Wartime Lies: Securing the Holocaust in Law and Literature

Lawrence Douglas
Review Essays

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Lawrence Douglas*

Who bears witness for the witness?
Paul Celan

People had always asked me, why aren’t you writing a novel? And I would always say, I have no novel to write . . . .
Louis Begley

INTRODUCTION

In Louis Begley’s remarkable work of Holocaust fiction, Wartime Lies, the narrator muses, “The issue was the limit of one’s inventiveness and memory.” The “issue” refers to the narrator’s struggles,

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2. Begley, 105.
within the context of the novel, to conceal his Jewish identity, yet the "limit" of which he speaks can be understood as standing for the pervasive problem of representing the Holocaust. As an event that "has changed the basis for the continuity of the conditions of life within history," the Holocaust has raised crucial questions concerning the capacity of various representational grammars to describe, explain, and make sense of the Nazi genocide. These questions, while of pressing concern to professional historians, apply with equal force to those discourses, such as the juridical and the fictional, that are often enlisted to support the project of securing history in responsible memory.

The claim that the law can play a valuable role in making the past intelligible is a proposition accepted by most legal theorists and historians. Like the discipline of history, the law remains anchored to a factual record that must be investigated and probed with an eye toward organizing events and actions into a coherent narrative embedded within a normative framework. As Ronald Dworkin has argued, the greatest ordering effects of the law come not through agencies of regulation or through the coercive administration of juridical decree, but through the filtering and assimilation of the past into practices of interpretation. In the case of the Holocaust, an appreciation of the special role that law can play in securing an adequate understanding of the past largely prompted the Allies at the end of World War II to agree upon a juridical response to Nazi crimes. The Nuremberg Trials, the Allies maintained, were less an instrument of retribution than one of pedagogy, in which the law

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4. As Anton Kaes has observed, "The insistence on the impossibility of adequately comprehending and describing the final solution has by now become a topos of Holocaust research." Anton Kaes, "Holocaust and the End of History: Postmodern Historiography in Cinema," in Probing the Limits of Representation, ed. Saul Friedlander (Cambridge: Harvard University Press, 1992), 207.

5. Addressing his fellow historians, Hayden White asks, "Are there any limits on the kind of story that can responsibly be told about these phenomena?" Hayden White, "Historical Emplotment and the Problem of Truth," in Friedlander, Probing the Limits of Representation, 37.


7. See Ronald Dworkin, Law’s Empire (Cambridge: Harvard University Press, 1986). Indeed, the very concept of precedent exemplifies the normative force of the past: the manner in which the historical can be said to issue in principles and commitments that bind the present and future. See also Harold J. Berman, "The Origins of Historical Jurisprudence," Yale Law Journal 103 (1994): 1651-738.
would provide a public forum for historical instruction and neutral judgment.\(^8\)

The claim that imaginative literature also has an important role to play in safeguarding historical truth remains more contentious. On the one hand, a growing number of legal scholars have sought instruction in the exclusions of legal discourse by turning to works of fiction, finding in novelistic representations those voices and experiences frequently silenced or ignored in the law.\(^9\) On the other hand, scholars of the Holocaust have expressed concerns about searching for historical clarification in the world of fiction. They argue that to aestheticize the past is to trivialize it, warning that the very act of fictionalizing history can be exploited by those who claim the Holocaust is itself a fiction.

In this Essay, I will defend the idea that imaginative literature about the Holocaust can serve the end of responsible memory. Specifically, I will consider how Begley’s *Wartime Lies*, a widely praised novel about survival during the Nazi genocide, justifies the fictionalizing of history and, in so doing, calls into question the idea that historical and juridical discourses enjoy a special privilege in safeguarding the memory of the Holocaust. The novel does so, however, not simply by supporting the position that literature supplies a more complete portrait of the past than the law. *Wartime Lies* vindicates the prerogatives of fiction, I will argue, less because it provides a poignant narrative of the Holocaust, than because it defines, in exemplary fashion, the limits of such representations—whether imaginatively or juridically conceived.

I. POLICING HOLOCAUST FICTIONS

Holocaust scholars such as Lawrence Langer have defended the notion that the Nazi genocide can only be adequately grasped through the idiom of the imagination,\(^10\) but many more have warned of the dangers of submitting the history of the Holocaust to the devices of fiction. Adorno, in a frequently quoted, though dimly understood aphorism, observed: “After Auschwitz, to write a poem is bar-

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Although Adorno's statement seems to make a general claim about the inappropriateness of writing poetry "as usual" after the metaphysical break occasioned by Auschwitz, his utterance has often been read as if he had written: "To write a poem about Auschwitz is barbaric." Adorno's own clarifications support both parsings. The power of imaginative creation, he suggests, is overwhelmed by the magnitude of the atrocities; the most compelling and legitimate writings about such evil will necessarily remain nonfictional, eyewitness accounts. Efforts to grasp the Holocaust with such a delicate and tremulous instrument as poetry—here associated, by Adorno's own amplifications, with the language of lyric—will produce not simply pale but grotesque results. Such efforts will inevitably result in melodrama or sentimentality: "Through the aesthetic principle of stylization... an unimaginable fate still seems as if it had some meaning; it becomes transfigured, with something of the horror removed."  

Historians Saul Friedlander and Berel Lang, among others, have followed Adorno's lead. As "the obligation to bear witness and record this past seems even more compelling"  

given the perpetrators' attempts to mask and erase their crimes of genocide, fictional creations disturb and confuse this special imperative of testimony. Though creative or figurative representations of the Holocaust cannot be dismissed as necessarily distorted or banalized, such fictionalizing can be seen as objectionable for several reasons. First, fictionalizing the Holocaust may inadvertently play into the hands of "revisionists" who would deny the existence of the death camps. This concern animated the controversy that surrounded the publication of Thomas Keneally's Schindler's List as a work of fiction, and the debates provoked by Joanna Siedlacka's recent claims that the story of survival told in Jerzy Kosinski's novel The Painted Bird was, in fact, "invented."  

Second, and more critically, figurative representations tend to aestheticize genocide by subjecting actual horrors to the voyeuristic impulses of the literary imagination. The value of an artistic work about the Nazi genocide must be measured, then, in terms of its utility in advancing the goals of responsible

13. Saul Friedlander, introduction to Probing the Limits of Representation, 3.
memory\textsuperscript{16}—memory which continues to highlight the unprecedented evil of the Holocaust.

Not surprisingly, this absence of "precedent" has created problems for legal as well as historical and fictional discourses. The Nuremberg Trial chronicled the difficult and at times labored efforts of the chief prosecutor for the Allies, Supreme Court Justice Robert Jackson, to cast the extreme outrages of the Holocaust as "lawless usurpations," justiciable under a flimsy body of international law. In Jackson's strategically juridical telling, the Final Solution is portrayed as an expedient of "aggressive war," the chief crime for which he believed the Nazi leadership could and should be held responsible under existing treaties and law.\textsuperscript{17} Hannah Arendt's \textit{Eichmann in Jerusalem} also reveals the strenuous and, in Arendt's view, misguided attempts of the law to render the Holocaust judicially manageable by creating a narrative of extreme human malignancy, a story that failed to perceive the deeper, more sinister lesson of the Holocaust: that a vast apparatus of death could be administered by a group of unimaginative, craven, but not particularly cruel, bureaucrats.\textsuperscript{18} But even if scholars have faulted attempts to represent the Holocaust juridically, the law continues to be used to safeguard the historical truth of the Holocaust against fiction.

The most compelling examples of this phenomenon have been attempts to criminalize denials of the Holocaust. While recent American scholarship has explored the idea of making Holocaust denial actionable as a form of hate speech, First Amendment jurisprudence continues to restrict the opportunities for legal control of "revisionist" arguments.\textsuperscript{19} An interesting case arose in California in 1985 when Mel Mermelstein, an Auschwitz survivor, sued the Institute for Historical Review, a revisionist "think tank," for its failure to honor a pledge to pay $50,000 to anyone who could prove that gassings took place at Auschwitz. The case, however, was settled before trial when the Institute agreed to pay the promised sum, along with an additional $100,000, for the pain and suffering caused by the

\textsuperscript{16} The term "responsible memory" is meant to suggest a \textit{historical} representation of the past. For a discussion of the tensions between memory more generally conceived and history, see Pierre Nora, "Between Memory and History: \textit{Les Lieux de Mémoire}," \textit{Representations} 26 (Spring 1989): 2-25.


revoked offer. Because Mermelstein's lawyers presented the case as a breach of contract, the court was not confronted with First Amendment issues.

A similar yet more complicated case is the 1985 trial of Ernst Zündel, a German-born Canadian citizen, who was accused of publishing Holocaust denials. Zündel, who had earned a small fortune in Canada as a photograph retoucher had arranged for the publication of Did Six Million Really Die?, a pamphlet that alleged the Holocaust was a Zionist hoax. After a trial that turned into a media circus (Zündel would arrive at court dressed in a flak jacket and hard hat emblazoned with the words “Freedom of Speech”), the defendant was found guilty of violating a little-used portion of the Canadian Criminal Code prohibiting the publication of false statements “likely to cause injury or mischief to a public good.” As the case required the Crown to show that Zündel’s denials of the Holocaust were in fact “false,” the Canadian trial court found itself functioning as a tribunal burdened with determining the truth of the Holocaust according to legal conventions of proof and evidence, a circumstance which, as we shall see later in this Essay, yielded provocative, if not grotesque, results.

In contrast, two constitutional courts in the Federal Republic of Germany have held that the Holocaust is offenkündig—that is, an incontestable and incontrovertible fact that can be taken for granted by courts in legal actions against those who deny it. Indeed, Holocaust denials were specifically made a crime under a law passed by the Federal Republic of Germany in 1985 to staunch the rise of rightist and neo-Nazi disputations of the death camps. Although

21. Many of the court documents associated with the suit are reproduced in Mel Mermelstein's memoir, Not by Bread Alone (Huntington Beach, CA: Auschwitz Study Foundation, 1993).
22. His work had appeared in many of Canada's leading magazines, and twice he had received awards from The Art Directors' Club of Toronto. See Manuel Prustchi, “The Zündel Affair,” in Antisemitism in Canada: History and Interpretation, ed. Alan Davies (Waterloo, Ontario: Wilfred Laurier University Press, 1992), 255.
23. R.S.C. ch. C-34, § 177 (1st Supp. 1970) (Can.). The statute provides that “every one who willfully publishes a statement, tale or news that he knows is false and that causes or is likely to cause injury or mischief to a public interest is guilty of an indictable offence and is liable to imprisonment for two years.”
24. See Tishler et al., “Freedom of Speech and Holocaust Denial,” 563. Though the Mermelstein case in California never reached trial, the judge also treated the Holocaust as indisputable historical fact, accepting the plaintiff's preliminary motion to take judicial notice of the Nazi killings. German courts, however, have taken such judicial notice even in criminal prosecutions (the Mermelstein case involved a civil suit), a move which the Canadian courts were reluctant to make in the Zündel case.
the "Auschwitz-lie" law raises interesting constitutional issues, more compelling is the proposition that the law can and must be enlisted for the purpose of preserving a singular historical truth. In a postmodern world in which there are, to quote Nietzsche, "no facts, but only interpretations," the circumstance of the Holocaust is given special treatment. Removed from the contentious world of historical debate and interpretation, the Holocaust has been granted foundational status over all other historical propositions. To deny this particular fact is not simply to commit a historical error but also to commit a legal wrong.

There is, perhaps, something odd or ironic in the idea that the sole foundational truth protected by the legal/coercive apparatus of the German state should be the fact of the state's own criminal past and lawlessness. Derrida, following the lead of Weber and Benjamin, has detailed the complex ways that states buttress their claims to legitimacy through acts of forgetting—rituals of erasure that obscure any connection to the state's foundational moment, inevitably a time of violent, lawless instantiation. In contrast, the German Federal Republic attempts to redeem its claims of legitimacy through acts of coerced remembering, in which the history of past crimes remains ever present, and in which the law serves as the muscle of memory. The law, then, claims the right to demand that no one deny its monstrous past. By criminalizing the Auschwitz-lie, the state boldly enlists the law to protect history against fiction.


27. The Auschwitz-lie law has stimulated considerable controversy in academic circles. Some German historians have defended the idea of legal enforcement of historical fact in this particular case, as it ensures judicial notice of the unique evil of the Holocaust. Other historians, specifically those associated with the Historikerstreit (historian's debate) of the last decade, have attacked the law for precisely the same reason. Without denying the Holocaust outright, Ernst Nolte, to take one prominent example, has attempted to assimilate the genocide against the Jews into a larger, more conventional narrative of historical atrocity. In his controversial work, The European Civil War, 1917-1945 (Der europäische Bürgerkrieg, 1917-1945 (Berlin: Propylaen Verlag, 1987)), Nolte tries to demonstrate that Nazi genocide did indeed have predecessors, specifically in Stalin's gulag. Perhaps not surprisingly, Nolte has attacked the Auschwitz-lie law not because it insists upon the fact of the Holocaust (the killings), but because it implicitly supports—by its exclusive nature—a particular reading of these facts (the "unprecedented horror"). Letter from Professor Dr. Ernst Nolte, in "Correspondence on the 'Auschwitz Lie,'" Michigan Law Review 87 (1989): 1026-32, 1029.

28. France and Austria have recently passed similar laws criminalizing Holocaust denial. The French law (J.O. 90-615 (July 13, 1990)) makes it a crime for anyone to contest "the existence of one or several crimes against humanity as defined in Article 6 of the Charter of the International Military Tribunal...." Article 6 of the Charter of the War Crimes Tribunal at Nuremberg defined crimes against humanity as "murder, extermination, enslavement, starvation or deportation and other inhumane acts committed against any civilian population, before or during the war...." Ironically, however, the French prosecution, which was responsible for
It is perhaps tendentious to conflate fictional representations of the Holocaust with the arguments of those who would claim the Holocaust is itself the stuff of fiction. Moreover, I do not mean to support the arguments that have been made against imaginative literature as a means of registering and preserving history. Indeed, a powerful case could be made, Adorno's arguments notwithstanding, that the horrors of the Holocaust are most vividly captured in the poetry of figures such as Paul Celan.29 Yet one can readily concede the representational opportunities available to "nonliteral" discourses without abandoning the basic idea that imaginative accounts of the Holocaust bear an additional burden of justification. How, then, does a work of imaginative literature attempt to rebut this presumption against fictional representations of the Holocaust?

This question is addressed in an exemplary form by Begley's Wartime Lies.30 Based upon the author's own experiences during the Nazi occupation of Poland, the novel invites two related queries: First, in light of legitimate concerns about fictionalizing the historical record, how does a text drawn from the autobiographical facts of its author's life understand its own status as a novel? Second, in light of the genre's relaxed fidelity to history, how does the novel answer the argument, presented in the most hyperbolic form in the "revisionist" writings of Zündel, that the story of the Holocaust is entirely

the presentation of the evidence of crimes against humanity at the Nuremberg Trial for the Major War Criminals, never mentioned the murder of the Jews. See Taylor, The Anatomy of the Nuremberg Trials, 295-96.

The Austrian statute (BGB1 No. 148 (March 19, 1992)) makes it a crime if a person "denies, grossly trivializes [groblich verharmlost], approves or seeks to justify the national socialist genocide or other national socialist crimes against humanity." Though the law was passed in 1992, no one has yet litigated the meaning of such terms as "grossly trivializes." See Stephen J. Roth, "Denial of the Holocaust: An Issue of Law," in Institute of Jewish Affairs Research Reports 2 (1994).

29. His justly famous "Todesfuge" ("Death Fugue"), with its syntax stripped of punctuation, presents canonical repetitions, startling juxtapositions, and violently oxymoronic metaphors ("Black milk of daybreak we drink it at evening. . . ."; "we shovel a grave in the air there you won't feel too cramped"). The piece provides an astonishing example of a powerful poetic imagination breaking with accepted idioms to express, in Lyotard's words, "what is not presentable under the rules of knowledge." "Todesfuge," in Poems of Paul Celan, ed. and trans. Michael Hamburger (New York: Persea, 1989), 60-63.

30. Wartime Lies, Begley's first novel, was published in 1991 when Begley was fifty-seven. Before that time Begley was best known for his distinguished career in the law. As a partner in the firm of Debevoise & Plimpton, Begley had risen to the top of his field of international law, an area he once described as "the most amusing form of practice." Elizabeth Devereaux, "Interview with Louis Begley," Publisher's Weekly, 2 May 1994, 278. Since Wartime Lies, he has published two further novels, The Man Who Was Late, a consideration of the psychic damage left upon a survivor, and As Max Saw It, a probing examination of a relationship between two men, one of whom is dying of an AIDS-like disease. His literary projects notwithstanding, he continues to practice law energetically. He provides, then, a particularly provocative example of an attorney-author who has achieved remarkable success in both spheres of his work. If, as I will argue, Wartime Lies implicitly instructs the reader in the exclusions of legal discourse, then it must not be mere coincidence that such instruction should issue from an author with such an intimate understanding of the language of the law.
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fictional? My answers to these questions will suggest, I hope, not only how Wartime Lies justifies itself as a work of fiction, but also how the text implicitly draws attention to the exclusions and distortions of historical and juridical discourses that claim a special privilege in representing and safeguarding the facts of the Holocaust.

II. HISTORY AS FICTION, OR FICTION AS HISTORY?

At first glance, Wartime Lies seems to rebel against its own fictional status; it reads, after all, less like a novel than a history, and less like a history than a chronicle. If a “chronicle” merely recites undigested historical detail, while “history” operates through principles of exclusion and schemes of emplotment, then many of the details presented in Wartime Lies seem to belong to the former genre of historical telling. To take a notable example from early in the novel, the first-person narrator, Maciek, tells how his aunt Tania, who will emerge as the most arresting figure in the story, came to live with his family. He does so by describing the death of Maciek’s uncle, Tania’s brother:

On one of his [horseback-riding] expeditions, he was surprised by a violent thunderstorm. He dismounted, took refuge under a tree, and, holding his horse by the reins, tried to calm him by stroking and kissing his nostrils. Lightening struck very close. The horse panicked and bit my uncle repeatedly on the face. The scars were very ugly. The girl [the uncle’s love] seemed more distant; my uncle didn’t know whether to blame distractions of university life or revulsion. Which reason was worse? ... Before the fall semester was over, he went one afternoon to the stable and killed his horse and himself with two rounds of shot. So it happened that Tania came to live with us, to make a home for my father and to bring me up.31

The story is remarkable, not least of all because the uncle never again receives mention in the book. As a piece of reportage, the story displays certain formal features of historical writing: The narrator for the most part tells the story from the outside, and his only moment of access to a character’s thoughts issues in an example of undecidability ("Which reason was worse?"). Yet the story fails as an instance of historical writing for the simple reason that it never clarifies the very point it is enlisted to explain: how the aunt came to live with Maciek’s family. Was she grief-stricken and, as a consequence, moved into the narrator’s household? The text creates the suggestion of a causal relation between the uncle’s suicide and the

aunt's move, yet the connection is never made clear. The passage subtly imputes a causal link between discrete events that in the boy's memory may simply have followed each other temporally.

The ambiguities of this passage notwithstanding, it clearly does not read as fiction. The very oddity of the details (the "stroking and kissing" of the horse's nostrils), and the Gothic Fuselian quality of the injuries (bitten "repeatedly" after a flash of lightning) might seem to mark the story as invented, but the fact that the voice of fabulative detail does not as a general matter characterize the texture of the writing, and the fact that neither the uncle's suicide nor the inflicted injuries foreshadow events in the rest of the text, create a structural imbalance that one would not admit into a fictive piece. If anything, the specificity and idiosyncracy of the details function as a "reality effect," a stretch of discourse that supports the facticity of the narrative.  

By this I do not mean to suggest that the very oddity of the story belies any suggestion that Begley might have fabricated it; I mean simply to claim that regardless of the ultimate truthfulness of the story, it functions as a "rhetoric of fact"; it serves to convince the reader that the narrative is principally a matter of historical truth rather than fictional creation.  

Later in the "novel" the narrator tells the story of his illness:

My liver hurt and I was feverish. It was obvious to Tania that I had jaundice, like my grandmother just before the end. . . . Summoning a doctor was excluded; he would want to examine me, he might see my penis. . . . This time Tania was worried. She was not sure how [one] cured jaundice. Apparently, Pan Wladek was worried too. He came to our room and said, I can recommend a doctor you can trust in every way; please let him examine the child, Pani need not be afraid. Tania agreed. The diet and pills the doctor prescribed worked rapidly. I was able to resume lessons and even to go out to meet my grandfather.'

Here again the novel reads less as fiction than as history, and less as history than as chronicle. A dramatic situation is sketched with an economy of means: the boy has fallen ill with the disease that has already claimed his grandmother, yet summoning a doctor is considered too dangerous as the boy's circumcised penis would reveal him to be a Jew. Further, his aunt, preternaturally resourceful in most situations, is at a loss when it comes to the treatment of jaundice.

33. For an excellent discussion of the uses of the "rhetoric of fact" in novelistic representations of the Holocaust, see James E. Young, Writing and Rewriting the Holocaust (Bloomington: Indiana University Press, 1990), 51-63.
34. Begley, 123.
Suddenly, however, the drama is resolved in the very paragraph in which it is introduced: a neighbor knows a trustworthy doctor who quickly cures the child. The reader approaches the following pages with the suspenseful expectation that the good doctor would be less trustworthy than originally believed, which would catapult the family once again into a situation of peril. But the next few pages pass without incident, and soon one stops thinking of either the jaundice or the doctor—except to consider why they were ever mentioned in the first place.

It is clear enough that a writer of fiction would not ordinarily introduce such a potentially dramatic situation only to resolve it in so sudden and unsatisfying a fashion. The incident serves, then, not to push the narrative imaginatively forward; to the contrary, it creates the suggestion that fidelity to an undigested historical record rather than submission to the imperatives of fiction is responsible for the shape of the text. The relative flatness of the writing, as well as the absence of any effort on the narrator's part to create a causal connection between the event and what follows in his story, support the notion that the jaundice incident functions as pure chronicle—a simple recitation of fact that serves no larger principles of narrative organization. By eschewing principles of fictional organization and relying upon a rhetoric of fact, the novel does not seem to rebut the presumption against fictional representations of the Holocaust as much as it ostensibly surrenders to the force of the critique. Indeed, if the text is so concerned with passing itself off as the truth that it bears many of the rhetorical and structural trappings of historical discourse, then why is the narrative presented as a work of fiction? Yet as we shall see, the text's own ambivalence toward its status as a novel describes less a fault with the work than it indicates a necessary and brilliant solution to the problems of representing the narrator's remarkable story of survival.

III. THE LIMITS OF INVENTION AND MEMORY: THE SURVIVOR AS LIAR

The contours of the story are suggested by the title, Wartime Lies. The title itself is discomfiting, creating inevitable associations with the claims of those who would offer a complete denial of the Nazis' campaign of genocide. More critically, the title resonates with what we have already observed, for the text's central lie seems to be contained in its pretensions to historical truth. It calls itself a work of the imagination at the same time that it rhetorically passes itself off as a factual discourse.
Yet the problem of "passing oneself off" describes not merely the novel's ambivalent participation in its genre, but also the very content of the narrative. For on the most general level, the novel tells the story of how Maciek and Tania survive the wartime years in Poland by passing themselves off as non-Jews. The story at the beginning is quite conventional, assuming the form of continuity and disruption. The first chapter establishes the quotidian routine of a Jewish family of some prominence in a town of middling size. This routine is vulnerable from the outset: the opening sentence portentously informs that "I was born a few months after the burning of the Reichstag in T., a town of about forty thousand in a part of Poland that before the Great War had belonged to the Austro-Hungarian Empire." At once, the text links the personal development of the little boy with larger, inexorable political events that will define, as much as any parent, his character. The reference to the Reichstag fire stands in the place of an explicit date of birth; the novel thus presupposes a bare familiarity with history to appreciate the chronology of the unfolding narrative. The use of the letter "T." to designate the town again serves as a reality effect, for it suggests that discretion counsels anonymity. Finally, the mention of the Austro-Hungarian empire situates the story historically as well as geographically.

Following a pattern set in other works of Holocaust literature such as Elie Wiesel's Night and Jiri Weil's Life with a Star, the narrative quickly turns into a story of disruption. When the Germans invade, Maciek's father, a doctor, must flee with escaping Soviet troops back to Russia; and the boy, whose mother died during his birth, remains in the care of his aunt. Yet this swift transformation of domestic routine registers with the boy less through the disappearance of the father than through the loss of his beloved Polish maid, who is bluntly told by her own father that "it was high time his child stopped wiping the rear end of a little Jew bastard" and rid herself of the "smell of Jew." From this moment on, the family's plight becomes progressively more desperate, although the novel assumes familiarity with, rather than portrays, the details of the rapidly escalating persecution of the Polish Jewish population. Nazi roundups and SS "actions" are named but not shown. Compared with works like Steven Spielberg's Schindler's List or Art Spiegelman's Maus, the novel is less concerned with supplying visual or discursive knowledge of these events, and more reliant upon the reader's

35. Ibid., 7.
38. Ibid., 33.
familiarity with the timetable of the "Final Solution" for the force of its drama.

The rest of the novel chronicles Maciek and Tania's "lies," the deceits they must call upon in order to keep the truth of their identities concealed. The text reveals the costs of these duplicities with great subtlety, as Maciek and Tania become transformed and defined by the very ruses they enlist to protect themselves. The beginning of the story suggests this transformation when, soon after the Nazis occupy the town, the boy's grandfather counsels him to "watch very carefully and try to understand as much as possible . . ."39 The act of witnessing is severed from the child's innocent curiosity, as witnessing becomes a tool of survival—and subterfuge. Later Maciek and Tania obtain, through the aunt's resourcefulness, forged papers, and later, "something really excellent, real papers and not forgeries, for a mother and son."40 These "real fakes" complete a transformation that has been moved along by the force of circumstance: The aunt fully assumes the role of maternal protector. She styles her hair in an effort to resemble more closely the mother pictured in the papers, and the two of them change their names. "In the new papers, my name was no longer Maciek, and Tania was no longer Tania; I was to be called Janek."41 Like the elaborate archival scheme of the Nazis from whom they flee, the two find themselves defined by their papers.

Their new identities take some getting used to and require more lies. A single mother home alone with a school-age child in a rented room would arouse suspicions, Tania realizes, so she invents a story of the boy's ill health, a tale the two spend hours rehearsing and perfecting: "Questions of the sort Tania and I rehearsed were to be answered before they were asked, so that the inquisitive landlady or fellow lodger would never begin the dreaded inquiry that might lead to the truth."42 Thus "mooted" by his aunt, the boy learns to construct tutored testimony that will be freely proffered in order to preempt difficult questions.

The aunt, moreover, demonstrates a keen insight into the formal requirements of such stories:

One had to talk, one could not always talk about books, one had to be ready to talk about oneself. Which self? The issue was the limit of one's inventiveness and memory, because the lies had to

39. Ibid., 36.
40. Ibid., 81.
41. Ibid., 85.
42. Ibid., 96.
be consistent—more consistent, according to Tania, than the truth.\textsuperscript{43}

This theory of lying indirectly explains the function that incidents such as the uncle’s suicide and the jaundice play in the narrative. In a discursive world that details the erosion of the distinction between “inventiveness and memory” in the life of a young boy, such incidents flag themselves as “the truth,” precisely because they lack the consistency that one demands from fictional creations.

The adoption of their new fictional identities is completed by “Janek’s” initiation into Catholicism. Up to this point the narrative has subtly chronicled the twosome’s growing distance from their doomed kinspeople and their religion. They escape an early SS “action” through a tip-off which they fail to share with their neighbors. Later, during the first autumn of their “hiding,” the aunt comments that it “probably was the period of Jewish holidays; it was odd not to know on what day they began.”\textsuperscript{44} When they find their first garret in Warsaw, they exterminate the bedbugs with “chemical agents,” a success that “paralleled that of the Reich.”\textsuperscript{45} Later, Maciek comes to watch German suppression of the Ghetto uprising from a rooftop in the company of other tenants who enjoy the unobstructed view of the “fireworks.”\textsuperscript{46} The boy bears witness to the destruction of Polish Jewry as an outsider looking in, and indeed his contact with the death camps is harrowing precisely because it remains circumstantial.

Yet the lies cause more than an alienation from their fellow Jews; slowly, they begin to leave their mark upon the relationship between Maciek and Tania. Toward the end of his story, the narrator tells of an incident in which he finds himself lying—this time to Tania herself. Their flight from Warsaw lands them in a farming village where a family of peasants permits Maciek to work their field and enlists Tania into its bootlegging operation. Maciek, encouraged by a local boy, spends a day smoking cheap cigarettes, precipitating a new medical crisis.

When it was time to drive the cows home, I was desperately sick. I rubbed my face and hands with cow dung to mask the smell of tobacco; the stench of vomit complemented my efforts. The vomiting was followed by diarrhea that continued through the night and into the next day. I was green; my teeth chattered; I was unable to eat. Just as Tania came close to concluding I had

\textsuperscript{43} Ibid., 105.
\textsuperscript{44} Ibid., 78.
\textsuperscript{45} Ibid., 94.
\textsuperscript{46} Ibid., 103.
come down with typhoid fever, I miraculously recovered. Nothing could induce me to reveal to her the true nature of my illness.47

It is a critical moment in the text: The techniques of subterfuge and dissembling that Maciek has dutifully learned from his aunt are now turned against her. The narrator himself recognizes the importance of the incident, and at this point the novel ceases to read as a story of survival and witnessing, and begins to assume the qualities of a confession, as the narrator gropes to make his behavior comprehensible to both his reader and himself. Indeed, the transgression is never admitted to the aunt; it is only revealed to the reader, who now learns that the true wrong was not the smoking but the failure to confess the original minor misdeed. The narrator offers various hypotheses of "what held me back with such force from confessing and made me prefer to increase her suffering as well as my own," and finally, rather laconically, concludes: "I was chained to the habit of lying, and I no longer believed that weakness or foolishness or mistakes could be forgiven by Tania or me."48

I was chained to the habit of lying: The story has come full circle. The habit of lying has become such a part of the boy's being that he now uses it to deceive the one person in the world who claims to know who he really is. Yet more provocatively, the narrator's very explanation of his own behavior is itself, I believe, unreliable. The literature of confession offers many fascinating examples of failed efforts to explain the transgressive behavior of the author/confessor. Consider two of the most famous instances of confession in Western literature: Rousseau's attempt to explain why he accused the young maid of stealing the yellow ribbon that in fact he had stolen to present to her as a gift, and Augustine's attempt to make clear why he plundered the pears from his neighbor's trees.49 Both instances remain notable not because they brilliantly lay bare the inner psyche and tangled motives of the respective confessors, but rather because they both can be understood as moments of failed explanation. Rousseau's and Augustine's confessions conspicuously fail to make sense of the very incidents that are presented in their texts as being responsible for the impulse to write. Their discursive tool, the

47. Ibid., 167.
48. Ibid., 171.
confession, cannot make comprehensible the very behaviors it is meant to lay bare.

But if confessional literature offers reasons for a reader to treat a confessor's explanation of transgression with some wariness, Maciek's confession deserves special circumspection. For one thing, it bears the very properties of a lie as defined by Tania. By resolving all narrative ambiguity, by tidily fitting it into a story about how one can become "chained to the habit of lying," the confession possesses precisely that quality of heightened consistency that the aunt has already claimed distinguishes the fictional from the true.

Moreover, the narrator seems oblivious to other, more plausible explanations of his behavior. While he speculates that he no longer believes that weakness and mistakes would be tolerated by Tania, he overlooks the ways in which his aunt submits him to a regimen of total watchfulness that leaves no aspects of his behavior free from surveillance.

[S]he was equally insistent on my controlling myself and being controlled by her at times when I thought it didn't matter, when we were alone. It may be that she thought I needed to be in constant training. More likely, it was because of the effort she was making never to lose the complete hold she had on herself and because we were constantly together. Already in T., . . . we slept in the same room... [M]y nakedness and my bowel and bladder movements continued to be subject to question, inspection and comment.50

The distinction between Maciek's and Tania's public life of duplicity and their private existence thus vanishes under his aunt's total and exhausting vigilance. Not only do the two literally "lie together,"51 the boy's life in hiding begins to resemble, through his aunt's exacting disciplines, the life of a camp inmate. Yet the possibility that his lying to his aunt about his smoking-induced sickness is born of some deeper psychology of rebellion, marking an attempt to define a space free from her scrutiny and probing, apparently never occurs to the narrator. Nor does the narrator consider the interesting parallels between his lies to Tania and his earlier traumas, which have brought him to consider the confessional itself as a form of lying.

Earlier in the narrative, Tania's insistence that Maciek receive, as part of their scheme of dissembling, a religious education in Catholicism triggers in the boy a crisis not simply of faith but also of

50. Begley, 165.
conscience. As he becomes initiated into the Catholic theory of sin, the boy reflects:

Bearing false witness was forbidden; serious lying and hypocrisy were the same as bearing false witness; I was a liar and hypocrite every day; I was mired in mortal sin on that account alone . . . .

The identification of bearing false witness with lying and hypocrisy recapitulates the text's basic crisis of representation; it claims to offer credible eyewitness testimony at the same time that the witness portrays himself as a liar. This crisis is exacerbated in the boy's mind by the church's sacraments:

The day of my first Communion came. Tania offered to give me breakfast on the sly in our room, but I refused. I wanted to be clean inside, just as Father P had directed. . . . The priest blessed me. . . . I did it all carefully and slowly, and even though I knew I remained in the state of mortal sin, I tried to do nothing, until I knelt to receive the wafer, that would add to the weight of the judgment hanging over me.

Here the boy's alienation from his religion is complete, as the very rituals meant to hide his Jewishness become internal to his sense of self. Yet the former identity continues to leave its traces in the form of guilt. Though he tries to be "clean inside," the very effort to pass himself off as something he is not marks him as corrupt. The rituals that are meant to enfold the pious into the community of belief, communion and confession, simply become new forms of torment. Confession is forever deferred, as the act that invites a coming "clean" becomes an occasion for greater duplicities. The act of confessing thus becomes impossible, a never-ending ritual of lying and torment.

His aunt tries to ease his crisis of conscience through instrumental thinking. "Her reasoning never varied: You have to do it, it's not your fault, if Jesus Christ allows these things to happen it is the fault of Jesus Christ, not your fault." While the aunt's words may offer a theologically or legally sound justification for perjury under the circumstances, the failure of her argument to convince the boy is suggested indirectly through a minor though morbid incident. The narrator briefly turns his story away from Maciek's religious ordeal to the food shortages that make his daily life a constant struggle with hunger:

52. Begley, 116.
53. Ibid., 120.
54. Ibid., 117.
One day, Tania came from the market with pork she had gotten at a decent price, probably because it was an inferior cut. The meat had an odd taste; it was sweet. The next day he [a fellow boarder] told her in secret there was no doubt we had eaten man.

Revolting as the story is in its concrete detail, its deeper associations powerfully suggest Maciek’s abject state of being. The intended purchase, pork, is a proscribed meat of the Jewish faith. Yet the act of inadvertent cannibalism also conjures the boy’s duplicitous communion. The cannibalism incident thus reads less as a detail of the horrors of war than as an instance of divine punishment for multiple sacrileges—for violating the dietary proscriptions of his “true” religion and for profaning the host of his fictional faith.

The narrator’s failure to make these connections represents more than a simple lack of insight into his own feelings and motivations. At this critical moment of self-revelation, the narrator’s understanding of himself fails for the simple reason that there is no stable self left to reveal. The alienation is complete: just as he has lost touch with his people, faith, and protecting “mother,” he has also lost the capacity to probe his own inwardness. The confession cannot deliver on the promise of cleansing and of return to conditions of authentic being because there is no “authentic” being left. In this regard, Wartime Lies differs importantly from other pieces of Holocaust writing such as Tadeusz Borowski’s This Way for the Gas, Ladies and Gentlemen or Arnost Lustig’s Darkness Casts No Shadow, for the emptying of self is not caused by contact with horrors so extreme that one’s normative and psychic universe is laid to waste. In Wartime Lies, Maciek and Tania protect themselves through lies that become constitutive of their identity, displacing the very “self” they were meant to protect.

The novel’s conclusion—“Tania and I were saved”—thus reads as a denouement. This is suggested by the shift in narrative voice: the last episode of Maciek’s story is told in the third person, a voice of ironical, not impersonal, narration. This final speaker refers to his own “self” and circumstances from the position of an observer. The boy-narrator has simply vanished:

And is Maciek’s name again Maciek? Has the unmentionable Jewish name been resumed? Certainly not; the visor was not

55. Ibid., 118.
lifted in Kielce; it will not be lifted in Cracow. Maciek has new Aryan papers and a new Polish surname with not a whiff of the Jew in it.58

The last vestige of his Judaism is the body that will not lie: "Yes, Maciek’s penis is still his old penis, different from the others, but he has learned that one can avoid urinating in public places or otherwise displaying that telltale member."59 While the practice of offering testimony is etymologically derived from the ancient Hebrew practice of swearing by one’s testicles, now the male anatomy registers the continuing history of deceit.

This detached voice sketches Maciek’s coming adulthood in broad strokes. The aunt moves away; the father, who survived the war through his own lies, remarries and brings the family to America. And where is Maciek now? In the novel’s final paragraph, we are told:

A man who bears one of the names Maciek used has replaced him. Is there much Maciek in that man? No: Maciek was a child, and our man has no childhood that he can bear to remember; he has had to invent one.60

The last sentence is poignant yet confusing: Was Maciek himself an invention? Earlier, when the aunt demands a consistency to their lies that she would not demand of the truth, the narrator comments, "the issue was the limit of one’s inventiveness and memory."61 Now, in the last sentences of the text, the tension between invention and memory resurfaces, though the "issue" is not the limits of the narrator’s power to lie as a means to survive the present, but his need to fictionalize in order to endure the past. In this final paragraph, the reader is returned to the novel’s prologue, when the narrator “thinks on the story of the child . . . . For the sake of an old song, he calls the child Maciek.”62 Thus the reader is reminded that “Maciek,” the very name that has undergone multiple changes, the signifier that has lost its signified, was itself, all along, a fiction.

IV. THE TESTIMONY OF THE LIAR/SURVIVOR

But if the narrator of Wartimes Lies must tell his story in the idiom of fiction because he “cannot bear” to tell his story truthfully, what remains of the truth? If the past can be spoken of only through

58. Ibid., 192.
59. Ibid., 196.
60. Ibid., 198.
61. Ibid., 105.
62. Ibid., 5.
fiction, and if our witness portrays himself as a compulsive liar, how can we speak of a stable historical record? The issue of the narrator's unreliability, his deconstruction of the boundary between memory and invention, thus returns us to our point of departure: the rival claims of fictional and juridical discourses attempting to secure the history of an event that resists representation.

In the case of the law, the trial serves as the primary tool for securing a truthful picture of an historical event. Indeed, as one commentator has observed, "we have no better way to discover the historical truth underlying a case than the trial process itself."63 Despite the elaborate evidentiary norms associated with this process, the trial in Anglo-American jurisprudence is governed by a relatively simple proposition: that facts be proved by firsthand testimony and that knowledge be produced by direct observation.64 This privileging of testimony, however, does not indicate a juridical faith in the veracity of the spoken word; quite to the contrary, Anglo-American jurisprudence attempts to control the specter of mendacious or mistaken testimony through the rigors of adversarial confrontation.65

The medieval canonical stricture of testis unus, testis nullus (one witness, no witness), though formally abandoned in modern rules of evidence, suggests an attitude that continues to inform contemporary jurisprudence, one that enfolds all testimony in suspicion.

The law's enduring epistemological wariness both focuses acute attention upon human recital—viva voce—as the foundational method of proof and generates intricate rules that control the court's capacity to hear and accept secondhand testimonial reports.66 To take a simple example from Wartime Lies, when Tania embarks on a risky trip to a nearby village to learn what has become of Maciek's grandfather, she meets a peasant who "laughed and said she had come too late.... [T]he Germans came last week and shot him right against the barn wall."67 Later that night, she tearfully awakens Maciek and tells him the dreadful news. Though the reader accepts the story with only minor reservations—how could Tania be sure that the man the peasant described was, in fact, her father?—as a juridical matter, the entire story, as told by Maciek, would be inadmissible as proof of the grandfather's murder. Indeed, in this case the hearsay is

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66. Uviller, 776, 779.

doubled, as Maciek is repeating a story related to his aunt. The juridically relevant witness, the Polish peasant, would remain unavailable to the court and thus so too would the small story of another Jew lost in the Holocaust.

More troublingly, adversarial jurisprudence’s insistence upon eyewitness testimony has the further consequence of rendering many Holocaust narratives either unavailable to a trial or available only through evidentiary loopholes. Thus in the 1987 case of Regina v. Zündel—the appellate case spawned from the trial mentioned earlier—the Canadian appellate tribunal had to decide whether the testimony of an eminent Holocaust historian, Raul Hilberg, had been improperly admitted during Ernst Zündel’s trial for injuring “a public interest” by publishing denials of the Holocaust. While the appellate court conceded that Hilberg’s testimony was technically hearsay, it reasoned that it was “admissible to prove the existence of the Holocaust.”

Exceptions to the hearsay rule, the court noted, generally “are based upon (a) necessity, and (b) the circumstantial trustworthiness of the evidence to which the exception applies.” Here the criterion of necessity was satisfied, as the question whether the Holocaust ever occurred had to be answered by the trial court concerned with prosecuting a professed denier. Usually, of course, a court can simply “take judicial notice” of an accepted historical fact; adversarial jurisprudence does not require that the parties “prove” Napoleon’s armies fought at Waterloo. In this case, however, the appellate court reasoned that had the trial court taken judicial notice of the Holocaust, it essentially would have relieved the prosecution of its burden of proving guilt: “to grant the motion would have the effect of substantially eliminating a portion of the duty incumbent on the Crown in so far as the guilt of the accused is concerned.” The prosecution was thrust, then, in the odd position of having to prove, in order to win its case, that the Holocaust occurred, a discomfiting position to occupy in a trial meant to demonstrate that certain statements are so beyond the pale of legitimate dispute as to justify the imposition of a criminal sanction. The turn to expert—that is, hearsay—testimony was necessitated, the Court reasoned, by the unlikelihood that “living witnesses could be obtained.”

69. Ibid., 146.
70. Ibid., 145.
71. Ibid., 149.
72. Ibid., 144.
The events sought to be proved by Dr. Hilberg's opinion occurred more than 40 years ago, and while there are survivors of the Nazi concentration camps, some whom were called as witnesses, it is unlikely that living witnesses responsible for formulating the policy of the Nazi government or carrying out the policies in relation to the events alleged, could be obtained.\footnote{Ibid.}

Reliance upon expert/hearsay testimony was necessitated not simply by the failing memories of the survivors, but also by the continued failure of the perpetrators to provide the law with a testimonial account of their crimes.\footnote{While the body of literature by survivors and eyewitnesses is large, the perpetrators of the Holocaust have remained largely silent about their deeds. This silence is broken in \textit{Auschwitz in den Augen der SS} [\textit{Auschwitz in the Eyes of the SS}], ed. Jadwiga Bezwinska and Danuta Czech (Warszawa: Verlag Interpress, 1992), a compilation of the writings of Rudolf Höß, Pery Broad, and Johann Paul Kremer. Höß served as the commandant of Auschwitz until 1943. Broad was a guard, and Kremer was a prison doctor who participated in "selecting" the newly arrived for work or extermination.} As Hilberg's work was based upon "material to which . . . any careful and competent historian would resort,"\footnote{\textit{Zündel}, 31 Canadian Criminal Cases at 148.} it also satisfied the second criterion of "the circumstantial guaranty of the trustworthiness of the evidence."

In contrast, the court concluded that a United States Army film documenting the liberation of the Nazi concentration camps failed under the rules of hearsay, as the nameless screenplay writer and narrator were unavailable for cross-examination. Although the film ostensibly produced direct visual information about the depicted historical event, the narrative in which these images were embedded was juridically unreliable. While the prosecution had anticipated the hearsay problem, it believed the film would be admitted, since there was ample precedent for the court to do so: The film had been shown forty years before at the Nuremberg trial.\footnote{See \textit{Proceedings of the Trial of the Major War Criminals before the International Military Tribunal}, 2: 431-34.} Unfortunately for the Zündel prosecution, the Nuremberg trial was governed by standards of proof intentionally relaxed to permit the display of evidence otherwise barred by Anglo-American conventions.\footnote{See Taylor, 63-64, 147-49.} When the film was shown in the Canadian trial, the court concluded that because the makers of the narrative were not present for adversarial confrontation (nor had they been available at Nuremberg), their film could not be accepted as a trustworthy depiction of the historical event it captured. (Here, Zündel's successful career as a photo retoucher creates its own disconcerting resonances.) Despite the
testimonies of Hilberg and the survivors, the trial court's admission of the army documentary, along with other procedural defects in the original trial, led the appellate court to toss out the original conviction.\footnote{78}

The court's conclusion exemplifies the problems with applying evidentiary conventions of Anglo-American jurisprudence to secure the fact of the Holocaust. At the same time that the law intervenes to protect history from the charge that it is mere fiction, the law remains strangely agnostic regarding the truth of the very event it is enlisted to defend. This highly artificial and formal restriction of knowledge merely redoubles the law's dependence upon the in-court witness, who functions then as the discursive medium through which a court, trapped in its self-willed ignorance, can secure the truth of an event. Yet it is precisely this model of the witness that only uneasily accommodates the testimony of a Maciek. For to be trustworthy, the witness ideally presents himself as a person of untainted character, whose testimony is sufficiently free of contradictions, inconsistencies, and incoherences to withstand the assault of cross-examination.\footnote{79} In this jurisprudential model, the witness identifies himself to the court before he tells the court what he has seen. His identity, once defined and secured, is considered anterior to, and enabling of, the act of bearing responsible witness. By focusing upon the character of the witness, as well as the coherence and consistency of his narrative, the law seeks to separate truth from lies, responsible memory from self-conscious or unwitting invention. Testimony thus functions as a proxy for a camera, providing the court with an unoccluded window on historical fact. Yet as the Zündel case makes clear, the court does not trust the camera by itself; even the "documentary" will be subject to

\footnote{78. The other defects included an improper voir dire regarding pretrial publicity and improper jury instructions regarding the mental state of the defendant. Zündel, 31 Canadian Criminal Cases at 124-25, 89-102. Zündel was retried from mid-January until early May 1988. The judge in the second trial agreed to take judicial notice of the Holocaust, directing the jury to accept that "the mass murder and extermination of Jews in Europe by the Nazis during the Second World War is so notorious as not to be subject of dispute." Leonidas E. Hill, "The Trial of Ernst Zündel: Revisionism and Law in Canada," in Simon Wiesenthal Center Annual (Chappaqua, N.Y.: Rossel Books, 1989), 200. Yet as Leonidas Hill has observed, the judicial notice was restrictively defined, as the judge's "careful wording left open the question of the number of Jews killed, the means (such as gas chambers) by which they were killed, and the role of official government policy." Ibid. Zündel was found guilty in the second trial and sentenced to nine months in prison. See ibid. In 1992, the Canadian Supreme Court declared unconstitutional the section of the Criminal Code under which Zündel had been charged. See Regina v. Zündel, 75 Canadian Criminal Cases (3d) 449 (S.C.R. 1992); see also Deborah E. Lipstadt, Denying the Holocaust (New York: Free Press, 1993), 157-82.

juridical doubt unless the person behind the lens can be seen and heard in the courtroom.

The court’s dependence upon the exemplary witness finds resonance in Holocaust studies, as scholars have searched for the best testimony to silence the hateful denials of the historical record.\(^8\) Ironically, it is Primo Levi, the very man who has been cast by historians as the “quintessential witness,”\(^8\) who has most persuasively disputed the coherence of this ideal: “The worst survived, that is the fittest: the best all died.”\(^8\) The consequence of this could serve as a précis for *Wartime Lies*: “At a distance of years one can today definitely affirm that the history of the Lagers has been written almost exclusively by those who, like myself, never fathomed them to the bottom.”\(^8\) The “privileged witnesses,” Levi explains, were the kapos and those whose luck and abilities made survival possible. Like the nameless narrator of Begley’s novel, the man whose skin is “virgin of tattoo,”\(^8\) it was often the liars who survived to tell the truth.

This observation is not meant to demonize or cast moral aspersions on the survivors. Nor does it suggest that the historical record remains, as a result, “corrupt.” Indeed, such a claim would merely call into question the soundness of the ambition for a perfectly untainted or transparent historical narrative. Instead, Levi’s statement and Begley’s novel correct two equally pernicious myths surrounding those who “lived to tell” and, in so doing, reveal how the very conventions of the law meant to secure the truth of the Holocaust fail to do justice to the experience of the survivors. On the one hand, there is the tendency to subject survivors to the demeaning suspicion that survival amid such odds could only be accomplished through extreme acts of savagery and self-interest. As in the medieval ordeal, innocence could be proven only by death.\(^8\) On the other hand, there is an opposite tendency to bestow upon survivors an impossible innocence. Long before she wrote about the Eichmann trial, Hannah Arendt noted that one of the unfortunate if inevitable consequences of the Nuremberg trials was to confer upon the victims “an innocence

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83. Ibid., 17.
84. Begley, 3.
that is beyond good or virtue.\textsuperscript{86} In the face of such monstrous “metaphysical guilt,” the law inevitably foisted upon the survivors a burdensome and unsustainable innocence.

This insight, I believe, helps us to understand better the representational ambivalence of \textit{Wartime Lies} and returns us to the question I posed earlier in this essay: Given the presumption against fictionalizing the Holocaust, as well as the text’s own rhetoric of fact, how can we understand the text’s status as a novel? The narrator, as we have seen, answers this question for himself: the turn to fiction is made inevitable by the pain of memory. Again, however, the narrator’s account of his own behavior requires some amplification.

In writing about the controversy surrounding Jerzy Kosinski’s \textit{The Painted Bird}, James Park Sloan draws attention to the similarities between the survivor’s skills and the writer’s talents. We should not be surprised, he argues, that “a man who survived the war by living a lie” should become “a practitioner of the liar’s profession.”\textsuperscript{87} But if the writing of fiction remains the “liar’s profession”—a discourse which by its very terms eschews strict fidelity to historical truth and thrives by blurring the distinction between memory and invention—it permits, for these very reasons, the offering of testimonies that remain beyond the ken of both legal and historical conventions of proof. For the law cannot offer a solution to the paradox of the Cretan liar; it cannot accommodate the witness who declares, “Everything I say is a lie.”

I do not suggest that the law would simply discredit the testimony of a Maciek, one whose act of bearing witness was enabled by skills of lying, though the \textit{Zündel} trial offers a bracing example of the kind of vicious scrutiny to which survivor witnesses can be subjected.\textsuperscript{88} Yet even if the court finds credible the words of the witness who has weathered the indignities of adversarial confrontation, because the legal/historical interest in a witness remains largely instrumental, it excludes precisely the kind of highly self-reflexive narration that we find in \textit{Wartime Lies}. The court’s interest in character remains focused upon the “truth of the said”; its concern is what was seen, not the costs of seeing exacted upon the witness. \textit{Wartime Lies}, by contrast, suggests that reliable narrative, either in the form of juridical

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87. Sloan, 53.
88. Zündel’s attorney, Douglas Christie, “engaged in brutal cross-examinations of survivor witnesses, seeking to undermine their testimony, cast doubt on their suffering and deprive their experiences of any real significance.” Manuel Frutschi, “The Zündel Affair,” in \textit{Antisemitism in Canada: History and Interpretation}, 252. Commentators observed that such tactics probably cost the defense in the minds of the jury; still, they may discourage potential survivor witnesses from testifying. Ibid.
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testimony or historical account, fails to comprehend the experience of the survivor sustained through evasion and invention. The novel permits us to view the survivor as something more than a mere instrument for the securing of a historical or juridical record; we can hear the voice of the self tainted by its fully justified acts of survival. In this regard, we can appreciate how the text’s ambivalent status as a novel supports, and harmonizes with, its specific content: by giving full voice to the survivor’s experience, *Wartime Lies* necessarily renders unsteady the very boundary between memory and invention that the law attempts to fix and police.

Thus, notwithstanding the narrator’s own claim that the turn to fiction proceeded from the pain of memory, I would argue that the confines and exclusions of legal and historical discourses make, in the case of this narrative of survival, the turn to fiction inevitable. This inevitability, however, creates a final dilemma: By relying on the discourse of fiction, the writer runs the risk of creating the suggestion that everything is indeed a lie, a misrepresentation. Indeed, this is precisely the controversy that has engulfed *The Painted Bird*, as some critics have greeted the news that the novel is, in fact, fictional (an odd revelation in the first place) as evidence that the larger history of the mistreatment of the Jews by their Polish neighbors during the Holocaust was itself the invention of a literary mind inclined to gross exaggeration. One can, of course, respond to such thinking with a general argument about the capacity of imaginative art to reveal deeper truths without being anchored to the historical record literally conceived. *Wartime Lies*, however, handles the problem of novelistic veracity internally. We can now appreciate what at first glance seemed anomalous: the novel’s inclusion of details and incidents that fail to advance the interests of fictional organization. By implicitly insisting on its facticity through precisely the kind of superfluous detail and implausible or attenuated causality that Maciek’s aunt bans from the discourse of fiction, the text is able to discredit the witness at the same time that it preserves the truth of what he reports. In so doing, the text submits itself as a novel, yet rhetorically contains and defeats the conclusion that everything in the narrative is, in fact, fiction.

89. Shoshana Felman offers a reading of *The Plague* that locates in Camus’s novel a similar representational concern with testimony that contaminates the witness. See Shoshana Felman, “Camus’ *The Plague*, or a Monument to Witnessing,” in *Testimony: Crises of Witnessing in Literature, Psychoanalysis, and History*, ed. Shoshana Felman and Dori Laub (New York: Routledge, 1992), 93-119.
V. HISTORICAL FICTIONS, LEGAL FICTIONS

This delicate balance between invention and veracity is preserved through the text’s final contact with a world of misrepresentations. After we are told in the final chapter that Maciek and Tania live in postwar Cracow with “their new names and new lies,” the narrator reflects on the ultimate utility of these continuing deceptions:

Are these lies still useful? Is anyone taken in? You would not think so. After all, it’s true, there are Jews all over Cracow, crawling out from every hole. The worst are the ones just back from Russia, arrived with Russian troops, like lice on their uniforms, only they are again Pan Doctor this and Pan Engineer that, living in the same fancy apartments as before. Other Jews spent the war in comfort too, right among us, eating our food, usurping good Polish names, putting their neighbors in danger, because, of course, we all knew; one could tell those Jews at a glance even if they called themselves Sobieski. And please, how many of them did we keep in a back room for just a pittance, with them always complaining they had nothing left, as if money mattered when you turn into black smoke going up a chimney?\(^9\)

By ironically identifying with the voice of the “typical” Pole, the narrator brings the reader in contact with a final set of misrepresentations, those that define the historical consciousness of the average citizen. The narrator asks whether the strategic deceits of Maciek and Tania can defeat these larger historical lies, but the text implicitly raises a different question: Can the truth behind Maciek’s misrepresentations ever defeat the misrepresentations that inform the nation’s historical “truth”? For the lies of the typical citizen must not be confused with Maciek’s. As Levi observes, “the acquired picture of historically accepted events” effects “the silent transition from falsehood to self-deception.”\(^91\) This self-deception, Levi argues, is useful to the citizen as he “is more easily believed by the judge, the historian, the reader, his wife, and his children.”\(^92\) In contrast to Maciek’s self-deceptions, those of the citizens invite an opportunistic and craven distortion of history. Wartime Lies suggests, then, a final dispiriting paradox: Just as the truth of the boy’s act of bearing witness must speak through a discourse of fiction, the deeper, more persistent lies remain in the larger historical record.

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90. Begley, 194.
92. Ibid.
But if history remains vulnerable to misrepresentation, we have already observed the problems posed by relying upon the law as a corrective. The Zündel trial, in which the procedural profile of the case forced the court to decide, through adversarial proceedings, whether the Holocaust happened, stands as but one provocative example of the disutilities of the law. Not only did the juridical conventions of proof force the court to question the admissibility of historical evidence (in the form of Hilberg’s expert testimony and the army documentary), but they permitted the defense to produce its own “experts,” in this case the Holocaust “revisionist” Dr. Robert Faurisson, a French literature professor who has made a second career in questioning the Holocaust from the standpoint of its technical feasibility. This latter point was not lost upon revisionists, who later publicized the fact that Faurisson had received judicial recognition as an expert. Thus the formal evidentiary agnosticism of adversarial jurisprudence renders Anglo-American law a peculiar tool for the protection of historical memory, one which may destabilize the very boundary between truth and fiction that it attempts to police.

Yet these problems are not peculiar to American or Canadian courts. This is underscored by the German experience with the passage of the so-called “Auschwitz-lie” law in 1985. Opposed by the Christian Democrats, the senior party of the ruling coalition, the bill prohibiting Holocaust denials was subtly changed in committee to win support among the government’s conservative flank. In its altered and approved form, the law now criminalizes two distinct statements of denial: those that deny the death camps, and those that deny the forced expulsion of “ethnic” Germans from the formerly German provinces of Poland at the war's conclusion. A product of political compromise, the text of the law now draws an implicit parallel between the two historical events. That no group motivated by hatred or anything else has ever denied the German expulsions seems

93. Without further explanation, the appellate court in Regina v. Zündel notes that “the trial judge, at the conclusion of a voir dire, ruled that Dr. Faurisson should be permitted to testify as an expert witness on the same basis as Dr. Hilberg was allowed to testify, namely, whether the German Government [sic] from 1933 to 1945 deliberately embarked on a scheme to exterminate the Jews in Europe.” Zündel, 31 Canadian Criminal Cases at 142.

Faurisson is best known in the United States in connection with the storm of controversy unleashed by the publication of one of his revisionist tracts with an introduction by Noam Chomsky defending Faurisson’s freedom of speech. (Chomsky attacked the unauthorized use of his piece by Faurisson’s publisher.) For an excellent discussion of this controversy, see Pierre Vidal-Naquet, Assassins of Memory, trans. Jeffrey Mehlman (New York: Columbia University Press, 1992).

94. The relevant sections of the bill (passed as Einundzwanzigstes Strafrechtänderungsgesetz [Twenty-first Law Modifying the Criminal Law] on June 13, 1985) were modified to criminalize insults to persons who have suffered persecution under National Socialism “or any other form of despotism and tyranny.” See Roth, “Denial of Holocaust,” 5; see also Stein, “History Against Free Speech,” 307-10.
of little relevance. Nor does it redeem the law to mention that similar analogies have been drawn by the historian Andreas Hillgruber in his controversial work *Zweierlei Untergang* ("Two Kinds of Ruin") which, without comment, juxtaposes the Final Solution and the expulsions in a single study of the end of the Second World War. Thus the differences between the destruction of European Jewry and the forced migration of Silesian and East Prussian Germans are erased both in the historical study and in the impersonal text of the law. The very legal instrument meant to protect the survivors from "insults" to the historical record becomes itself a source of new insults.

**CONCLUSION**

If juridical, historical, and fictional discourses are all vulnerable to charges of misrepresenting the past, does this suggest that all tools are equally inadequate to further the end of responsible memory? Günther Grass’s brilliant *Dog Years* describes the task facing the writer. "Believe me Mattern," writes one of the novel’s narrators, "with your help we will work out a valid technique for getting at the truth . . . . [T]his is a matter of vital necessity: we must . . . design a window that will give us back our perspective."

*Wartime Lies*, however, challenges the project of ever designing a window that will provide a transparent view of the Holocaust. Indeed, by instructing in the ways that juridical and historical discourses can distort and constrict the historical record, the novel implicitly critiques the position that would privilege representations of the Holocaust cast in those impersonal terms.

At the same time, however, the novel complicates the notion that "only art can convey the fullest meaning of the Holocaust experience." If art can portray meanings and experiences unavailable to the law, it is not because the vision of the artist is more innocent or unoccluded. To the contrary, *Wartime Lies* clarifies the affinities between the novel’s craft and the survivor’s duplicities. If the novel provides a window on the experience of survival, it reveals not because of its discursive transparency, but because it permits us to learn from the narrative’s provocative opacity. *Wartime Lies* tells a

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95. Conservative politicians argued that nations in the former Warsaw Pact omitted mention of these forced migrations from their official histories.


vital story through its own rhetoric of fact and concealment; it permits the testimony of the tainted survivor witness to be admitted through a fictional discourse that filters the truth through the confession of misrepresentation. These misrepresentations can neither be erased by the "innocent" history, nor silenced by the arm of the law. If the novel can serve the ends of responsible memory, it is because the survivor's truth can speak through the language of the dissembler.