boringhieri 1998) 12-35.

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Samantha Power, *A Problem from Hell: America and the Age of Genocide* (Perennial 2003) 503.

¹²² Ibid.

¹²³ Michael Berenbaum cited in Annette Wieviorka, *The Era of the Witness* (Cornell University Press 2006) 117.

¹²⁴ Ibid 117-118.

absolute experience”¹²⁵ for society: “people don’t know what good and evil are, but they are certain about one thing: the Holocaust is absolute evil.”¹²⁶

These tensions, which will be discussed at length in the fourth Chapter, reveal certain structural characteristics of transitional justice mechanisms. While the trials examined here have succeeded in enabling forms of public recognition, they have also tended to prioritise certain narratives, categories of victims, and historical interpretations, while marginalising others. Against this background, Rwanda offers an important comparative perspective. The following Chapter will therefore examine how different transitional justice mechanisms have operated in distinct post-conflict contexts and assess their capacity to produce and transmit collective memory.

¹²⁵ Ibid

¹²⁶ Ibid.

3. TRANSITIONAL JUSTICE AFTER THE RWANDAN GENOCIDE

3.1 Post-Genocide Rwanda and the Limits of International Justice

The Rwandan genocide, which broke out on April 7, 1994, unfolded over the course of just one hundred days, yet standing as one of the most violent and terrifying events in contemporary history. As Susan Thomson has observed, in a nation of seven million people, at least half a million Tutsi died.¹ Although this tragedy is also classified by the international community as genocide, Mahmood Mamdani identifies two structural characteristics that distinguish the Rwandan genocide from the Holocaust and that are of particular relevance to the present research.²

First, unlike the Holocaust, which was carried out at a distance through the bureaucratic efficiency of industrial death camps and gas chambers, the genocide in Rwanda was an “intimate affair”.³ carried out with machetes by a very large number of perpetrators, often neighbours of the victims themselves.⁴ Mamdani observes in this regard that the Nuremberg Trials were made possible in part by the physical distance that had come to exist between perpetrators and victims, most of whom had departed for either America or Israel.⁵ In Rwanda, by contrast, Tutsis and Hutu, victims and perpetrators, were forced to live side by side within the same community, making the achievement of reconciliation an inescapable imperative.⁶ Second, while the genocide perpetrated by Nazi Germany was essentially a state project, conceived and carried out by a small group through a centralised bureaucratic apparatus, the Rwandan genocide unfolded as a wave of mass violence of a popular nature that involved a large portion of civilian population.⁷ For this reason, during the International Conference on Genocide, Impunity and Accountability in Kigali in 1995,

¹ Susan Thomson, *Rwanda: From Genocide to Precarious Peace* (Yale University Press 2018) 24. Estimates of the death toll vary considerably in the scholarly literature, ranging from at least 500,000 to over 800,000 victims. See also Stannard, who refers to approximately 850,000 Tutsi killed (p.67).

² Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda* (Princeton University Press 2001) 18-22.

³ Ibid 19.

⁴ Ibid 18-22.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

Pasteur Bizimungu spoke of “hundreds of thousands of criminals”⁸ present in the country.⁹ Mamdani suggests that, for this reason, the Rwandan genocide in fact resembles the structure of apartheid in South Africa more than the Holocaust.¹⁰

The presence of tens of thousands of suspects also created a structural problem of enormous proportions. In the immediate post-genocide period, a very large number of individuals were arrested and transferred to prisons that were already severely overcrowded, where they remained detained for years without being formally charged, under extremely harsh living conditions.¹¹ The forced coexistence between victims and the numerous perpetrators made it essential to establish extraordinary mechanisms of transitional justice. In response to this need, on November 8, 1994, the UN Security Council authorised the establishment of the International Criminal Tribunal for Rwanda (ICTR)¹², an institution designed to prosecute the principal architects of the genocide.¹³ Similar to the Nuremberg Trials, the ICTR was based on a retributive logic, stemming from the conviction that punishing the main perpetrators was necessary to achieve lasting peace and reconciliation.¹⁴ However, the Tribunal was not welcomed by either the Rwandan government led by President Kagame or the majority of the population.¹⁵ At the institutional level, the government viewed the ICTR as an institution run by the same colonial powers that had abandoned Rwanda in its moment of greatest need by failing to intervene to stop the ongoing genocide.¹⁶ From a practical perspective, by focusing solely on the principal organisers of the mass violence and securing only thirty-eight convictions,¹⁷ the Tribunal was viewed as a costly and largely ineffective instrument.¹⁸ Kagame himself, in an interview, stated that the Tribunal, rather than dealing seriously with the

⁸ Pasteur Bizimungu cited in Saskia Van Hoyweghen, 'The Rwandan Villagisation Programme: Resettlement or Reconstruction?' in Didier Goyvaerts (ed), *Conflict and Ethnicity in Central Africa* (Institute for the Study of Languages and Cultures of Asia and Africa 2000) 212.

⁹ Ibid.

¹⁰ Mamdani, *When Victims Become Killers* 18-22.

¹¹ Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (Cambridge University Press 2010) 170-171.

¹² UNSC Res 955 (8 November 1994) UN Doc S/RES/955.

¹³ Ibid.

¹⁴ Clark, *The Gacaca Courts*, 170-171.

¹⁵ Ibid 132-136.

¹⁶ Ibid.

¹⁷ Clark reports 38 convictions as of the time of writing (2010). The ICTR formally closed in 2015 having secured a total of 61 convictions out of 93 persons indicted.

¹⁸ Ibid.

genocide, served as a pretext for paying “huge salaries to UN workers”.¹⁹ Similar criticisms were voiced by the Rwandan people, who complained that the Tribunal’s location in Arusha, Tanzania, prevented the criminals on trial from facing the community they had gravely harmed, thereby precluding any possibility of seeking forgiveness and initiating a genuine process of collective healing.²⁰ The criticisms levelled against the ICTR clearly reveal that, in Rwanda, the goal was not limited to merely punishing those responsible, but rather there was a need to initiate a process of reconciliation between the parties, who were destined to continue living together in the same village. It was precisely in response to this need that the Gacaca Courts emerged once again.

3.2 Community-Based Justice and the Gacaca Courts

Gacaca, a term derived from the *Kinyarwanda* word meaning “the lawn, the grass” in reference to the open spaces where hearings were held, was not created after the genocide.²¹ Rather, it constituted the principal traditional mechanism for conflict resolution in Rwandan society during the early twentieth century, relying on the collective participation of the community gathered in a public space.²² Based on collective participation and public deliberation, traditional Gacaca dealt with limited and relatively minor cases, such as land disputes, marriages and disputes over livestock.²³ This institution was not designed to address atrocities such as those that occurred in 1994.²⁴ In fact, at an international conference in 1995, the government initially dismissed the idea of using the Gacaca system because it violated existing Rwandan law, which required that serious crimes be formally prosecuted.²⁵ The decision to revive and adapt Gacaca arose from the extraordinary challenges faced in the aftermath of the genocide. Rwanda, in fact, had more than 120,000 suspects in already overcrowded prisons, while the ICTR was proceeding slowly, focusing on a limited number of high-ranking perpetrators.²⁶ Moreover, the population was very poorly

¹⁹ Paul Kagame, (interviewed by V Brittain), 'The Arusha Tribunal Costs Too Much for Very Few Results' (2003) 11 *African Geopolitics* <www.african-geopolitics.org/show.aspx?ArticleId=3537> accessed 7 June 2026.

²⁰ Clark, *The Gacaca Courts*, 132-136.

²¹ Ibid 3.

²² Ibid.

²³ Ibid.

²⁴ Ibid 55.

²⁵ Ibid.

²⁶ Clark, *The Gacaca Courts* 175-176.

informed about the work of the ICTR, “undermining the potential for justice to be seen and be done”²⁷.

However, Gacaca did not “inherently possess the concepts and methods necessary to address genocide crimes”²⁸. For this reason, the Gacaca Law, enacted in January 2001 and subsequently revised five times, transformed the traditional institution, enabling it to address serious crimes while retaining its community-based and participatory nature.²⁹ Modern Gacaca has introduced several significant innovations.³⁰ While retaining the outdoor setting and the emphasis on community participation, Gacaca now operates on a written legal basis, ensures that women can participate both as witnesses and as judges, and provides for the possibility of sentencing those responsible for genocide to prison terms.³¹ Gacaca is a unique institution, differing not only from the trials examined so far, but more broadly from all the transitional justice institutions around the world.³² In order to briefly explain how such a complex institution works, it is useful to turn to Clark, who describes Gacaca as an institution capable of

“Facilitate restorative justice via meaningful engagement between parties previously in conflict, in the form of communal dialogue and cooperation, which are crucial to fostering reconciliation after a genocide”.³³

Unlike conventional war crimes tribunals which focus only on criminal accountability, or truth commissions that prioritise disclosure over punishment, Gacaca incorporates both dimensions: it holds perpetrators accountable while simultaneously creating a space where the community can engage in an emotional dialogue about the lived experience of genocide.³⁴ Gacaca displays what Clark defines as “internal hybridity”.³⁵ Within the field of transitional justice, hybridity is based

²⁷ Timothy Longman, *Memory and Justice in Post-Genocide Rwanda* (Cambridge University Press 2017) 302.

²⁸ Clark, ‘*The Gacaca Courts*’ 71.

²⁹ Ibid.

³⁰ Phil Clark ‘The Rules and Politics of engagement: the Gacaca Courts and Post-Genocide Justice, Healing and Reconciliation in Rwanda in Phill Clark and Zachary D. Kaufman (eds) *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond* (Columbia University Press 2009) 297.

³¹ Ibid.

³² Clark, ‘*The Gacaca Courts*’ 75.

³³ Clark, ‘The Rules and Politics of Engagement’ 300.

³⁴ Ibid 297.

³⁵ Clark, ‘*The Gacaca Courts*’ 55.

on the idea that multiple legal, political and social institutions, operating concurrently, can contribute more effectively to the reconstruction of a society harmed by heinous crimes.³⁶

The emergence of Gacaca as a local justice mechanism, as opposed to international mechanisms such as Nuremberg or the ICTR itself, reflects a broader shift identified by Lars Waldorf in the field of transitional justice.³⁷ In recent years, he observes, accountability “has increasingly turned to the local”,³⁸ reorienting the focus from cosmopolitan norms and state agendas to particularist practices and community needs.³⁹ Waldorf observes a growing criticism of international criminal justice, which is seen as imposing Western values on local communities and crowding out more restorative and locally grounded approaches to accountability.⁴⁰ As he argues, the international criminal justice model has been dominated by “liberalism, legalism, retribution, individualism”,⁴¹ a set of preferences that Gacaca fundamentally challenged by relocating the production of justice within the community itself. Therefore, the truth that emerges from this local instrument is not transmitted from above through institutional authorities but is instead negotiated within the community itself, a distinction with profound consequences for the kind of collective memory that emerges in Rwanda. Gacaca encompasses a range of objectives that would normally require different institutions, seeking to address various social needs of Rwandan society.⁴² Phil Clark has identified six different transitional justice objectives that Gacaca aimed to pursue.⁴³ These include uncovering the truth about what happened and why; building peace by fostering new methods of conflict resolution; promoting justice through retributive, deterrent and restorative measures; facilitating healing; encouraging forgiveness between perpetrators and victims; and ultimately rebuilding the social fabric through reconciliation.⁴⁴ The path followed by many genocide suspects illustrates this multidimensional approach. First, selected suspects are released and sent to various *Ingando*, camps, temporary re-education and reintegration centres where participants underwent a three-month civic education program.⁴⁵ After completing this period of education, suspects were

³⁶ Ibid.

³⁷ Lars Waldorf, 'Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice' (2006) 79 *Temple Law Review* 1, 42-52.

³⁸ Ibid 49.

³⁹ Ibid 42-52.

⁴⁰ Ibid.

⁴¹ Ibid 52.

⁴² Clark, 'The Gacaca Courts' 48.

⁴³ Ibid 29-46.

⁴⁴ Ibid.

⁴⁵ Ibid 98.

released into their home communities, where they awaited trial by a Gacaca court.⁴⁶ Depending on their confession and the severity of the crimes committed, after Gacaca they could either remain in the community and serve alternative sentences or return to prison.⁴⁷

The key point to emphasise when discussing Gacaca is the central role assigned to the community. Unlike conventional courts, Gacaca institutions require the complete absence of professional judges, lawyers, or police officers.⁴⁸ Instead, proceedings were overseen by elected community members known as *Inyangamugayo* (“those who detest dishonesty”), whose role was to facilitate dialogue and encourage everyone’s participation.⁴⁹ The underlying assumption was that the adversarial nature of conventional courts did not allow the population to speak out about the atrocities they had suffered, and thus failed to address the social consequences of the genocide.⁵⁰ For this reason, the community plays a pivotal role throughout the entire process, sharing its experiences and concerns. Another central element of this institution is confession. The latter is understood as the suspect’s voluntary admission of the crimes committed and the acknowledgment of the atrocity of these actions.⁵¹ Gacaca was founded on the idea that only through confession could relationships within the community between perpetrators and survivors be restored.⁵² Relatives of the victims have often lived for many years without knowing exactly what happened to their loved ones or where their bodies were hidden.⁵³ For most of the population, seeking freedom from their ignorance of past events is essential, since, as Clark reports in his interviews, this constitutes a vital means to healing.⁵⁴

Gacaca was heavily criticised by various international and Western human rights organisations, which raised doubts about its ability to ensure fair trials in the absence of the procedural safeguards typical of formal judicial systems.⁵⁵ In fact, one of the main criticisms concerned the lack of lawyers or trained judges in proceedings dealing with highly sensitive issues such as genocide-

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid 137.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid 98-107.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid 141-145.

related crimes.⁵⁶ This, combined with the direct participation of a community still traumatised and divided, risked, according to critics, turning the hearings into a form of “mob justice”, in which dynamics of revenge and community pressure would leave the innocent suspects unprotected.⁵⁷

Clark responds to these procedural criticisms by emphasising the existence of various safeguards designed to protect the accused’s right to a fair trial. Judges had broad powers to ensure that the rights of suspects are respected; they deliberate in private before rendering a verdict; and suspects, if not satisfied with the decision, have the option to appeal.⁵⁸ More than 25% of cases have resulted in acquittal, a percentage that is hardly consistent with an arbitrary system or mob justice.⁵⁹ It is also essential to emphasise that evaluating Gacaca exclusively through the lens of conventional criminal justice can be misleading. Gacaca is not a formal court and does not aspire to be one; rather, it is a hybrid community institution that pursues objectives far broader than the punishment of the guilty. Gacaca Law itself affirms Gacaca is designed “not only with the aim of providing punishment but also reconstituting the Rwandan society that had been destroyed by bad leaders”.⁶⁰ The “formal” models of Gacaca, implicitly suggested by critics, which would bring this institution closer to conventional Western forms, would risk constraining community participation, thereby compromising the driving ethos of the entire institution.⁶¹ It is, however, precisely through collective participation that Gacaca aims to grasp a form of truth that is structurally different from the one emerged from the trials examined in the previous Chapter, paving the way for the analysis of the processes through which such truth is constructed in the following section.

3.3 Collective Memory in Post-Genocide Rwanda

Described by Longman as more akin to the truth commission established in South Africa than to conventional trials examined earlier, Gacaca has produced a form of truth that radically differs from that emerged through the filter of international criminal law and its documentary logic.⁶²

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid 155.

⁶⁰ Clark ‘The Rules and Politics of Engagement’ 313.

⁶¹ Clark, ‘*The Gacaca Courts*’ 164.

⁶² Longman, *Memory and Justice in Post-Genocide Rwanda* 116.

Rather than relying on evidentiary reconstruction, Gacaca produces truth through dialogue within the community in which the violence occurred.⁶³

It is precisely the hybridity of this institution that leads Clark to argue that Gacaca simultaneously incorporates three interrelated dimensions of truth: legal, therapeutic and restorative truth.⁶⁴ The latter are realised through three distinct, yet interdependent processes embedded in the functioning of the institution. The first process, truth-telling, stems from active participation in public hearings, where members are offered the opportunity to describe individual and collective experiences during the genocide.⁶⁵ According to Clark, this process facilitates healing and reconciliation: victims, feeling that they are finally being heard, regain a sense of belonging within the community.⁶⁶ In this sense, truth is not pre-given but articulated through situated testimony or confession. The second process, truth-hearing, describes the collective reception and acknowledgement of these narratives.⁶⁷ When, for example, a witness provides new information, such as implicating a suspect, the community does not merely listen, but it integrates that information into its understanding of the events.⁶⁸ For the victims' families, this process responds to the fundamental need to know what happened to their relatives, enabling forms of psychological and social closure.⁶⁹ Given the dramatic nature of the events described, these two processes do not unfold in a linear fashion. The individual accounts provided by the participants, often marked by contradiction and partiality, require continuous mediation.⁷⁰ At this stage, the role of institutional actors becomes crucial, as they selectively interpret and organise testimonies, producing an initial layer of narrative ordering.⁷¹ The truth that thus emerges from Gacaca is a truth that is continually negotiated at the local level, embodied in the community's testimonies, and heavily dependent on the perpetrators' confessions.⁷² It is for this reason that the third process undertaken by Gacaca is even more fundamental: the process of truth-shaping.⁷³ The truth that emerges from local participation is not simply recorded but actively reinterpreted and reframed by

⁶³ Ibid.

⁶⁴ Clark, *The Gacaca Courts* 1-28.

⁶⁵ Ibid 186-219.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

institutional and political actors in order to fulfil a new function.⁷⁴ The Rwandan government has always attributed central importance to this dimension, presenting Gacaca as a privileged tool for civic education and the construction of national memory. The creation of the Gacaca Documentation Centre in Kigali, which will house physical and digital archives of the Gacaca Courts, exemplifies precisely the process through which the establishment of truth within the Gacaca courts becomes institutionalised within broader national narratives about the genocide.⁷⁵

Gacaca can therefore be understood as a vast process of collective remembrance through which fragmented individual memories are transformed into socially recognised narratives about the genocide and shared by society. Following Assmann's distinction, Gacaca initially produces communicative memory rooted in everyday and face-to-face interactions, which is subsequently stabilised, through the creation of archival institutions such as the Gacaca Documentation Centre, into more durable forms of cultural memory.⁷⁶ This transformation becomes visible in Rwanda's genocide memorial landscape. These sites embody the idea, developed by Pierre Nora, that in order to create a historical record of the past and collective memory, society needs *lieux de memoire*, sites of memory, whose specific purpose is to prevent important events from being forgotten.⁷⁷ Since the aftermath of the 1994 genocide, more than 243 genocide memorials have been established in Rwanda.⁷⁸ However, the types of memorials that can be found throughout the country differ structurally from the museums created, for example, to commemorate the Holocaust. Here, memorials are typically located at the sites where violence occurred and often display human remains and bones.⁷⁹ For this reason, they are described by Julia Viebach as "deathscapes",⁸⁰ places associated with death and imbued with meanings.⁸¹ The author argues that in Rwanda, survivors were particularly involved in the construction of a shared memory within the country.⁸² Her work, however, demonstrates that, given the very nature of these memorials, while for the

⁷⁴ Ibid.

⁷⁵ Longman, 'Memory and Justice in Post-Genocide Rwanda' 81.

⁷⁶ Jan Assmann, *Cultural Memory and Early Civilization: Writing, Remembrance, and Political Imagination* (Cambridge University Press 2011) 1-70.

⁷⁷ Nora, 'Between Memory and History: Les Lieux de Mémoire' 7-18.

⁷⁸ Julia Viebach, 'Place-Bound Proximity at Rwanda's genocide memorials' in Mina Rauschenbach, Julia Viebach and Stephan Parmentier (eds), *Localising Memory in Transitional Justice: The Dynamics and Informal Practices of Memorialisation after Mass Violence and Dictatorship* (Routledge 2022) 179- 208.

⁷⁹ Ibid.

⁸⁰ Ibid 181.

⁸¹ Ibid.

⁸² Ibid 179-208.

community the memorials serve to fix the collective memory of trauma and injury, for the victims, they also represent places of private and individual mourning.⁸³ This widespread presence of memorials in all the country reminds Rwandans of the centrality of the genocide in the country's history.⁸⁴ People are regularly reminded of the genocide. As the Director of the Office for Genocide Memorials stated, "we must not forget because if we forget it can be very dangerous, not just for Rwanda but for all humanity."⁸⁵ Alongside these memorials, a series of commemorative practices have become institutionalised over the years.⁸⁶ The most significant is Kwibuka, the national commemoration ceremony held annually on April 7, the anniversary marking the start of the genocide, during which the entire nation pauses to remember the victims.⁸⁷ Known as "the week of mourning," this commemoration lasts a week and features the president, cabinet ministers, and foreign dignitaries delivering speeches at various genocide sites.⁸⁸

Within this framework, Gacaca does not merely contribute to delivering justice or recounting what happened but actively participates in the production of a socially legitimate version of that past. The memory that emerges from these institutions is therefore neither entirely spontaneous nor imposed, but rather the result of a structured process of articulating, acknowledging and institutionalising the experiences of the entire community.

3.4 Reconciliation, Unity and Narrative Regulation

The process of establishing a shared and collective memory of the genocide in Rwanda did not emerge in isolation but developed within a broader project of national reconstruction and reconciliation promoted by the Rwandan Patriotic Front (RPF). The latter, following its rise to power in 1994, embarked upon an ambitious project to construct a new single historical narrative of the country.⁸⁹

The new narrative sought, first and foremost, to deny any enduring social or historical significance to ethnic categories. According to the RPF, the achievement of lasting peace and national unity required replacing the previous interpretation of Rwandan history, which was founded upon the

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid 89.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ René Lemarchand, *The Dynamics of Violence in Central Africa* (University of Pennsylvania Press 2009) 109-128.

division between Hutu and Tutsi, with a new narrative that rejected the notion that the Tutsi were foreign invaders.⁹⁰ This interpretation is clearly reflected in a panel displayed at the Kigali Genocide Memorial, which presents pre-colonial Rwanda as unified and peaceful society whose divisions emerged only with the arrival of Belgian colonialism.⁹¹ This is, indeed, the second pillar upon which the new historical narrative proposed by the RPF is based: Rwanda's ethnic conflict stemmed from colonial rule.⁹² It should be noted, however, that this narrative resonated with many Rwandans' lived experiences as they still possessed the identity cards issued by the Belgians, where ethnicity was the most relevant information.⁹³ A third pillar that emerges when analysing the narratives promoted by the RPF, especially during commemorative events such as Kwibuka, is the idea that without this political party, a second, new atrocity could occur.⁹⁴ The RPF is, in fact, described as being composed of people with noble intentions who did not seek to enter into war, but who were nevertheless compelled to do so in order to end the genocide.⁹⁵ These themes were not confined to official speeches or educational programs. They were further reinforced by the extraordinary density of memorial sites across the country. According to Longman, this proliferation of memorials serves a dual purpose.⁹⁶ On the one hand, it contributes to the legitimization of Rwanda as a "victim-nation"; on the other, it provides a discursive and symbolic framework through which restrictions on civil society and political opposition can be justified.⁹⁷ In this sense, Rwanda has indeed constructed a singular official narrative, one that maintains unity around a collective sense of victimhood while systematically marginalising memories that could undermine or complicate this account. The precise contours of these silences and exclusions will be examined in greater detail in the following section.

Since Gacaca courts became one of the main arenas in which the genocide could be publicly discussed and a collective memory could be constructed, articulated and transmitted, questions inevitably emerged regarding the extent to which the official state narrative also shaped the truth produced within these proceedings⁹⁸. Indeed, many critics argue that the official narrative by the

⁹⁰ Longman, *Memory and Justice in Post-Genocide Rwanda*, 91-135.

⁹¹ Ibid.

⁹² Ibid 238.

⁹³ Ibid.

⁹⁴ Ibid 56-60.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid 54-56.

⁹⁸ Ibid.

state also influenced the functioning of the Gacaca courts themselves.⁹⁹ Several scholars argue that this relationship significantly limited the autonomy of Gacaca. Longman, while acknowledging the innovative value of the institutions as capable of providing important opportunities for the community to confront the past and engage in dialogue, argues that the Gacaca courts failed to promote genuine and meaningful reconciliation.¹⁰⁰ The author contends that Gacaca became an instrument through which the State exercised control over the population.¹⁰¹ An example put forward by Longman is the exclusion, and complete absence of any mention, of crimes committed by the RPF within the Gacaca process, which contributed to consolidating a partial narrative of the genocide.¹⁰² This exclusion thus paradoxically made ethnicity the determining criterion for establishing which crimes were to be investigated and which were not, creating a hierarchy among victims, privileging Tutsi victimhood and risking fostering resentment along ethnic and political lines.¹⁰³ Similar concerns have been raised by Bert Ingelaere¹⁰⁴ and Lars Waldorf.¹⁰⁵ The authors have similarly described Gacaca as a “state-driven, state owned and top-down process”¹⁰⁶ which fails to deliver justice free from political interference. From these perspectives, the truth generated by Gacaca must be contextualised within the broader political objectives of the State government. Rather than creating a genuinely plural space where memory can be negotiated, Gacaca is viewed as contributing to the dissemination of an officially selective interpretation of the past.

Clark, however, cautions against overestimating state interference. While acknowledging the existence of broader political pressures, he argues that the State had no direct control over what occurred within Gacaca hearings¹⁰⁷. Within Gacaca, it is not government representatives who exercise power or interfere in the dialogue process, but rather the judges. Their role is to mediate

⁹⁹ Ibid.

¹⁰⁰ Ibid 110-113.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Erin Jessee, 'The Micro-politics of Remembering "the 1994 Genocide against the Tutsi" in Rwanda' in Mina Rauschenbach, Julia Viebach and Stephan Parmentier (eds), *Localising Memory in Transitional Justice: The Dynamics and Informal Practices of Memorialisation after Mass Violence and Dictatorship* (Routledge 2022) 83.

¹⁰⁴ Bert Ingelaere, 'The Gacaca Courts in Rwanda', in L. Huyse and M. Salter (eds.), *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*, Stockholm: IDEA, 2008, 54.

¹⁰⁵ Waldorf, 'Mass Justice for Mass Atrocity' 3.

¹⁰⁶ Ibid.

¹⁰⁷ Clark, 'The Gacaca Courts' 156-157.

the dialogue that unfolds within the institution in order to make it as productive as possible, while also ensuring that no external force interferes.¹⁰⁸ Clark notes that, on at least three occasions he personally observed, judges intervened to ask government officials to desist from speaking or from speaking on behalf of the community¹⁰⁹. Even Longman himself, despite his reservations regarding Gacaca's independence, admits that "the sheer number of judges on each panel help to make influencing them more difficult".¹¹⁰ The criticisms raised, according to Clark, underestimate the local agency exercised by these judges.¹¹¹ The author acknowledges that there were instances in which the government pressured or even coerced participation, but he argues that it is problematic to assume this necessarily translated into coercion over what was subsequently discussed within Gacaca proceedings.¹¹² Moreover, it must not be overlooked the fact that Rwanda comprised approximately 11,000 jurisdictions, making it impossible even for a highly centralised bureaucracy such as the RPF to exercise control over every Gacaca proceeding¹¹³. These authors often overestimate "the ability of the government to monitor and influence directly a court system as diffuse as Gacaca".¹¹⁴

The differing interpretations advanced by Ingelaere, Waldorf, Longman and Clark reveal a broader tension at the heart of post-genocide memory construction in Rwanda. On the one hand, Gacaca created unprecedented opportunities for local participation, dialogue and collective truth telling. On the other hand, these institutions operated within a political context characterised by strong State involvement in promoting a single shared collective memory. The results and consequences of this tension cannot be ignored and will be the subject of the following section.

3.5 Limits, Silences and the Politics of Memory

As analysed above, the historical narrative promulgated by the Rwandan government is structured around three main pillars: national unity and reconciliation, the attribution of ethnic divisions to Belgian colonialism and the role of the RPF as a liberating force that brought the genocide to an

¹⁰⁸ Ibid.

¹⁰⁹ Ibid

¹¹⁰ Timothy Longman, 'Justice at the Grassroots? Gacaca Trials in Rwanda' in Naomi Roht-Arriaza and Javier Mariezcurrena (eds), *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (Cambridge University Press 2006) 215.

¹¹¹ Clark, 'The Gacaca Courts' 158-161.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Clark, 'The Gacaca Courts' 160

end. Within this framework, however, certain elements of the past are systematically marginalised. What this narrative excludes and silences are the Hutu victims and the crimes committed by the ruling party itself during the genocide.¹¹⁵ This selective framing becomes even more apparent when, in 2008, the parliament enacted a legal amendment renaming the “Rwandan genocide” as the “genocide against the Tutsis”, thereby further influencing a specific interpretation of the violence.¹¹⁶

Scholars have therefore examined the ways in which memory has been constructed in Rwanda in the aftermath of the genocide. Among the most influential contributions is that of René Lemarchand, who interprets the process of constructing a memory regime through the conceptual categories proposed by Paul Ricoeur. The latter, in his work entitled *La Mémoire, l'Histoire, l'Oubli*,¹¹⁷ had identified three distinct theoretical categories: thwarted memory, manipulated memory and enforced memory.¹¹⁸ The concept of thwarted memory allows Lemarchand to shed light on some of the blind spots of the dominant narrative. The insistence on national unity obscures the centrality of ethnic divisions in shaping the experience of violence and its aftermath.¹¹⁹ Furthermore, the complete silence surrounding Hutu victims, or the moderates within this ethnic group who attempted to resist the genocide, means that the responsibilities of both communities and of the ruling elites, for what happened remain unaddressed.¹²⁰ Manipulated memory, by contrast, refers to President Kagame’s complete refusal to acknowledge the crimes against humanity committed by his army during the war.¹²¹ Even if no reliable figures are available, it suffices to note that between 25,000 and 45,000 Hutu were massacred in just three communes between April and August 1994.¹²² Finally, the concept of enforced memory analyses the commemorative practices described above.¹²³ During these events the ethnic identities of the community are never mentioned but rather left in the background.¹²⁴ According to Lemarchand, this form of enforced silence proves to be one of the main obstacles to reconciliation, because it

¹¹⁵ Jessee, ‘Micro-politics of Remembering’ 87.

¹¹⁶ Ibid.

¹¹⁷ Paul Ricoeur, *La Mémoire, l'Histoire, l'Oubli* (Éditions du Seuil 2000).

¹¹⁸ Ibid.

¹¹⁹ Lemarchand, *The Dynamics of Violence* 120-131.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ Ibid.

“rules out the process of reckoning by which each community must confront its past and come to terms with its share of responsibility for the horrors of 1994”.¹²⁵ In this sense, Kibuka risks being instrumentalised to frame a narrative which keeps the Hutu in a position of culpability and legitimises the consolidation of Tutsi power.¹²⁶ The analysis conducted thus far has shed light on how the principal concerns of the Rwandan government was not only to deliver justice, but also to initiate a process of reconciliation among members of the community who were required to continue living together in the same social space. As Clark observes, these objectives were enshrined in the Gacaca process itself and were grounded in the broader aspiration to prevent such atrocities from ever occurring again.¹²⁷ However, as Lemarchand rightly observes, effective reconciliation processes presuppose that the past be confronted in its entirety and that none of its parts be erased: “oblivion is not an option if the promise of never again is to be fulfilled”.¹²⁸

As Clark, however, argues, “there can never be an official memory to which all citizens subscribe”.¹²⁹ The first Chapter of this thesis demonstrated how a society contains as many collective memories as there are groups and institutions within it.¹³⁰ Accordingly, in Rwanda there can be identified, alongside President Kagame’s official memory, the memory shared by the Hutu and the memory shared by the Tutsi, which often differs from the official narrative advanced by the State.¹³¹ Brandon Hamber underlines the importance of local memory, that is, memory rooted in lived experience and local social relations, which stands in contrast to the “totalizing, exclusive and top-down memory”¹³² imposed by governmental institutions. It is precisely this plurality of local, fragmented memories,¹³³ unrecognised by official memory, that reveals the structural limits of the memory regime imposed by President Kagame. The existence of competing Hutu and Tutsi memories suggests that collective memory cannot be entirely imposed from above. As discussed

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Clark, ‘*The Gacaca Courts*’ 29-46.

¹²⁸ Lemarchand, *The Dynamics of Violence in Central Africa* 120-131, citing Robert Gersony, ‘Prospects for Early Repatriation of Rwandan Refugees’ (UNHCR 1994) (unpublished report).

¹²⁹ Clark, ‘*The Gacaca Courts*’ 218.

¹³⁰ Maurice Halbwachs, *On Collective Memory* (University of Chicago Press 1992) 1-46.

¹³¹ Lemarchand, *The Dynamics of Violence* 129-130.

¹³² Brandon Hamber, ‘Epilogue: Localising Memory and Reinventing the Present’ in Rauschenbach, Viebach and Parmentier (eds), *Localising Memory in Transitional Justice* (Routledge 2022) 262.

¹³³ Elizabeth Jelin, *State Repression and the Labors of Memory* (Judy Rein and Marcial Godoy-Anativia trs, University of Minnesota Press 2003) xiii-xx.

in the first Chapter, memory remains embedded within social groups and therefore plural rather than singular.

The analysis conducted in this section reveals that the memory of Rwanda remains deeply contested, fragmented between a plurality of local memories and an official narrative that does not entirely succeed in silencing them. The transitional justice mechanisms examined in this Chapter have attempted to construct a negotiated, shared and collective memory of the Rwandan genocide. Yet, the memory that has emerged from these mechanisms risks being selective, partial and contested. Although Gacaca created an incredible opportunity for processes of popular participation and truth-telling, the broader political context meant that memory remained constructed around the suffering of Tutsi victims, and silent on the crimes committed by the RPF. It is precisely this structural partiality of the memory produced by transitional justice mechanisms and processes that the following Chapter sets out to examine through a comparative perspective.

4. COMPARATIVE ANALYSIS: MODELS OF JUSTICE AND TRANSMISSION OF MEMORY

4.1 *Two Models of Justice, Two Models of Truth*

The transitional justice mechanisms examined in the previous Chapters, the Nuremberg and Eichmann trials on the one hand and the Gacaca courts on the other, are grounded in radically different procedural logics. The adoption of these distinct mechanisms was itself determined by the structural differences between the two genocides and the distinct historical contexts in which they unfolded. Despite these structural differences, the present Chapter brings the two cases into direct comparative dialogue to examine whether, and to what extent, these opposing approaches generated comparable patterns of exclusion and selectivity in the construction of collective memory, and how the memory thus shaped was subsequently mobilised by broader political forces.

The Nuremberg Tribunal constitutes the first and most influential attempt to address the atrocities committed by the Nazis during World War II.¹ As Mamdani has observed, the “effective divorce”² between victims and perpetrators in Germany had facilitated the adoption of an international legal tribunal based on retributive logic that would punish the principal Nazi perpetrators.³ Douglas has argued that the Tribunal was not conceived solely as an instrument of justice but as a “didactic spectacle”,⁴ a vehicle for collective pedagogy capable of transmitting to societies a shared narrative of the events.⁵ The gravity of the actions committed required a legal response that, while delivering formal justice, would also serve the interests of didactic legality.⁶ Indeed, as Lars Waldorf observes, the Tribunal succeeded in providing an “enduring paradigm of accountability for atrocity”.⁷

¹ Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (Yale University Press 2001) 89-94.

² Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda* (Princeton University Press 2001) 18-22.

³ Ibid.

⁴ Douglas, *The Memory of Judgment* 3.

⁵ Ibid.

⁶ Ibid 1-7.

⁷ Lars Waldorf, 'Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice' (2006) 79 *Temple Law Review* 1, 42.

The Tribunal's evidentiary strategy relied almost exclusively on documents preserved by Nazi Germany: over hundreds of documents were used as exhibits in the proceedings.⁸ It was precisely this documentary strategy that undermined the pedagogical purpose of the trial.⁹ The truth produced through documents was formally unimpeachable and incontestable, yet largely inaccessible to the broader public.¹⁰ As Douglas himself acknowledges, this process "drained the proceedings of their expected drama",¹¹ a drama that was nonetheless necessary if the purpose of the trials was also to produce a shared and collective narrative of the events.¹² As already noted, "both the Allied powers in general and the prosecution in particular were invested in relying upon evidence that would ensure historical truth beyond contestation."¹³ The documentary logic of the trial not only constrained its pedagogical ambitions, but it also shaped the very content of the memory it constructed: institutionally authoritative in its content but structurally limited in its scope.¹⁴ The victorious powers had, in fact, preferred to rely on hard documentary evidence "rather than what were seen as unreliable and possibly exaggerated eyewitness accounts".¹⁵ It follows that the memory generated at Nuremberg reflected the limitations of the legal instrument used to generate it: what the trial managed to convey did not necessarily correspond to what was historically most significant, but rather to what was legally most manageable. It is precisely this dynamic that leads Bloxham to identify a structural gap between judicial memory and collective memory.¹⁶

Whereas Nuremberg had entrusted the task of preserving the memory of the genocide to written documents, the Eichmann trial placed, for the first time, the direct testimony of the survivors at the centre of the proceedings.¹⁷ As Douglas observes, testimony served an apparently juridical function but was essentially "educational and commemorative":¹⁸ the court became primarily a

⁸ Douglas, *The Memory of Judgment* 11-18.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid 16.

¹² Ibid.

¹³ Ibid 30.

¹⁴ Donald Bloxham, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory* (Oxford University Press 2001) 93-128.

¹⁵ Ibid 111.

¹⁶ Ibid 2.

¹⁷ Deborah Lipstadt, *The Eichmann Trial* (Schocken Books 2011) 51-55.

¹⁸ Douglas, *The Memory of Judgment* 182.

vehicle for the stories of the survivors.¹⁹ Survivor testimony thus became the “definitive model for the construction of memory”²⁰ of the Holocaust. However, even in this case, the truth produced, and thus the memory subsequently constructed, did not emerge spontaneously but was deliberately shaped and mediated by the judicial institution itself. As highlighted in the previous Chapter, Hausner carefully selected over one hundred witnesses, many of whom had no direct connection with Eichmann and were therefore unable to recount the role that the Nazi official had played in the Final Solution.²¹ Hannah Arendt was among the first to identify this contradiction: the imperative to construct a pedagogical trial had resulted in the subordination of the procedural logic of the Eichmann trial to the demands of memory production.²² It is precisely in this sense that Arendt employed the term “show trial”.²³ The memory institutionalised by the Eichmann trial more closely reflected the lived experience of Holocaust victims than that of the Nuremberg trials.²⁴ However, it was still curated and selected by a prosecution that was itself, as Arendt argued, subject to the political influence of Prime Minister Ben-Gurion.²⁵ The limitations identified in analysing trials as a tool of transitional justice and the construction of memory have therefore led to an examination of a completely different model proposed after the genocide in Rwanda. Whereas criminal tribunals determine from above what may be said, by whom and in what form, the Gacaca courts offered a radically different model for establishing the truth and, consequently, for constructing collective memory.

Before proceeding with the comparative analysis of these two diametrically opposed transitional justice mechanisms, it is useful to recall the structural differences between the two post-conflict contexts in which these instruments have operated, as identified by Mamdani.²⁶ The genocide in Rwanda was not carried out by a small number of perpetrators through a cold and distant bureaucratic apparatus, but by an extraordinarily large number of individuals who acted in a direct and intimate manner within their own communities.²⁷ As a result, in the aftermath of the genocide, there were more than 120,000 suspects in the country, a number that rendered mass incarceration

¹⁹ Ibid.

²⁰ Annette Wieviorka, *The Era of the Witness* (Cornell University Press 2006) xvi.

²¹ Lipstadt, *The Eichmann Trial* 51-55.

²² Douglas, *The Memory of Judgment* 106

²³ Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (Penguin Books 2006) 4.

²⁴ Lipstadt, *The Eichmann Trial* 51-55.

²⁵ Arendt, *Eichmann in Jerusalem* 4-6.

²⁶ Mamdani, *When Victims Become Killers* 18-22.

²⁷ Ibid.

practically impossible and compelled victims to continue living alongside those responsible of such atrocious crimes.²⁸ It is this structural condition that explains why a model analogous to Nuremberg could not be adopted in Rwanda.²⁹ Indeed, the ICTR, operating according to a retributive logic aimed at punishing the main architects of the genocide, was considered inadequate to address the scale of the crisis.³⁰ Gacaca, initially rejected by Rwandan authorities as incompatible with existing legislation, gradually emerged as a response to this dual imperative: to deliver justice and to promote a process of peace and reconciliation among communities forced to share the same social space.³¹

The shift from international to local justice was not solely a pragmatic response to the structural constraints of the post-genocide context but reflected a broader trend identified by Waldorf in the field of transitional justice.³² As Waldorf identified, accountability has “turned to the local”,³³ reorienting the focus to particularist practices and community needs.³⁴ Whereas international criminal justice privileges what Waldorf describes as “liberalism, legalism, retribution and individualism”,³⁵ local justice mechanisms such as the Gacaca courts fundamentally challenge this set of preferences by relocating the production of truth and accountability within the community itself, with profound consequences for the kind of collective memory that emerges from this process.³⁶ Indeed, as emphasised in the preceding Chapter, one of the defining characteristics of this model was the absence of professional judges or lawyers, whose presence would have filtered or even limited the engagement of the community and, consequently, the process of constructing a collectively shared memory.³⁷ Gacaca sought to produce a truth that emerged from the grassroots, negotiated locally between victims and perpetrators through the confession of crimes committed and direct involvement of the entire community.³⁸ As analysed in the previous Chapter, Clark distinguishes three distinct yet interdependent processes through which this truth is formed:

²⁸ Ibid.

²⁹ Ibid.

³⁰ Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (Cambridge University Press 2010) 132-136.

³¹ Ibid.

³² Waldorf, 'Mass Justice for Mass Atrocity' 48-52.

³³ Ibid 49.

³⁴ Ibid.

³⁵ Ibid 52.

³⁶ Ibid 48-52.

³⁷ Clark, *The Gacaca Courts* 98-107.

³⁸ Ibid 186-219.

truth-telling, truth-hearing and truth-shaping, each capable of simultaneously fulfilling a legal, therapeutic, and reconciliatory function.³⁹ Through these three processes, truth emerges from community dialogue, and after being negotiated between victims and perpetrators, it is gradually transformed into a shared collective memory.⁴⁰

The fundamental distinction that emerges from this comparison is therefore not merely procedural. Different transitional justice mechanisms generate different forms of truth, and consequently, different forms of collective memory. Nuremberg privileged a documentary truth, producing a highly authoritative but relatively distant and superficial account of the Holocaust; the Eichmann Trial, on the other hand, relied on testimonial truth to produce memory. Gacaca, by contrast, relocated truth production within the community itself, generating a locally negotiated narrative of the genocide. However, despite being structurally opposed in their procedural logic, these models share a fundamental characteristic. The memory they all produce is always the result of processes of selection and exclusion, guided by specific political and institutional interests. None of these mechanisms has produced an unmediated account of past events; rather, the truth that emerged from each instrument was filtered through the selection of who could be heard, which experiences were deemed most relevant, and which interpretations could become part of collective memory. The question that therefore arises in the following section is not whether these transitional justice mechanisms select certain truths over others, but rather what they select and with what consequences for societies that emerge from conflict. The comparative analysis developed in this Chapter makes it possible to identify exactly not only what has been specifically excluded from the memory constructed by each mechanism, but also the broader political consequences that these forms of selection generate in post-conflict societies.

4.2 The Inevitability of Selection: Silences and Exclusions

Both models of transitional justice employed after the genocide in Rwanda and the Holocaust inevitably selected certain interpretations, truths or even voices while excluding or marginalising others. However, the outcome of this selection is not identical. In some instances, the exclusions stemmed from the inherent characteristics of the instruments themselves: criminal tribunals are constrained by the evidentiary standards governing admissible proof, while the Gacaca courts

³⁹ Ibid.

⁴⁰ Ibid.

relied primarily upon confession and community testimony. In other instances, the silences were shaped by political interests to which these instruments were subjected. In Nuremberg, victorious powers needed to rely on written evidence collected by Nazi Germany in order to construct an incontestable narrative of the crimes committed;⁴¹ Israel sought to build a trial that would serve pedagogical purposes and produce a comprehensive account of the violence suffered by the Jewish community;⁴² in Rwanda the imperative extended beyond the prosecution of perpetrators to encompass the restoration of durable peace and the promotion of reconciliation among communities compelled to coexist.⁴³

With regard to the Nuremberg Trial, it is useful for the purposes of this section to briefly review some of the exclusions already identified in the second Chapter that characterise the transitional justice mechanisms analysed here. Mark Osiel, despite having been an advocate of the vital role that trials can play in the construction of public memory, also warned about the main limitations of this instrument.⁴⁴ In fact, trials can contribute to promoting a selective and partial narrative of the past.⁴⁵ Bloxham had immediately noted that, from a geographical standpoint, certain areas had been marginalised, if not excluded, from the scope of the trial: the camps at Belzec, Sobibor and Treblinka were not discussed.⁴⁶ A second fundamental exclusion that can be identified is the complete omission of crimes committed by the Allies.⁴⁷ Nuremberg was, in fact, criticised from the outset as an example of “victor’s justice”, where the bombings of Dresden, Hiroshima and Nagasaki never fell within the scope of the trial, and responsibility of the victors was never called into question.⁴⁸ These omissions reflect what Richard Wilson has described as the “partiality thesis”,⁴⁹ according to which trials, by becoming absorbed in legal and evidentiary details often produce an incomplete and selective historical record.⁵⁰ A different form of selectivity characterised the Eichmann Trial. The proceedings appear to have completely marginalised the other victims of the Nazi regime, such as Poles, Slavs, Roma, homosexuals, political dissidents

⁴¹ Douglas, *The Memory of Judgment* 30.

⁴² Arendt, *Eichmann in Jerusalem* 4-6.

⁴³ René Lemarchand, *The Dynamics of Violence in Central Africa* (University of Pennsylvania Press 2009) 109-128.

⁴⁴ Mark Osiel, *Mass Atrocity, Collective Memory, and the Law*, (Transaction Publisher 1997) 59-240.

⁴⁵ *Ibid* 79-142.

⁴⁶ Bloxham, *Genocide on Trial*: 186-190.

⁴⁷ *Ibid* 1-14.

⁴⁸ *Ibid*.

⁴⁹ Richard Ashby Wilson, *Writing History in International Criminal Trials*, (Cambridge University Press 2011) 6.

⁵⁰ *Ibid*.

and people with disabilities.⁵¹ As Yonatan Ratosh observed, this marginalisation of certain groups and the exclusive emphasis placed upon Jewish suffering for pedagogical purposes resulted in the complete relegation of other victims to the margins of public memory.⁵² More significantly, the pedagogical objectives established by Hausner influenced not only the types of victims who could be remembered but also how the Holocaust itself was narrated. By privileging the experience of Jewish victimhood, the trial established it as the dominant lens through which Nazi persecution was interpreted, thereby contributing to the marginalisation of other victim groups within collective memory.⁵³

A strikingly similar dynamic can be identified in Rwanda. It suffices to observe that Lars Waldorf has characterised the Gacaca courts as “the most sympathetic case for victor’s justice”,⁵⁴ an institution that focused solely on crimes committed against the Tutsi.⁵⁵ Yet between 25,000 and 45,000 civilians were killed by the RPF in 1994 and the crimes committed against the Hutu minority were systematically excluded from the jurisdiction of the Gacaca courts, silencing an entire category of victims.⁵⁶ Indeed, although the 1996 Gacaca Law targeted all crimes committed during the genocide, Waldorf cites a statement of a Gacaca judge who clarified that the courts would recognise as victims only those killed in the genocide itself, thereby excluding the victims of crimes committed by RPF soldiers.⁵⁷ This exclusion reflects the structural tendency of any transitional justice mechanism to align with the interests of those who established it. As previously discussed, Lemarchand employs Ricoeur’s category of “thwarted memory”⁵⁸ to highlight how the systematic silence surrounding Hutu victims, including those moderates who attempted to oppose the genocide, contributes to shielding the ruling elites from scrutiny regarding crimes committed during the conflict.⁵⁹ Allison Corey and Sandra Joireman, addressing the same problem, speak of

⁵¹ Yonatan Ratosh, ‘Within a Very Limited Space’ Davar, (1 September 1961).

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Waldorf, ‘Mass Justice for Mass Atrocity’ 151.

⁵⁵ Ibid.

⁵⁶ Timothy Longman, *Memory and Justice in Post-Genocide Rwanda* (Cambridge University Press 2017) 202.

⁵⁷ Waldorf, ‘Mass Justice for Mass Atrocity’ 151.

⁵⁸ Ibid.

⁵⁹ Ibid.

“politicized justice”,⁶⁰ a form of accountability which risks failing to encourage a genuine process of reconciliation and instead intensifies “a desire of vengeance among the Hutu majority”.⁶¹

As this research has consistently suggested, the narrative constructed within judicial proceedings does not remain confined to the courtroom but is progressively reproduced within the broader commemorative landscape, shaping what is subsequently remembered and commemorated in the public sphere. Indeed, the silences and exclusions identified within the judicial process were progressively reproduced within memorials and sites of remembrance. According to Erin Jessee, Rwanda’s genocide memorials appear to be dedicated to disseminating the official history of the “1994 genocide against the Tutsis”,⁶² failing to take into account the broader political violence that occurred in 1994.⁶³ The author further observes that these silences persist in the present, continuing to shape the collective memory of the Rwandan population today.⁶⁴ It is indeed worth invoking here the concept of “chosen amnesia” developed by Buckley-Zistel.⁶⁵ With this term, the author seeks to emphasise that what influences the present is not only what is articulated in collective memory, but also everything that it excludes and marginalises. Looking specifically at the case of Rwanda, Buckley-Zistel asserts that the population appears to have chosen to eclipse certain dimensions of the past in an attempt to build peace among individuals compelled to live in the same community.⁶⁶ Such selective forgetting appears particularly necessary when people are forced to live together in a territory where an official memory is strongly present.⁶⁷ In introducing this concept, however, the author also aims to emphasise that the exclusions and silenced dimensions of the past exert an influence no less significant than what is actively remembered.⁶⁸ Although developed specifically in relation to the Rwandan case, this concept proves useful in illustrating how memory regimes are shaped not only by the selection of what will be remembered

⁶⁰ Allison Corey and Sandra F Joireman, 'Retributive Justice: The Gacaca Courts in Rwanda' (2004) 103 *African Affairs* 73.

⁶¹ Ibid.

⁶² Erin Jessee, 'The Micro-Politics of Remembering the 1994 Genocide against the Tutsi in Rwanda' in Mina Rauschenbach, Julia Viebach and Stephan Parmentier (eds), *Localising Memory in Transitional Justice: The Dynamics and Informal Practices of Memorialization after Mass Violence and Dictatorship* (Routledge 2022) 84.

⁶³ Ibid 99.

⁶⁴ Ibid.

⁶⁵ Susanne Buckley-Zistel, 'Remembering to Forget: Chosen Amnesia as a Strategy for Local Coexistence in Post-Genocide Rwanda' (2006) 76 *Africa* 131.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

but also by what is instead decided to be forgotten. What is excluded from public narratives is never collectively elaborated and continues to exert its influence upon social and political life in the present.

Finally, what also emerges from this comparative analysis is that in both cases, despite being grounded in radically different procedural logics, the mechanisms of transitional justice examined reflected the structure of the political power that had instituted them, producing a single dominant narrative of the past while systematically excluding the crimes of victors. This selectivity does not appear to be accidental but rather a structural characteristic of any institutional process of memory-making: whoever holds the power to establish the mechanism also holds the power to determine which memories are legitimised and which are consigned to oblivion.⁶⁹ However, the consequences of these silences and exclusions were not identical. While both memory regimes were selective, the Holocaust acquired global moral authority and became a universal framework through which subsequent atrocities, including the Rwandan genocide, would be measured and interpreted. It is this asymmetry, and the political institutional forces that produced it, that will be the focus of the next section.

4.3 Global Memory Hierarchies: The Holocaust as a Paradigm

The analysis conducted in the previous section has demonstrated how both transitional justice mechanisms employed have generated forms of memory that are equally and structurally selective, in which certain victims and specific dimensions of the truth have been systematically marginalised. However, despite this symmetry in their limitations, the consequences of this selectivity have proven to be profoundly asymmetrical. Although both mechanisms gave rise to powerful processes of memorialisation, only the Holocaust has acquired global moral authority, becoming, in the words of Levy and Sznajder, “a global frame of reference for memory”⁷⁰ through which subsequent genocides have frequently been interpreted, including Rwanda itself.⁷¹ This outcome does not reflect an intrinsic superiority of the event but is the result of specific processes of memory production and transmission that transitional justice mechanisms have helped to

⁶⁹ Elizabeth Jelin, *State Repression and the Labors of Memory* (Judy Rein and Marcial Godoy-Anativia trs, University of Minnesota Press 2003) xiii-xx.

⁷⁰ Daniel Levy and Natan Sznajder, *The Holocaust and Memory in the Global Age* (Temple University Press 2006) 132.

⁷¹ Ibid.

generate. This asymmetry is rooted, at least in part, in the very nature of the memory produced by each mechanism. As previously demonstrated, the Nuremberg Tribunal had already provided the juridical foundation for this universalisation through the construction of the category of crimes against humanity, which framed Nazi atrocities not as offences against a single national community but as crimes against the entire mankind.⁷² The documentary foundation established at Nuremberg, formally incontestable and institutionally authoritative, provided the juridical basis upon which this universalisation was built.⁷³ It was, however, the Eichmann Trial that marked a decisive step in this process at the memorial level. The direct testimony of survivors subjected the narrative of the genocide to a process of humanisation that rendered it emotionally accessible to a vastly wider audience than that reached by the documentary logic of Nuremberg.⁷⁴ The subsequent global transmission of the proceedings via international radio and press extended this emotional accessibility to a worldwide scale, what Lipstadt has termed the “globalization of Holocaust memory”.⁷⁵ Such global visibility was structurally precluded in the Rwandan model. The memory produced by the Gacaca courts, locally negotiated and rooted in community participation and the oral testimony of victims, did not possess the same channels of international dissemination, and this procedural difference has contributed, at least in part, to the asymmetry in the global recognition of the two genocides. Yet while Nuremberg had framed Nazi atrocities as crimes against humanity, the Eichmann Trial moved in a different direction, framing the Holocaust as a historically singular event rooted primarily in antisemitic persecution. As Ratosh argues, by placing almost exclusive emphasis on Jewish victimhood while marginalising other victim groups persecuted under Nazi rule, the proceedings constructed a selective narrative that may have contributed to laying the groundwork for the subsequent representation of the Holocaust as an exceptional and incomparable historical experience.⁷⁶

The perception of the Holocaust as a categorically incomparable event has been further reinforced by a strand of academic literature, which has consistently emphasised the intrinsic uniqueness of the event itself.⁷⁷ Steven Katz, one of the leading proponents of this position, argues that “the

⁷² Douglas, *The Memory of Judgment* 1-7.

⁷³ Ibid.

⁷⁴ Lipstadt, *The Eichmann Trial* (Schocken 2011) 25-29.

⁷⁵ Ibid.

⁷⁶ Yonatan Ratosh, ‘Within a Very Limited Space’.

⁷⁷ Alan S Rosenbaum, 'Introduction to the First Edition' in Alan S Rosenbaum (ed), *Is the Holocaust Unique? Perspectives on Comparative Genocide* (Westview Press 2009) 11-18.

historically and phenomenologically unique character of the Holocaust ensures that the Nazi genocide will differ from every case said to be comparable to it”.⁷⁸ Proponents of this thesis assert that it is the number of victims, the speed with which the extermination was carried out, and the Nazis’ intent to eliminate every single Jew from the face of the earth that make the Holocaust a unique event.⁷⁹ In his work, David Stannard subjects each of these three elements to a systematic critical analysis, arguing that the empirical evidence advanced in support of each is insufficient to sustain the uniqueness claim, either when considered individually or in combination.⁸⁰ While proponents of the uniqueness thesis may argue that it is the cumulative weight of these factors that establishes the Holocaust’s incomparability, Stannard challenges the very methodology underlying this position, observing that advocates of the uniqueness have consistently selected only those data that support a pre-existing conviction.⁸¹ With regard to the criterion of the number of victims, Stannard draws attention not only to the data concerning the extermination of indigenous peoples at the hands of European invaders but also cites Lucy Dawidowicz, herself a proponent of the Holocaust uniqueness, who nevertheless acknowledges that “no other people anywhere lost the main body of its population and the fountainhead of its cultural resources”⁸² like in Armenia.⁸³ With regard to the speed of the extermination as a criterion of uniqueness, Stannard draws upon the genocide in Rwanda to refute this claim.⁸⁴ Between April and July 1994, approximately 850,000 Tutsis were killed in just three months: a rate of approximately 10,000 victims per day, “a figure equal to the maximum ever achieved during a single 24-hour period at Auschwitz”.⁸⁵ Finally, with regard to the argument of Nazi intentionality, authors such as Katz and Bauer maintain that no other group can claim to have been the object of a “pseudo religious, pseudo-messianic”⁸⁶ obsession comparable to that harboured by the Nazis toward the Jews, a determination to carry out total extermination that sought the death of every single member of the Jewish population.⁸⁷

⁷⁸ Steven T Katz, 'The Uniqueness of the Holocaust: The Historical Dimension' in Alan S Rosenbaum (ed), *Is the Holocaust Unique? Perspectives on Comparative Genocide* (Westview Press 2009) 49.

⁷⁹ Alan S Rosenbaum, 'Introduction to the First Edition' 11-18.

⁸⁰ David E. Stannard, Uniqueness as Denial: The Politics of Genocide Scholarship in Alan S Rosenbaum (ed), *Is the Holocaust Unique? Perspectives on Comparative Genocide* (Westview Press 2009) 245-281.

⁸¹ Ibid.

⁸² Ibid 251-252.

⁸³ Ibid.

⁸⁴ Ibid 254-255.

⁸⁵ Ibid 254.

⁸⁶ Ibid 266.

⁸⁷ Ibid.

Stannard responds by advancing two distinct lines of counter-argument.⁸⁸ First, he observes that during the Holocaust itself, the Roma people were subjected to a persecutory treatment similar to that inflicted on Jews, raising serious doubts about the possibility of identifying in anti-Jewish intentionality a truly exclusive phenomenon.⁸⁹ Second, he points out that the Nazis, under certain circumstances, deemed it more expedient to spare certain groups of Jews rather than eliminate them, a factual observation that undermines the thesis of an absolute and immutable intent.⁹⁰ Christopher R. Browning himself states that: “the practice of Nazi Jewish policy until 1941 does not support the thesis of a long-held, fixed intention to murder the European Jews”⁹¹ suggesting that the totalising intentionality posited by uniqueness proponents may itself be a retrospective construction rather than an original design.

Stannard’s objective goes beyond academic criticism. According to the author, refuting these arguments is necessary because those who assert the uniqueness of the Holocaust end up establishing a hierarchy among the victims: genocides other than the Holocaust are downgraded to a less significant form of suffering, deprived of equivalent moral authority.⁹² The concrete consequences of this dynamic are evident in the words of Katz, who has described what happened in Rwanda as “not genocidal but simply a struggle for tribal domination”,⁹³ a formulation that, in light of the quantitative evidence examined above, proves historically inaccurate.⁹⁴ A similar concern is raised by Samantha Power who, in her analysis of the American society’s response to the genocides of the twentieth century, observes that this paradigm risks rendering the recognition of contemporary acts of violence extremely difficult:⁹⁵ “America’s public awareness of the Holocaust seemed to set the bar for concern so high that we were able to tell ourselves that contemporary genocides were not measuring up”.⁹⁶

Stannard’s theoretical approach is based on a competitive conception of collective memory, according to which different memories cannot coexist but must necessarily compete with one

⁸⁸ Ibid 269-272.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid 269.

⁹² Ibid 273.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

another for space in the public sphere. Samantha Power also acknowledges that this competition is real and can undermine mutual recognition among different histories of violence.⁹⁷ It is instructive, however, to consider an alternative theoretical framework proposed by Michael Rothberg.⁹⁸ Rather than conceiving memory as competitive, the author suggests that it could be understood as multidirectional, “as subject to ongoing negotiation, cross-referring and borrowing, as productive and not privative”.⁹⁹ Drawing upon the concept of collective memory, Rothberg criticises the idea that it constitutes a limited resource, such that the attention accorded to the Holocaust would necessarily divert attention from other historical tragedies, including Rwanda.¹⁰⁰ According to the author, this interpretation is unfounded: collective memory is capable of being strengthened through mutual engagement rather than being exhausted in a zero-sum competition.¹⁰¹ However, the author himself admits that, despite preferring a multidimensional conception of memory, in reality competition over memory does exist and “sometimes overrides other possibilities for thinking about the relation between different histories”.¹⁰² This does not mean that Rothberg accepts a competitive conception of memory; he distinguishes between the structural nature of collective memory, fundamentally multidirectional, and concrete memorial practices, which can often take on a competitive form.¹⁰³

The analysis conducted in this section suggests that discourses on the uniqueness of the Holocaust may contribute to the formation of global memorial hierarchies in which certain genocides acquire greater visibility and moral authority than others, with profound consequences for how subsequent atrocities are understood and recognised. The formulations identified in Katz do not constitute isolated or anecdotal instances but are symptoms of a broader structural dynamic: attributing global moral authority to a specific historical event risks fixing the very terms through which other experiences of mass violence are understood and recognised. It is precisely this authority that becomes susceptible to further political instrumentalisation, an issue that the next section aims to examine.

⁹⁷ Samantha Power, *A Problem from Hell: America and the Age of Genocide* (Perennial 2003) 503.

⁹⁸ Michael Rothberg, *Multidirectional Memory: Remembering the Holocaust in the Age of Decolonization* (Stanford University Press 2009) 17-43.

⁹⁹ Ibid 18.

¹⁰⁰ Ibid 25.

¹⁰¹ Ibid 17-43.

¹⁰² Ibid 25.

¹⁰³ Ibid.

4.4 Memory, Legitimacy and the Politics of Recognition

As emerged in the previous section, the collective memory constructed by transitional justice mechanisms does not operate exclusively as an instrument for commemorating victims or coming to terms with the past. Once consolidated within the public sphere as a recognised memorial framework, it inevitably becomes a political resource used by state actors to build consensus, legitimacy and collective identities in the present. The cases reported in this research offer two particularly significant illustrations of this dynamic.

In the post-genocide Rwandan context, the official memory transmitted by the state did not operate exclusively as an instrument for the collective elaboration of the genocide but became a central resource of political legitimization.¹⁰⁴ As Claudine Vidal has observed in her analysis of Rwandan government policies, the authorities systematically employed institutionalised commemorative practices, including the Kwibuka and other forms of public memorialisation, to consolidate their own power and reinforce the political authority of the Tutsi ethnic group.¹⁰⁵ Vidal is not alone in advancing this argument: Rony Brauman and Stephen Smith go further, contending that the government deliberately instrumentalised international public sympathy towards those who had brought the genocide to an end in order to consolidate its own political power.¹⁰⁶ It is in this sense that Lemarchand speaks of “genocide credit”:¹⁰⁷ a form of political immunity that allegedly afforded Kagame considerable room for manoeuvre both domestically and internationally, significantly limiting the possibility of external criticism of his policies.¹⁰⁸ Lemarchand further suggests that human rights observers have been reluctant to scrutinise certain political decisions adopted by the RPF that appear to compromise fundamental rights, including the decision to suppress ethnic identities.¹⁰⁹ The collective memory of the Rwandan genocide, at least in its official version, has thus become a tool through which the government has portrayed itself as a liberating force, marginalised dissenting voices, and legitimised the project of national unity, transforming collective mourning into a source of power.¹¹⁰ The Rwandan case therefore suggests

¹⁰⁴ Longman, *Memory and Justice in Post-Genocide Rwanda*, 91-135.

¹⁰⁵ Claudine Vidal, ‘Les commémorations du génocide au Rwanda’, (2001) *613 Les Temps Modernes* 1.

¹⁰⁶ Lemarchand, *The Dynamics of Violence in Central Africa* 128.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Longman, *Memory and Justice in Post-Genocide Rwanda*, 91-135.

that collective memory, once institutionalised, may be mobilised for purposes that extend well beyond the simple commemoration of victims.¹¹¹ Collective memory becomes a powerful instrument capable of producing political legitimacy, defining collective identities and influencing public discourse. This transformation of memory into political capital can also be observed in the case of the Holocaust.

Precisely because of the global moral authority it has acquired, the Holocaust has become the subject of political manipulation. The debate on its uniqueness mentioned above is once again of great interest for the purposes of this research, as it is not confined to an academic dispute. As Isaiah Berlin observed, it “has a conspicuously political motive”.¹¹² This assertion becomes clear when one considers the multiple political uses to which the memory of the Holocaust has been subjected: from the State of Israel’s mobilisation of Holocaust memory to legitimise its own political project,¹¹³ to the appropriation of Holocaust remembrance by post-communist-states across Eastern Europe.¹¹⁴ In the case of Israel, this political dimension is particularly evident. Stannard argues in this regard that the uniqueness argument “provides a screen behind which opportunistic governments today attempt to conceal their own past and ongoing genocidal actions”.¹¹⁵ Drawing upon Bauman’s analysis, the author contends that these very assumptions concerning the uniqueness of the Jewish people’s suffering have been mobilised by Israel to justify its political legitimacy and its expansionist ambitions toward Palestinian territories, an interpretation that can be summarised in the following quote:¹¹⁶ “The claimed historical uniqueness of Jewish suffering during the Holocaust serves an important function in a theocratic state that perceives itself as under siege”.¹¹⁷ As Subotic has argued, this dynamic extends well beyond the Israeli context.¹¹⁸ States across Eastern Europe have engaged in what the author terms “memory appropriation”,¹¹⁹ strategically mobilising Holocaust memory to resolve what she describes as “contemporary ontological insecurities about their identities, their status and their

¹¹¹ Ibid.

¹¹² Alan S Rosenbaum, 'Introduction to the First Edition' 5.

¹¹³ Stannard, 'Uniqueness as Denial' 276.

¹¹⁴ Jelena Subotic, *Yellow Star, Red Star: Holocaust Remembrance after Communism* (Cornell University Press 2019) 1-17.

¹¹⁵ Stannard, 'Uniqueness as Denial' 276.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Subotic, *Yellow Star, Red Star* 1-17.

¹¹⁹ Ibid 9.

relationships with other international actors”.¹²⁰ These States have sought to deploy the memory of the Holocaust in order to highlight their own suffering under communism through what Ewa Plonowska Ziarek has called a “narcissistic identification with Jewish suffering”.¹²¹ Through this practice, Holocaust remembrance is redirected away from its actual victims, serving instead to filter out serious reckoning with one’s own responsibility for atrocity.¹²² Subotic argues that these practices do not reflect genuine memory solidarity but rather reinforce existing patterns of exclusion and hierarchies of recognition.¹²³ Yet despite the pervasiveness of these practices of political instrumentalisation, the relationship between memory and political power is more complex than a simple model of top-down imposition would suggest. As Elizabeth Jelin has observed, it is impossible to find “one memory, or a single vision and interpretation of the past”¹²⁴ regarding any given event.¹²⁵ Although, as this research has demonstrated, an institutionalised and dominant memory may emerge, there will always be other narratives and alternative interpretations of the same event which will survive within society, in the private sphere, at the margins of the official narrative.¹²⁶ James Young suggests that even the same memorials constructed by the State to propagate its own narrative become sites where alternative and even competing memories can take form.¹²⁷ As he observes, new generations visit these same sites under new circumstances, reinterpreting the message conveyed by the memorial and generating new meanings that were not anticipated by those who commissioned them.¹²⁸

Memory thus remains inherently plural and multidimensional, even when states attempt to impose a dominant narrative for political purposes.¹²⁹ While in Rwanda the memory of the genocide has reinforced the authority of the RPF and the construction of a collective national identity, in the case of the Holocaust, its global centrality has conferred a particular moral authority upon specific state actors. The comparative analysis developed in this Chapter suggests that processes of collective memory are not concerned solely with commemorating the victims but also have a

¹²⁰ Ibid 10.

¹²¹ Ibid 9.

¹²² Ibid 1-17.

¹²³ Ibid.

¹²⁴ Elizabeth Jelin, *State Repression and the Labors of Memory* (Judy Rein and Marcial Godoy-Anativia trs, University of Minnesota Press 2003) xviii.

¹²⁵ Ibid xiii-xx.

¹²⁶ Ibid.

¹²⁷ James E Young, *The Texture of Memory: Holocaust Memorials and Meaning* (Yale University Press 1993) 1-17.

¹²⁸ Ibid.

¹²⁹ Jelin, *State Repression and the Labors of Memory* xiii-xx.

fundamental impact on power relations in post-conflict societies. It is for this reason that the final section of this Chapter aims to reflect precisely on these implications.

4.5 Implications for Post-Conflict Societies

The analysis conducted in this Chapter suggests that memorialisation of past atrocities cannot be treated as a collateral effect of transitional justice mechanisms. As the cases examined here have demonstrated, the production of collective memory must instead become an explicit and conscious objective, especially when choosing among the different instruments of transitional justice that can be employed. The choice of which transitional justice mechanism to employ after genocide or instances of mass violence should not be evaluated solely on the basis of its capacity to punish perpetrators or establish legal accountability. Different mechanisms generate different forms of truth production, different opportunities for community participation and therefore different forms of collective memory. For this reason, when selecting transitional justice mechanisms, post-conflict societies should base their choice not only on the type of justice they wish to pursue but also on the type of collective memory they seek to foster. As demonstrated throughout this research, none of the mechanisms analysed here can be regarded as neutral. The comparative analysis of the cases of Rwanda and the Holocaust has shown that the memory produced by these instruments never coincides with the totality of the past but rather constitutes a single, selective, exclusionary, socially mediated reconstruction of it, one that is often used to pursue political objectives and interests.

The question that emerges at the end of this research is whether it is ever possible to avoid the consolidation of a single narrative that excludes and silences equally important dimensions of the past. The analysis conducted here suggests that the answer is, in all likelihood, negative and that is particularly true in the case of genocide. As Drumbl observes, genocide is not an ordinary crime but an atrocity of extraordinary gravity that targets the collective identity of entire communities, a form of violence so exceptional that, in Arendt's words, it "exploded the limits of the law".¹³⁰ Yet despite this extraordinariness, the mechanisms deployed in its aftermath have remained, in Drumbl's phrase, "disappointingly, although perhaps reassuringly, ordinary",¹³¹ producing what

¹³⁰ Mark A Drumbl, *Atrocity, Punishment and International Law* (Cambridge University Press 2007) 156.

¹³¹ *Ibid* 6.

he terms “selective truths”.¹³² Martha Minow similarly argues that any societal response to collective violence can, at best, “only seek a path between too much memory and too much forgetting”.¹³³ According to Drumbl, the gravity and scale of such atrocities cannot be addressed exclusively through the deployment of criminal mechanisms designed for ordinary crimes.¹³⁴ The author proposes an alternative that transcends the limitations of these instruments, which he terms “cosmopolitan pluralism”.¹³⁵ Through this framework, Drumbl advocates for the integration of extrajudicial mechanisms alongside criminal proceedings, including truth commissions, public inquiries and what he describes as “politics of commemoration”.¹³⁶ In responding to mass atrocities, reliance on criminal prosecution alone is insufficient; the author calls instead for a plurality of overlapping mechanisms capable together of producing more inclusive and less selective narratives of the past.¹³⁷

Yet even within such a pluralistic framework, post-conflict societies therefore appear to confront a structural tension: on the one hand, they require a sufficiently shared and collective narrative that allows them to come to terms with what has happened in order to encourage the reconstruction of social cohesion; on the other, they face the imperative to not suppress the plurality of memories, often in conflict with one another, that will continue to exist within the same community. A possible normative response to this tension can be found in the work of Paul Ricoeur.¹³⁸ The author observes that in the aftermath of mass atrocities and events of this kind, societies tend to fixate upon what he terms the “devoir de memoire”,¹³⁹ a moral imperative to remember that is frequently reiterated in a ritualistic, formulaic and repetitive manner.¹⁴⁰ Ricoeur instead suggests that a society is called upon to engage in what he calls “le travail de memoire”,¹⁴¹ a more complex process that invites a critical confrontation with the past, resisting the suppression of the plurality of experiences and interpretations that emerge from it.¹⁴² Applied to the cases analysed in this

¹³² Ibid 176.

¹³³ Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Beacon Press 1998) 4.

¹³⁴ Drumbl, *Atrocity, Punishment and International Law* 205.

¹³⁵ Ibid

¹³⁶ Ibid 18.

¹³⁷ Ibid 205.

¹³⁸ Paul Ricoeur, *La Mémoire, l'Histoire, l'Oubli* (Éditions du Seuil 2000) 32-48.

¹³⁹ Ibid 36.

¹⁴⁰ Ibid 32-48

¹⁴¹ Ibid 37.

¹⁴² Ibid 32-48.

research, the task of memory does not consist in eliminating the plurality of past experiences, but in constructing a collective memory that is sufficiently shared to allow for social coexistence without silencing the voices and experiences that remain at its margins.

In both contexts examined, it can be observed that collective memory has solidified in different ways into a dominant narrative. In Rwanda, the official memory has favoured the consolidation of a narrative instrumental to the project of national unity, promoted by the RPF, marginalising and silencing certain victims and categories of crimes; in the case of the Holocaust, the gradual universalisation of memory has led to the construction of a global memorial paradigm that sometimes risks overshadowing other experiences of genocide or relegating them to a subordinate position. The comparison between the Holocaust and Rwanda thus suggests that transitional justice mechanisms should not be evaluated solely according to their capacity to deliver convictions or establish legal accountability. Equal recognition must be accorded to the fundamental importance that collective memory assumes in shaping the present and guiding the future in these post-conflict societies. The central question, however, does not concern the construction of a perfectly inclusive or neutral memory, a goal that is difficult to achieve, but rather the capacity to acknowledge the inevitably selective character of any process of remembrance. The challenge for post-conflict societies therefore lies in constructing a collective memory that is sufficiently shared to promote the reconstruction of the social fabric of society without transforming it into a single exclusive narrative incapable of acknowledging the plurality of experiences that make up the past. Memory must not be a secondary and unintended consequence of transitional justice, but one of its most enduring and politically significant dimensions.

Conclusion

This thesis set out to examine how transitional justice mechanisms contribute to the production and public legitimisation of collective memory in post-genocide societies. Through a comparative analysis of the Holocaust and the Rwandan genocide, this research has demonstrated that transitional justice mechanisms do not merely respond to past atrocities by achieving justice and punishing the perpetrators. They also actively contribute to the construction and legitimisation of collective memory of what happened, through which societies come to understand, narrate and subsequently mobilise the past for political purposes.

First, after providing a theoretical framework to understand the nature and political import of collective memory, this research attempted to show how the procedural logic of the specific transitional justice mechanisms contributes to the resulting form of collective memory: different instruments produce different regimes of memory. International criminal trials, testimonial proceedings and community-based justice mechanisms generate different forms of shared truth, participation and public remembrance. These procedural differences have contributed, at least in part, to the profound asymmetry in the global reach of the two memory regimes. While the Holocaust memory, through the documentary logic of Nuremberg and the survivor testimony-centred proceedings of the Eichmann Trial, has indeed become accessible on a global scale, the locally negotiated memory produced by the Gacaca courts remained structurally confined within national boundaries. This asymmetry was further reinforced by the way in which the Eichmann Trial framed the Holocaust as a crime rooted primarily in antisemitic persecution, contributing to its subsequent representation as a historically singular and incomparable event. This perception of uniqueness, as the analysis has tried to show, has had concrete consequences for how other genocides, including Rwanda's, have been recognised and interpreted within global public discourse.

At the same time, the comparative analysis has shown that these differences should not obscure a deeper structural similarity. Despite the profound structural differences between the two post-genocide contexts at issue, and the divergent mechanisms of transitional justice adopted, both cases reveal patterns of exclusion and selectivity in the production of collective memory. The latter appears to be exclusive, selective and partial, where significant dimensions of past violence remain excluded from public recognition and institutional acknowledgment. None of the mechanisms

examined here has generated an exhaustive account of the past; each has instead privileged certain experiences while marginalising others. Most strikingly, both memory regimes proved closely aligned with the interests of the victorious powers. This is evident in the systematic exclusion of Allied responsibility for the bombing campaigns against cities such as Dresden, Hiroshima and Nagasaki from the scope of the Nuremberg proceedings; similarly, in Rwanda, the Gacaca courts consistently excluded from their jurisdiction the crimes committed by the RPF during the genocide, completely silencing Hutu victims from the official narrative of historical events. This selectivity does not appear to be an incidental feature of these specific mechanisms, but rather a deeper structural tendency inherent in any institutional process of memory-making. The research has further shown that once collective memory becomes publicly institutionalised, it is particularly susceptible to becoming a political resource capable of legitimising power, shaping collective identities and influencing present and future political life. Collective memory becomes an instrument through which states legitimise authority, define political identities and shape future understanding of violence.

However, the dominant narrative, despite being imposed and instrumentalised by state actors to promote their political interests, cannot entirely eliminate rival memories: there will always be other narratives and alternative interpretations of the same event that survive within society, in the private sphere, at the margins of the official narrative.¹ This dynamic is evident in both cases examined: the marginalised voices of non-Jewish victims at Nuremberg, the suppressed accounts of Hutu victims in Rwanda, the crimes of the Allied powers and RPF, all marginalised by the official narrative yet never fully extinguished from historical consciousness. Yet the persistence of these competing narratives also points to a broader challenge: if alternative memories inevitably survive at the margins, post-conflict societies must ask whether institutional mechanisms can be designed to create space for these voices rather than suppress them. The comparative analysis carried out so far suggests, however, that selectivity is structurally inevitable: every mechanism has selected, excluded and institutionalised particular narratives. As Minow has argued, no single

¹ Elizabeth Jelin, *State Repression and the Labors of Memory* (Judy Rein and Marcial Godoy-Anativia trs, University of Minnesota Press 2003) xiii-xx.

instrument of transitional justice is adequate to address the complexity of mass atrocity: each captures only a partial truth and leaves other dimensions of the past unaddressed.²

The question, therefore, is not how to eliminate selectivity but how to prevent any single narrative from monopolising the past entirely. In this regard, Drumbl's concept of "cosmopolitan pluralism"³ points toward a more promising approach. Emphasising the extraordinary gravity of atrocities such as genocide, Drumbl argues that "justice for atrocity is not synonymous with international criminal trials - it entails much, much more".⁴ Responding to genocide requires a plurality of overlapping instruments, judicial and extrajudicial, international and local. Applying this to the production of collective memory, it seems that post-conflict societies need multiple and competing sites of memory-making capable of resisting the monopolisation of the past by any single institutional actor. Local memory practices can constitute alternative and complementary spaces where otherwise marginalised voices and suppressed narratives may survive and be preserved. Therefore, the main conclusion of this thesis is that any system of transitional justice responding to atrocities of this nature must recognise that the imposition of a single dominant narrative, however authoritative, cannot substitute for the plurality of memories that constitute the full complexity of the past. The challenge facing post-conflict societies is not to replace oblivion with a single authoritative memory, but to preserve the coexistence of competing memories while preventing any one of them from monopolising the public understanding of the past.

The present research presents several limitations that future scholarship might address. The analysis relies exclusively on secondary sources and is confined to two cases, limiting the scope of generalisation. Future research could benefit from empirical fieldwork and from extending the comparative framework to additional cases such as Cambodia, Argentina or South Africa, where different combinations of transitional justice mechanisms have produced distinct memory regimes. More broadly, systematic comparative analyses examining how structurally opposed transitional justice models generate different regimes of collective memory remain limited, and represent a promising direction for future scholarship.

² Martha Minow, *Between Vengeance and Forgiveness :Facing History after Genocide and Mass Violence*, (Boston : Beacon Press 1998) 5.

³ Mark A Drumbl, *Atrocity, Punishment and International Law* (Cambridge University Press 2007) 20.

⁴ Ibid 205.

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