

Epistemic Power of Universal Jurisdiction: Spreading Knowledge about Mass Atrocity Crimes

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Abstract

This article examines universal jurisdiction's (UJ) epistemic power: its contribution to shaping knowledge and collective memories about mass atrocity crimes. UJ illustrates the interaction between the process of transnational and global legal ordering on the one hand and political, legal, and institutional conditions at the nation-state level on the other. Political considerations fare prominently, even where—in Justice Jackson's famous dictum—power pays tribute to reason. Once the legal process has been initiated, the institutional logic of criminal law contributes to shaping the structure of knowledge. This article thus explores a field of tension and coordination between the global and the national and between the political and the judicial fields, and their consequences for knowledge and collective memories of mass atrocity crimes. Reviewing relevant literature and examining in detail one recent case, that of Syria's Anwar Raslan before a German criminal court in Koblenz, this article identifies the conditions of an amplification effect of court narratives driven by media, refugee communities, and human rights NGOs.

I. INTRODUCTION: QUESTIONS FROM THE GROWTH OF UNIVERSAL JURISDICTION

Recent decades have witnessed an increasing frequency in

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the application of Universal Jurisdiction (UJ), that is, criminal jurisdiction over a person accused of serious violations against human rights, regardless of where the alleged crime was committed and of the accused's nationality or country of residence. Maximo Langer and Mackenzie Eason documented this increase by conducting a worldwide survey of all universal jurisdiction complaints over core international crimes presented between 1961 and 2017.¹ They measure "a significant growth in the number of universal jurisdiction trials, in the frequency with which these trials take place year by year and in the geographical scope of universal jurisdiction litigation."² Langer and Eason attribute this expansion to a few developments:

The adoption of International Criminal Court implementing statutes, the creation of specialized international crimes units by states, institutional learning by states and non-governmental organizations (NGOs), technological changes, new migration and refugee waves to universal jurisdiction states, criticisms of international criminal law as neo-colonial and the search of new venues by human rights NGOs.³

It is thus appropriate to apply to UJ a kind of exploration that has gained prominence in research on judicial interventions against mass atrocity crimes in recent decades: their effect on public knowledge about such crimes, on the formation of collective memory and cultural trauma, as well as on knowledge about legal interventions themselves.⁴

In this article, we do not engage with the normative question

1. Maximo Langer & Mackenzie Eason, *The Quiet Expansion of Universal Jurisdiction*, 30 EUR. J. INT'L L. 779, (2019).

2. *Id.*

3. *Id.*

4. For background on the relationship between prosecutions of mass atrocity crimes and the collective memory of these crimes, see generally LAWRENCE DOUGLAS, *THE MEMORY OF JUDGMENT* (2001); Michael R. Marrus, *The Nuremberg Doctors' Trial and the Limitations of Context*, in ATROCITIES ON TRIAL 103 (Patricia Heberer & Jurgen Matthaus eds., 2008); MARK OSIEL, *MASS ATROCITY, COLLECTIVE MEMORY, AND THE LAW* (1997); DEVIN O. PENDAS, *THE FRANKFURT AUSCHWITZ TRIAL, 1963-1965* (2006); Joachim J. Savelsberg & Hollie Nyseth Brehm, *Representing Human Rights Violations in Darfur: Global Justice, National Distinctions*, 121 AM. J. SOCIO. 564 (2015); JOACHIM SAVELSBERG & RYAN D. KING, *AMERICAN MEMORIES: ATROCITIES AND THE LAW* (2011); JOACHIM J. SAVELSBERG, *REPRESENTING MASS VIOLENCE* (2015); PHILIP SMITH, *PUNISHMENT AND CULTURE* (2008).

of what purposes criminal trials under universal jurisdiction *should* serve, and specifically, if the shaping of knowledge and collective memories *should* be among them. Instead, we ask if such proceedings *in fact* have the capacity of shaping knowledge of violations and collective memories of horrendous pasts. In pursuit of this question, some conceptual clarifications are in order. By knowledge, we do not mean certified knowledge, but—in the tradition of the sociology of knowledge—the certainty among everyday actors that phenomena exists and that they have specific characteristics.⁵ Collective memory is knowledge about the past that is shared, acknowledged, and reaffirmed by a collectivity; while held in the minds of individuals, it is the outcome of collective social processes.⁶ A particular type of collective memory is cultural trauma, “a memory accepted and publicly given credence by a relevant membership group and evoking an event or situation that is a) laden with negative affect, b) represented as indelible, and c) regarded as threatening a society’s existence or violating one or more of its cultural presuppositions.”⁷

In other words, in the following, we are concerned with the epistemic power of criminal proceedings under UJ, by which we mean “the chance [that prosecutions and trials] impress on a global public, even against resistance, an understanding of mass violence as a form of criminal violence.”⁸ The question matters especially as epistemic power generates memorial normativity and potentially turns into symbolic power *à la* Bourdieu: a tacit mode of cultural domination unfolding within everyday social habits and belief systems. “Sources of this domination include control over rituals, including legal rituals (ritual power), access to channels of communication (communicative power), and authority derived from procedurally based legitimacy,”

5. JOACHIM J. SAVELSBERG, KNOWING ABOUT GENOCIDE: ARMENIAN SUFFERING AND EPISTEMIC STRUGGLES xi (2021); *see generally* PETER L. BERGER & THOMAS LUCKMANN, THE SOCIAL CONSTRUCTION OF REALITY (1966) (hypothesizing that the object of the sociality of knowledge is to analyze the social construct that is reality).

6. Lewis Coser, *Introduction* to MAURICE HALBWACHS, ON COLLECTIVE MEMORY 22 (Lewis A. Coser ed., trans., 1992).

7. Neil J. Smelser, *Psychological Trauma and Cultural Trauma*, in CULTURAL TRAUMA AND COLLECTIVE IDENTITY 31, 44 (2004).

8. Joachim J. Savelsberg, *The Representational Power of International Criminal Courts*, in POWER IN INTERNATIONAL CRIMINAL JUSTICE 281, 281 (Morten Bergsmo et al. eds., 2020).

especially that of the law.⁹

We proceed by first examining what the literature tells us about knowledge-generating effects of justice interventions against grave violations of human rights. How intensely do they shape knowledge, and how do they affect the structure of knowledge? We explore what past insights tell us when applied to the UJ cases. We finally examine these questions for a specific UJ case—that against Anwar Raslan, a Syrian intelligence officer accused of crimes against humanity—examining its implications for theoretical assumptions about the epistemic power of universal jurisdiction cases in spreading knowledge about mass atrocity crimes.

II. LITERATURE: LEGAL INTERVENTIONS AGAINST PERPETRATORS OF HUMAN RIGHTS VIOLATIONS AND THEIR EFFECTS ON KNOWLEDGE AND COLLECTIVE MEMORY

Practitioners and scholars have, for some time, invested high expectation in trials as generators of knowledge about evil.¹⁰ These expectations are partially confirmed by empirical research. Yet scholarship also shows that memory produced by trials is always selective, colored by the institutional logic of criminal law.¹¹ Research further documents that the epistemic effect of trials is dependent on the legitimacy of court proceedings, which varies substantially across collectivities and national contexts.¹² We will show how all of this applies to cases under UJ, even if some of these patterns take specific shape in

9. *Id.* at 282.

10. DOUGLAS, *supra* note 4, at 2 (“No one . . . would deny that the primary responsibility of a criminal trial is to resolve questions of guilt in a procedurally fair manner.”); *see also* STEPHAN LANDSMAN, CRIMES OF THE HOLOCAUST: THE LAW CONFRONTS HARD CASES 6 (2005); Amos Elon, *The Excommunication of Hannah Arendt*, 23 WORLD POL’Y J. 93 (2006); SAVELSBERG & KING, *supra* note 4; SAVELSBERG, *supra* note 5.

11. *E.g.*, Marrus, *supra* note 4, at 105 (describing how Nuremberg judges remained silent of a “historic assessment of medicine in the Third Reich, for a human dimension of the catastrophe, or even for clues as to what went so wrong in Nazi Germany”); *see also* PENDAS, *supra* note 4 (providing a history of a high-profile Holocaust trial in German courts); SAVELSBERG & KING, *supra* note 5, at 1.

12. *See generally* SAVELSBERG, *supra* note 4 (providing specific case studies to show how judicial representations are constrained by limiting institutional logic by which judicial proceedings filter events on the ground and are challenged by competing narratives).

UJ cases.

A. BETWEEN THE GLOBAL AND THE NATION, BETWEEN POLITICS AND THE LAW

The growth and spread of criminal proceedings under UJ are part of a broader trend toward the development of legal tools to control and respond to mass violence,¹³ toward a transnational legal ordering,¹⁴ and, specifically, toward a “justice cascade.”¹⁵ While its rules leave room for interpretation, attempts to clarify them and to provide guidelines to countries have been undertaken; most noteworthy is the drafting of the Princeton Principles of Universal Jurisdiction.¹⁶ Yet, like the national-level implementation of international law generally, UJ proceedings are contingent on national conditions. Both the will and the capacity of countries to prosecute under UJ vary substantially, as the uneven distribution of cases suggests. Argentina, Belgium, the Commonwealth States (Australia, Canada, UK), France, Germany, the Nordic states of Europe, and Spain account for the largest number of proceedings.¹⁷ Almost all are Western democracies, most are European countries. A country’s size and wealth, its investment in human rights principles, its geopolitical position, and its cultural sensitivities and memory of mass violence are likely factors that affect the likelihood of applying UJ.

Relatedly, judicial proceedings under UJ, while guided by the rule of law, unfold in political contexts. Especially their initiation is typically motivated by political will. Consider the first trial under UJ, the anniversary of which motivates this current Symposium: the Eichmann trial in Jerusalem. Amos Elon, in his introduction to an updated edition of Hannah Arendt’s famous and much debated 1963 book on the Eichmann trial in Jerusalem, revisits the intent with which Israel’s Prime

13. See generally MARTHA MINOW, *BETWEEN VENGEANCE AND FORGIVENESS* (1999) (describing the struggle to use prosecutions of atrocities to respond to atrocities).

14. See Gregory Shaffer & Ely Aaronson, *The Transnational Legal Ordering of Criminal Justice*, in *TRANSNATIONAL LEGAL ORDERING OF CRIMINAL JUSTICE* 3, 4 (Gregory Shaffer & Ely Aaronson eds., 2020).

15. See KATHRYN SIKKINK, *THE JUSTICE CASCADE* 5 (2011).

16. See PROGRAM IN LAW AND PUBLIC AFFAIRS, *THE PRINCETON PRINCIPLES ON UNIVERSAL JURISDICTION* (2001).

17. Langer & Eason, *supra* note 1, at 779–817.

Minister in 1961, David Ben-Gurion, pursued the kidnapping from Argentina and trial of Adolf Eichmann, the organizer of the transports of millions into the annihilation centers.¹⁸ “Its purpose, in Ben-Gurion’s words, was to ‘educate the young’ and the entire world and give the Jewish people a voice in making a historic accounting with its persecutors.”¹⁹ The view Ben-Gurion pursued was focused on the fate of the Jewish victims of Nazi Germany specifically: “Eichmann’s trial was a show trial, staged by Ben-Gurion at least partly for political reasons to prove conclusively that the Holocaust had simply been the largest anti-Semitic pogrom in history.”²⁰

Generally, the initiation of criminal proceedings under UJ can hardly be imagined without the involvement of political intent, in the Eichmann case and beyond. In addition, the intervention by legislatures is most certainly political, when they seek to contain judicial initiative under UJ to thereby avoid complications and disturbances that criminal proceedings may yield in the field of international relations. Belgium and Spain are but the most prominent examples.

B. EXPECTATIONS IN THE KNOWLEDGE-GENERATING CAPACITIES OF LAW: EPISTEMIC POWER

Just like Ben-Gurion’s intent for the Eichmann trial, prominent human rights trials have often been concerned with the formation of collective memory. Famously, Justice Robert Jackson, the American chief prosecutor at the International Military Tribunal (IMT), hoped that the proceedings at Nuremberg would firmly establish a collective memory of the crimes committed by Nazi Germany: “[u]nless we write the record of this movement with clarity and precision, we cannot blame the future if in days of peace it finds incredible the accusatory generalities uttered during the war. We must establish incredible events by credible evidence.”²¹ Similarly, President Franklin Delano Roosevelt, according to his confidant, Judge Samuel Rosenman, “was determined that the question of Hitler’s guilt—and the guilt of his gangsters—must not be left open to future debate. The whole nauseating matter should be

18. Elon, *supra* note 10.

19. *Id.* at 101.

20. *Id.* at 97.

21. LANDSMAN, *supra* note 10, at 6–7.

spread out on a permanent record under oath by witnesses and with all the written documents.”²² Roosevelt had come to believe that revisionist interpretations of World War I, which challenged the doctrine of Germany’s primary guilt, had contributed to isolationist tendencies in the United States that Roosevelt despised.²³ His interest in documenting the Nazi regime’s aggression and atrocities through court proceedings, and thus preserving them for posterity, was thus not just an effort to seek accountability and to write history. Roosevelt’s words clearly reveal a political agenda as well.

Not only was the initiation of the IMT motivated by political-pedagogical intent, but also its structuration. Each of the defendants was selected to represent a specific organization of the Nazi state. Similarly, the goal of the “Subsequent Nuremberg Trials,” conducted under U.S. authority, was to delegitimize leading actors of various professional groups and organizations. Most Germans, bystanders and many other contributors to the atrocities, whose hearts had to be won over for an identification with the newly emerging Western alliance of democratic countries, enjoyed the benefit of de-coupling.²⁴ Guilt was attached to some, and the rest went (legally) scot-free.

Concern with knowledge formation fares prominently in other historic cases as well. Examples abound, including Attorney General Fritz Bauer of the German state of Hesse who, inspired by the international visibility of the Eichmann trial, initiated a collective trial against twenty-two perpetrators of the Auschwitz death camp in 1963.²⁵ Many small trials might have equally served justice (or failed to do so), but a large trial against many actors was needed to generate publicity, to awaken the public conscience, and to shape public knowledge and the collective memory of Nazi crimes.²⁶

Hopes by politicians and legal practitioners are supported by theoretical and empirical scholarship. Philip Smith of the Yale School of Cultural Sociology, for example, conceives of

22. *Id.* at 6.

23. *Id.*

24. See generally Bernhard Giesen, *The Trauma of Perpetrators: The Holocaust as the Traumatic Reference of German National Identity*, in *CULTURAL TRAUMA AND COLLECTIVE IDENTITY* 112, 116 (Jeffrey Alexander ed., 2004) (explaining how the traumatic reference to the German national identity that was Nazism finally gave way with a “*Sonderweg*” to modernity).

25. See PENDAS, *supra* note 4, at 52.

26. See *id.*

criminal trials and punishment as speech acts in which society talks to itself about its moral identity.²⁷ To him, criminal justice signifies, through the rituals of court trials, the separation of the sacred from the evil.²⁸ Smith builds his argument on ideas by classical sociologist Emile Durkheim who—writing about the anti-Semitism-inspired trial against Alfred Dreyfus in his native France—alerts us not only to the cultural power of rituals, but also to one force that is of crucial importance to human rights scholarship: the modern “cult of the individual”:

The human person, by reference to the definition of which good must be distinguished from evil, is considered as sacred, in what can be called the ritual sense of the word. It has something of that transcendental majesty which the churches of all times have accorded to their gods. It is conceived as being invested with that mysterious property which creates a vacuum about holy objects, which keeps them away from profane contacts and which separates them from ordinary life. . . . Such a morality is therefore not simply a hygienic discipline or a wise principle of economy. It is a religion of which man is, at the same time, both believer and god.²⁹

Applying such considerations to mass atrocity crimes, Jeffrey Alexander illustrates for post-Holocaust history how, through symbolic extension of the Shoah and psychological identification with the victims, members of a world audience became traumatized by an experience that they themselves had not shared.³⁰ He explores how this generalization began with legal interventions, especially the IMT in Nuremberg, the UN General Assembly’s Resolution 95 that recognized Nuremberg, and the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.³¹ In consequence, “customary law” was developed that militated *against* nonintervention in the affairs of sovereign states when states engage in systematic human

27. SMITH, *supra* note 4, at 16.

28. *Id.* at 21–23.

29. *Id.* at 18–19 (quoting Émile Durkheim, *Democracy and Political Representation*, in DURKHEIM ON POLITICS AND THE STATE 73, 81 (Anthony Giddens ed., W.D. Halls trans., 1986)).

30. See Jeffrey C. Alexander, *On the Social Construction of Moral Universals: The “Holocaust” from War Crime to Trauma Drama*, in CULTURAL TRAUMA AND COLLECTIVE IDENTITY 196, 251 (2004).

31. *Id.* at 250.

rights violations.”³² The punishment of leading Nazi perpetrators by the IMT and in subsequent trials was performative or demonstrative in Durkheim’s terms.³³ It provided, consistent with a semiotic model of social life, images, symbols, totems, myths, stories, and it thus contributed to the formation of a collective memory of evil.

Once established as universal evil, the Holocaust served as “analogical bridging” to reinterpret later events in light of this earlier trauma.³⁴ Examples are the treatment of minorities in the U.S. or the victimization of millions in the Yugoslav wars during the 1990s. In the latter case, analogical bridging occurred most expressively through the image of an emaciated Bosnian concentration camp inmate behind barbed wire, published on the front pages of most international newspapers.³⁵ This publicity advanced diplomatic and military intervention and the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY), with considerable potential at universalizing the case and contributing to new international criminal law.³⁶

Empirical research confirms expectations regarding the epistemic power of major human rights trials and prosecutions. Following the wars in the former Yugoslavia, proceedings by the ICTY shaped the understanding of the violence internationally more than narratives produced in the spheres of politics and diplomacy.³⁷ The same applies to the understanding of the My Lai massacre committed by a U.S. military company in the context of the Vietnam War. Court martial proceedings against several accused military affected textbook and media depictions far more effectively than the Pulitzer Prize-winning book by Seymour Hersch, *My Lai 4*,³⁸ and the report of the Pentagon’s

32. *Id.* at 251.

33. See Patricia Herber, *Early Postwar Justice in the American Zone: The “Hadmar Murder Factory” Trial*, in ATROCITIES ON TRIAL 25, 25 (Patricia Heberer & Jürgen Matthäus eds., 2008).

34. Alexander, *supra* note 30, at 245–49.

35. E.g., Stephen Engelberg & Chuck Sudetic, *Conflict in the Balkans: In Enemy Hands – A Special Report; Clearer Picture of Bosnia Camps: A Brutal Piece of a Larger Plan [Special Report]*, N.Y. TIMES (Aug. 16, 1992), <https://www.nytimes.com/1992/08/16/world/conflict-balkans-enemy-hands-special-report-clearer-picture-bosnia-camps-brutal.html?searchResultPosition=1>.

36. See JOHN HAGAN, JUSTICE IN THE BALKANS 15–16 (2003).

37. SAVELSBERG & KING, *supra* note 4, at 87–95.

38. SEYMOUR M. HERSH, MY LAI 4 (1970).

investigatory commission³⁹ under General Peers.⁴⁰ More recently, prosecutions of the International Criminal Court against leading members of the governing regime of Sudan, including former President Omar al-Bashir, for crimes committed in the Darfur region of the country, shaped international reporting about the violence more than competing narratives produced by the humanitarian aid and diplomacy fields.⁴¹ Indeed, the violence in Darfur is today interpreted as criminal violence more than as a humanitarian emergency or as an armed conflict.

We do not fully understand why judicial narratives stick more than alternative accounts. One reason may be legitimacy associated with procedural safeguards of the law and its use in criminal courts. Be that as it may, there is no reason to assume that court cases under UJ would be less effective in intensifying, framing, and structuring representations and, eventually, collective memories of mass atrocity crimes. Yet two caveats must be addressed. The first concerns the selectivity of judicial narratives, the second the issue of legitimacy and visibility of court proceedings conducted under UJ.

C. CAVEATS: INSTITUTIONAL LOGIC, REDUCED NARRATIVES, AND LEGITIMACY CHALLENGES

Legal proceedings face limits when they contribute to the construction of knowledge about atrocities. These limits are not just of theoretical interest; practitioners must be mindful of them when they seek to use law to establish a collective memory of mass atrocity crimes. Importantly, criminal law is subject to a particular set of institutional rules that, for example, restrict access to information, allowing only some evidence to be presented in court. Criminal law further directs attention to a relatively small number of individuals and away from larger structural and cultural forces, away also from the *longue durée* and toward shorter-term processes. It further assesses liability through a simple binary of guilty versus not guilty. Due to such rules, representations of mass violence produced in legal processes always differ from those generated in other fields, such as scholarship, politics, art, or religion. Wise jurists are aware of

39. See JOSEPH GOLDSTEIN ET AL., THE MY LAI MASSACRE AND ITS COVER-UP 1–2 (1976).

40. SAVELSBERG & KING, *supra* note 4, at 37–48.

41. See SAVELSBERG, *supra* note 5, at 267–74.

the limits of law as a place for the reconstruction of history, as reflected in the words of the judges of the Jerusalem court in its 1961 proceedings against Adolf Eichmann:

The court does not have at its disposal the tools required for the investigation of general questions of the kind referred to above. For example, in connection with the description of the historical background of the Holocaust, a great amount of material was brought before us in the form of documents and evidence, collected most painstakingly, and certainly in a genuine attempt to delineate as complete a picture as possible. Even so, all this material is but a tiny fraction of all that is extant on this subject As for questions of principle which are outside the realm of law, no one has made us judges of them, and therefore no greater weight is to be attached to our opinion on them than to that of any person devoting study and thought to these questions.⁴²

We recognize additional selectivities of law when we follow Jeffery Alexander's discussion on the generation of cultural trauma.⁴³ The construction of cultural trauma, Alexander argues, depends on the existence of claims-making by agents; carrier groups of the trauma process; speech acts, in which carrier groups address an audience in a specific situation, seeking to project the trauma claim to the audience; cultural classifications regarding the nature of the pain, the nature of the victim; the relation of the trauma victim to the wider audience; and the attribution of responsibility.⁴⁴ Importantly, Alexander observes that linguistic action, through which the master narrative of social suffering is created, is mediated by the nature of institutional arenas that contribute to it.⁴⁵ Law certainly is a very specific arena that interacts with all the factors. Some claims can be better expressed in legal proceedings than others that will forever remain, in Franz Kafka's famous words, "before the Law;"⁴⁶ some carrier groups have easier access to law,

42. CrimC (DC Jer) 40/61 Attorney Gen. of Israel v. Eichmann, 36 I.L.R. 18, para. 2 (1961) (Isr.).

43. Jeffrey C. Alexander, *Toward a Theory of Cultural Trauma*, in *CULTURAL TRAUMA AND COLLECTIVE IDENTITY* 1 (2004).

44. *Id.* at 10–15.

45. *Id.* at 15.

46. FRANZ KAFKA, *THE TRIAL* 268 (Willa Muir & Edwin Muir, trans., Alfred

classically illustrated for the privileged position of “repeat players;”⁴⁷ further, some classifications of suffering and victims are more in line with those of the law than others. Law’s construction of the past, the kind of truth it speaks (*vere dicere*), the knowledge it produces, and the collective memory to which it contributes are thus always selective.

In short, law faces noteworthy limits when actors use it to write history. These limits result from its institutional logic: a focus on the behavior of individuals; consideration of only a limited set of behaviors; constraints imposed by rules of evidence; and, for criminal law, its binary logic and exclusionary intent. Each of these features has consequences for the narratives that result from legal procedures, and, through them, for collective memory.

Just like the epistemic power of criminal proceedings, their selectivities in the generation of knowledge about mass atrocities have also been confirmed by empirical research. The Frankfurt Auschwitz trial focused especially on outrageous behaviors where the agency of perpetrators was most obvious. Less attention was paid to those who were subordinates in the mass killing operations, an outcome that was intensified by German criminal law’s focus on volition and its definition of the role of accomplices.⁴⁸ In the Doctor’s Trial, one of the subsequent Nuremberg trials, attention was directed at the most outrageous killings and medical “experiments” conducted on human beings, while the widespread approval of euthanasia was silenced and the sterilization of hundreds of thousands of women even before WWII was not subject to the proceedings.⁴⁹ Judicial logic, accompanied by political motives and practical challenges, contributed to such selectivity.⁵⁰ The narrative resulting from proceedings against the perpetrators of the My Lai massacre directed attention to only one relatively low-ranking member of the military, to a limited number of victims, and it omitted the

A. Knopf, Inc., 1937).

47. Mark Galanter, *Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change*, 9 L. & SOC’Y REV. 95, 123 n.72 (1974).

48. PENDAS, *supra* note 4, at 53–56.

49. See Marrus, *supra* note 4, at 111–14; Donald Bloxham, *Milestones and Mythologies: The Impact of Nuremberg*, in ATROCITIES ON TRIAL 236, 265–67 (Patricia Heberer & Jürgen Matthäus eds., 2008).

50. See generally Michael Marrus, *The Nuremberg Doctors’ Trial and the Limitations of Context*, in ATROCITIES ON TRIAL 103 (Patricia Heberer & Jürgen Matthäus eds., 2008) (discussing the legal approaches to different atrocities in the Doctor’s Trial).

attempts at cover-up by the U.S. Army.⁵¹ Again, the selectivity of law's institutional logic joined pragmatic and political reasons to constrain the judicial narrative.⁵²

While we argue that we should expect the epistemic power of human rights trials to also apply in cases conducted under UJ, we similarly see no reason why we should not expect the same kind of selectivity. This is our first caveat to expectations regarding the knowledge-generating capacity of criminal trials.

A second caveat concerns the legitimacy and, relatedly, visibility of criminal trials against perpetrators of mass atrocity crimes. Legitimacy of such trials varies with time and space. It is especially questionable in the immediate aftermath of atrocities and in the home countries of the perpetrators. The IMT, infamously charged as “victor’s justice” by one of its defendants, was not embraced by most Germans.⁵³ Similarly, the ICTY, targeting Serbian perpetrators of atrocities during the Yugoslav wars, is still today viewed with substantial suspicion, even resentment, in Serbia.⁵⁴ These experiences—coupled with complications in international relations—might well have encouraged prosecution under UJ to proceed quietly, as the title of Langer and Eason’s article suggests.⁵⁵

III. KNOWLEDGE FUNCTIONS OF UNIVERSAL JURISDICTION: AN EMPIRICAL CASE EXPLORATION

A close examination of a recent prosecution under UJ, that of Syria’s Anwar Raslan, allows us to discuss some of the theoretical expectations developed thus far. This case serves illustrative purposes with the goal of generating further questions that will facilitate the development of a theory on the epistemic power of universal jurisdiction trials.

51. See Shaun Raviv, *The Ghosts of My Lai*, SMITHSONIAN MAG. (Jan. 2018), <https://www.smithsonianmag.com/history/ghosts-my-lai-180967497/>.

52. See SAVELSBERG & KING, *supra* note 4, at 87–95 (arguing this hypothesis with respect to the Milosevic atrocities).

53. Bloxham, *supra* note 49, at 264, 267; William A. Schabas, *Victor’s Justice: Selecting “Situations” at the International Criminal Court*, 43 J. MARSHALL L. REV. 535, 535 (2010).

54. Milica Kostić, *Public Opinion Survey in Serbia Sheds Light on ICTY Legacy*, EJIL: TALK! (Jan. 22, 2018), <https://www.ejiltalk.org/public-opinion-survey-in-serbia-sheds-light-on-icty-legacy/>.

55. See Langer & Eason, *supra* note 1, at 817.

A. THE CASE: ANWAR RASLAN AND THE SYRIAN REGIME

Anwar Raslan is a former colonel in the Syrian Intelligence Services. He was the head of the Investigative Unit of a detention facility (Branch 251 or al-Khatib Branch) in Damascus. In 2012, after the Syrian government committed a massacre in his hometown of Houla, Raslan defected from the al-Assad regime.⁵⁶ He was smuggled to Jordan and joined the ranks of the opposition, even travelling to the United Nations in 2014 as part of an opposition delegation.⁵⁷ He later migrated to Germany, where he was granted asylum in 2014.⁵⁸

Fearing repercussions from his former colleagues, Raslan approached the Berlin police, explained his involvement in the Syrian intelligence apparatus, and asked for special security protection. The police did not grant his request.⁵⁹ On another occasion, Raslan spoke to the Stuttgart police during investigations into another Syrian officer.⁶⁰ He, again, provided information on his role as part of the General Intelligence Services. This time, the information he shared about violence and murder in Syria piqued the suspicion of the police, who alerted the Federal Criminal Police Office (*Bundeskriminalamt*), prompting that agency to open an investigation.⁶¹ As part of the investigation, several Syrians filed criminal complaints with the help of human rights organizations about the role of Anwar Raslan.⁶² He was arrested in February 2019 and prosecuted alongside his co-defendant Eyad Al-Gharib, a low-level officer in Branch 251.⁶³

Anwar Raslan was charged with crimes against humanity

56. *Seeking Justice for Syria: How an Alleged Syrian Intelligence Officer Was Put on Trial in Germany*, HUM. RTS. WATCH (Jan. 6, 2022), <https://www.hrw.org/feature/2022/01/06/seeking-justice-for-syria/how-an-alleged-intelligence-officer-was-put-on-trial-in-germany>.

57. *Id.*

58. *Id.*

59. *Id.*

60. Philip Oltermann, *German Court Jails Former Syrian Intelligence Officer for Life*, GUARDIAN (Jan. 13, 2022, 6:12 P.M.), <https://www.theguardian.com/world/2022/jan/13/german-court-jails-former-syrian-intelligence-officer-anwar-raslan-for-life>.

61. Roger Lu Phillips, *A Drop in the Ocean: A Preliminary Assessment of the Koblenz Trial on Syrian Torture*, JUST SECURITY (Apr. 22, 2021), <https://www.justsecurity.org/75849/a-drop-in-the-ocean-a-preliminary-assessment-of-the-koblenz-trial-on-syrian-torture/>.

62. *Id.*

63. HUM. RTS. WATCH, *supra* note 56.

committed between April 2011 and September 2012, including 4,000 cases of torture, 58 murders, and several cases of rape and sexual assault.⁶⁴ His case was the first to address crimes against humanity committed by a high-ranking state official in the Syrian government, and the first to specifically deal with state-sponsored torture in Syria.⁶⁵

Given that Syria was not a party to the Rome Statute, the treaty establishing the International Criminal Court (ICC),⁶⁶ and that Russia and China vetoed ICC referrals by the United Nations Security Council,⁶⁷ Syrian advocates turned to countries with universal jurisdiction to seek justice. This was especially possible in Germany, where many Syrians—including witnesses, plaintiffs, and the accused—have migrated as refugees and asylees to escape the war in Syria. The trial against Anwar Raslan benefited from extensive documentation on violations by the Syrian regime carried out by Syrian lawyers, such as Anwar al-Bunni and Mazen Darwish, as well as Syrian non-profits, such as the Syria Justice and Accountability Centre, an NGO with the mission to document violations by the Syrian regime.⁶⁸ The Higher Regional Court (*Oberlandesgericht*) in Koblenz, Germany, recognized the crimes committed by Anwar Raslan as part of “widespread or systematic attack directed against any civilian population” by the Syrian government and thus charged, and eventually sentenced him to, life in prison in January 2022 for crimes against humanity.⁶⁹

64. *Id.*; see also *Anklage gegen zwei mutmaßliche Mitarbeiter des syrischen Geheimdienstes wegen der Begehung von Verbrechen gegen die Menschlichkeit u.a. zugelassen*, LANDESREGIERUNG VON RHEINLAND-PFALZ (Mar. 10, 2020), <https://olgko.justiz.rlp.de/de/startseite/detail/news/News/detail/anklage-gegen-zwei-mutmassliche-mitarbeiter-des-syrischen-geheimdienstes-wegen-der-begehung-von-verbr/>.

65. Oltermann, *supra* note 60; HUM. RTS. WATCH, *supra* note 56.

66. *UN Security Council: Vetoes Betray Syrian Victims*, HUM. RTS. WATCH (May 22, 2014, 10:48 AM), <https://www.hrw.org/news/2014/05/22/un-security-council-vetoes-betray-syrian-victims#>.

67. *Id.*

68. See HUM. RTS. WATCH, *supra* note 56.

69. *Life Imprisonment Due to Crimes Committed Against Humanity and Murder - Sentencing of a Suspected Member of the Syrian Secret Service*, LANDESREGIERUNG VON RHEINLAND-PFALZ (Jan. 17, 2022) [hereinafter Higher Regional Court Koblenz], <https://olgko.justiz.rlp.de/de/startseite/detail/news/News/detail/life-imprisonment-due-to-crimes-committed-against-humanity-and-murder-sentencing-of-a-suspected-me/>.

B. THE CASE AGAINST ANWAR RASLAN IN CRIMINAL COURT

Anwar Raslan was but one actor in the Syrian government's widespread and systematic effort to repress a popular uprising in 2011 against President Bashar al-Assad's rule. International NGOs describe the repression in detail, as illustrated by this Amnesty International country overview:

Government and allied forces carried out indiscriminate attacks and direct attacks on civilians and civilian objects using aerial and artillery bombing, killing and injuring hundreds of people in Idlib and Hama in north-west Syria. Government forces continued restricting access to humanitarian and medical aid to civilians living in government-controlled areas.

Security forces arbitrarily arrested civilians and former fighters who had reconciled with the government and continued to detain tens of thousands of people, including peaceful activists, humanitarian workers, lawyers and journalists, subjecting many to enforced disappearance and torture or other ill-treatment, and causing deaths in detention.⁷⁰

Other reports address torture practices specifically:

Former prisoners speak of an endless cycle of beatings . . . Many of the people we spoke to said they had been beaten with plastic hose pipes, silicone bars and wooden sticks. Some had been scalded with hot water and burnt with cigarettes. Others were forced to stand in water and given electric shocks.⁷¹

Obviously, human rights NGOs and news media had already widely publicized patterns of repression in Syria. What then does a single case of prosecution under UJ, here in a

70. *Syria: Human Rights Overview*, AMNESTY INT'L, <https://www.amnestyusa.org/countries/syria/> (last visited July 4, 2022).

71. *End the Horror in Syria's Torture Prisons*, AMNESTY INT'L, <https://www.amnesty.org/en/latest/campaigns/2016/08/syria-torture-prisons/>. For more evidence, see Anne Barnard, *Inside Syria's Secret Torture Prisons: How Bashar al-Assad Crushed Dissent*, N.Y. TIMES (May 11, 2019), <https://www.nytimes.com/2019/05/11/world/middleeast/syria-torture-prisons.html>.

regime.”⁷⁷

The idea that human rights norms are often undermined in organizational contexts is not new. It is reflected in the concepts of “criminal organization” (IMT) and “joint criminal enterprise” (ICTY), both rooted in the legal notion of conspiracy developed in the United States.⁷⁸ In both the IMT and the ICTY defendants were found guilty of working in organizational contexts involved in the systematic and widespread violation of human rights. This recognition is significant even if the juridical concepts applied by these courts do not do justice to the need for social scientific explanations of the organizational processes involved, as well as the underlying structural conditions.⁷⁹

Nonetheless, the Koblenz Court in the Raslan case went out of its way to generate a narrative—through its charges and media releases—in which an individual’s guilt was documented and identified as part of a system of perpetration. In proceeding under UJ, future research should examine if courts increasingly use individual defendants and their cases in ways that are suited to alert the public to broad patterns of repression.

2. Evidentiary Rules

In line with the law’s emphasis on visible proof of injury,⁸⁰ the court heard from several detainees and doctors about torture in Branch 251. In one exchange, Judge Stefan Wiedner repeatedly asked a witness, a former detainee in Branch 251, about any physical signs of torture.⁸¹ When the witness mentioned the psychological impact, the judge repeated his question about physical signs.⁸² The witness responded that he had a fading mark on his leg, and upon further questioning about physical injuries at the time of detainment, he clarified that his leg was wounded and bruised and he was left with a

77. *Id.*

78. Jens Meierhenrich, *Conspiracy in International Law*, 2 ANN. REV. L. & SOC. SCI. 341, 341 (2006).

79. *See, e.g.*, JOHN HAGAN & WYNONA RYMOND-RICHMOND, *DARFUR AND THE CRIME OF GENOCIDE* xx–xxii (2008) (noting how legal proceedings against Sudan for the Darfur atrocities failed to address the racial motivations behind the genocide).

80. *See* TOBIAS KELLY, *THIS SIDE OF SILENCE* 5, 15 (2011).

81. *Inside the Raslan Trial #4: Victims Testify*, SYRIA JUST. & ACCOUNTABILITY CTR. (July 9, 2020), <https://syriaaccountability.org/inside-the-raslan-trial-victims-testify/>.

82. *See id.*

context of widespread and systemic attacks and requested that Raslan be charged with crimes against humanity.⁹² Throughout the trial, witnesses—both men and women—shared their experiences of sexual violence, including threats of rape, routine body cavity searches, verbal abuse, and sexualized torture.⁹³ In the end, the court found Anwar Raslan guilty of several counts of sexual violence as crimes against humanity.⁹⁴

While the court considered forced disappearances as deprivation of liberty, it did not categorize them as crimes against humanity.⁹⁵ One of the plaintiffs described at length the hurdles his family went through trying to find information about the whereabouts of his disappeared brother.⁹⁶ The family was informed by several people that the brother died, including by an interrogator and a former detainee who said that he died from torture in Branch 251.⁹⁷ The joint plaintiffs filed a motion to characterize forced disappearances as a crime against humanity in the indictment.⁹⁸ Referring to German law, the prosecution

92. See *Syria Trial in Koblenz: Sexual Violence Must Be Charged as a Crime Against Humanity*, ECCHR (Nov. 19, 2020), <https://www.ecchr.eu/en/press-release/syrien-prozess-in-koblenz-sexualisierte-gewalt-muss-als-verbrechen-gegen-die-menschlichkeit-behandelt-werden/>.

93. See, e.g., *Inside the Raslan Trial #4*, *supra* note 81; *Inside the Raslan Trial #14: Guards Played the Music of Fayrouz Amidst the Sound of Beatings*, SYRIA JUST. & ACCOUNTABILITY CTR. (Jan. 14, 2021), <https://syriaaccountability.org/updates/2021/01/14/inside-the-raslan-trial-guards-played-the-music-of-fayrouz-amidst-the-sound-of-beatings/>; *Inside the Raslan Trial #18: The Czech and a Journalist: “The Corpse’s Head Knocked Against Each Step”*, SYRIA JUST. & ACCOUNTABILITY CTR. (Feb. 15, 2021), <https://syriaaccountability.org/updates/2021/02/25/inside-the-raslan-trial-the-czech-and-a-journalist-the-corpses-head-knocked-against-each-step/>; *Inside the Raslan Trial #29: “I Am Not Me”*, SYRIA JUST. & ACCOUNTABILITY CTR. (May 13, 2021), <https://syriaaccountability.org/updates/2021/05/13/inside-the-raslan-trial-i-am-not-me/>; *Inside the Raslan Trial #42: Incidents or a Revolution?*, SYRIA JUST. & ACCOUNTABILITY CTR. (Sept. 2, 2021), <https://syriaaccountability.org/updates/2021/09/02/inside-the-raslan-trial-incidents-or-a-revolution/>.

94. High Regional Court Koblenz, *supra* note 69.

95. *Inside the Raslan Trial #49: An Interrogator’s Job Is to Interrogate*, SYRIA JUST. & ACCOUNTABILITY CTR. (Nov. 18, 2021), <https://syriaaccountability.org/updates/2021/11/18/inside-the-raslan-trial-an-interrogators-job-is-to-interrogate/>.

96. *Inside the Raslan Trial #15: Corpses as Chattel and Raslan’s Photographic Memory*, SYRIA JUST. & ACCOUNTABILITY CTR. (Feb. 1, 2021), <https://syriaaccountability.org/updates/2021/02/01/inside-the-raslan-trial-corpses-as-chattel-and-raslans-photographic-memory/>.

97. In one instance, a subordinate of Anwar Raslan tried to hand over a corpse to the family that was not actually the brother’s corpse. *Id.*

98. *Executive Summary: Enforced Disappearances in the al-Khatib Trial*, ECCHR, https://www.ecchr.eu/fileadmin/Juristische_Dokumente/20210721_

sympathetic to the opposition.¹⁰⁵ One witness, for example, explained how Raslan provided information about his disappeared cousin, and even expressed empathy with the family's situation.¹⁰⁶

On the other hand, the prosecution presented a portrait of Raslan as a high-level Syrian official who oversaw torture and violence. The prosecuting attorneys dedicated the first few days of the trial to establishing the defendant's position within the hierarchy of the Intelligence Service, placing him within the broader state apparatus.¹⁰⁷ One of the witnesses was a former athlete on the Syrian national team, who was arrested thirteen times.¹⁰⁸ During one of his detentions in Branch 251, he recalled how Raslan threatened violence during an interrogation if the witness did not confess.¹⁰⁹ When he refused, Raslan ordered the guards to enter his cell and use methods of torture to extract a confession.¹¹⁰ Recounting another detention, the witness recalled being able to hear Raslan's voice while being tortured.¹¹¹ Throughout his testimony, this witness emphasized Raslan's active role in overseeing the arrests, detention, torture, and the releases of individuals.¹¹²

In the end, the court found Anwar Raslan guilty, not for administering the crimes himself, but for being in a position of

105. See, e.g., *Inside the Raslan Trial #42*, *supra* note 93; *Inside the Raslan Trial #54: 'Vengeance Is Not Our Goal, Nor Do We Seek Merely Just Retribution'*, SYRIA JUST. & ACCOUNTABILITY CTR. (Jan. 20, 2022), <https://syriaaccountability.org/updates/2022/01/20/inside-the-raslan-trial-vengeance-is-not-our-goal-nor-do-we-seek-merely-just-retribution/>; *Inside the Raslan Trial #52: 'There Are Spies Everywhere!'*, SYRIA JUST. & ACCOUNTABILITY CTR. (Dec. 15, 2021), <https://syriaaccountability.org/updates/2021/12/15/inside-the-raslan-trial-there-are-spies-everywhere/>.

106. *Inside the Raslan Trial #13: Notes of Compassion from Raslan and SCM's Director Testifies*, SYRIA JUST. & ACCOUNTABILITY CTR. (Jan. 7, 2021), <https://syriaaccountability.org/updates/2021/01/07/inside-the-raslan-trial-notes-of-compassion-from-raslan-and-scms-director-testifies/>.

107. *Inside the Raslan Trial #3: Details on Branch 251*, SYRIA JUST. & ACCOUNTABILITY CTR. (June 25, 2020), <https://syriaaccountability.org/updates/2020/06/25/inside-the-raslan-trial-details-on-branch-251/>.

108. *Inside the Raslan Trial #37: Guard: "There Is No God, Just Bashar Al-Assad"*, SYRIA JUST. & ACCOUNTABILITY CTR. (July 15, 2021), <https://syriaaccountability.org/updates/2021/07/15/inside-the-raslan-trial-guard-there-is-no-god-just-bashar-al-assad/>.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

authority.¹¹³ After sentencing him to life in prison, the court issued a press release claiming that “[d]espite the fact that the defendant did not commit the offenses in person, they are to be attributed to him as a result of his decision-making and command.”¹¹⁴ Apart from the specific wording, the court had to arrive at a decision of guilty versus not guilty, and it did.

C. RECEPTION AND DIFFUSION: NGOS, NEWS MEDIA, AND THE AMPLIFICATION EFFECT

Closely related to legitimacy challenges of international criminal justice—specifically for proceedings under UJ—is the “quietness” with which they are conducted.¹¹⁵ While some human rights trials—including the Eichmann trial—were designed with the goal of the greatest possible international exposure,¹¹⁶ such strife for publicity does not come to bear in many UJ cases. Maximo Langer and Mackenzie Eason spell out several reasons. First, many UJ proceedings are against “low-cost” defendants, which typically means actors low in the hierarchy through which atrocities were committed.¹¹⁷ Second, language barriers impede the spread of news beyond the prosecuting state.¹¹⁸ Third, sensational arrests as in Eichmann’s case—or, later, that of leading perpetrators from the Yugoslav wars¹¹⁹—have become rare.¹²⁰ Often prosecutors charge actors who already reside in their country, frequently as applicants for refugee status.¹²¹ Finally, potential political interventions, when prosecutions might complicate international relations or where neo-colonial intent may be charged, further encourage

113. See High Regional Court Koblenz, *supra* note 69.

114. *Id.*

115. Langer & Eason, *supra* note 1, at 817.

116. See *id.* at 782. Consider that a wall of the court room in Nuremberg was removed to allow more international journalists access to the IMT proceedings. See *Memorium Nuremberg Trials: The Courtroom*, <https://museen.nuernberg.de/panorama/saal-600/> (click on “Press Gallery”) (last visited July 4, 2022).

117. Langer & Eason, *supra* note 1, at 809.

118. *Id.* at 810.

119. See Steven Erlanger & Carlotta Gall, *The Milosevic Surrender: The Overview; Milosevic Arrest Came with Pledge for a Fair Trial*, N.Y. TIMES, Apr. 2, 2001, at A1.

120. Langer & Eason, *supra* note 1, at 811.

121. *Id.*

prosecuting agencies to proceed discretely in cases under UJ.¹²²

These are valid arguments. Yet the Raslan case before the Koblenz court points at limits to their validity. It is true that the court applied, in some respects, the kind of caution Langer and Eason observe.¹²³ For example, although the trial proceedings were translated into Arabic for those directly participating in the trial and for a group of pre-accredited journalists, the translations were not made available for the broader audience in attendance.¹²⁴ The court also decided not to audio- or video-record the trial, arguing that it might have negative effects on witnesses and that it did not hold broader significance for German society.¹²⁵ Both international and Syrian NGOs vehemently critiqued these decisions.¹²⁶

On the other hand, the court did issue press releases. Although all were in German, the court did translate its press release on the verdict into Arabic and English.¹²⁷ More importantly, the trial took place in a new institutional environment, where those observing the proceedings included human rights NGOs and journalists who publicized the court proceedings and thus amplified the trial's narrative.¹²⁸ This amplification effect should not be surprising given the massive increase in the number of human rights NGOs in recent decades and their growing role in international criminal law.¹²⁹ This is especially relevant in a context where exiled and diasporic Syrians focused their mobilization efforts on transitional justice

122. *Id.* at 807–08.

123. Langer & Eason, *supra* note 1, at 811.

124. Drake Lucas, *Germany Should Translate Trials on Syria into Arabic*, HUM. RTS. WATCH (Jan. 13, 2022, 4:00 A.M.), <https://www.hrw.org/news/2022/01/13/germany-should-translate-trials-syria-arabic>.

125. *Press Release: Historic Syria trial in Koblenz: Academics call for Audio Recordings*, SYRIA JUST. & ACCOUNTABILITY CTR. (July 1, 2021), <https://syriaaccountability.org/updates/2021/07/01/press-release-historic-syria-trial-in-koblenz-academics-call-for-audio-recordings/>.

126. *Id.*

127. *See, e.g.*, حكم – سجن مدى الحياة وضمن أشياء أخرى بسبب جريمة ضد الإنسانية وبسبب جريمة قتل – ضد عنصر يفترض انتماؤه لجهاز المخابرات السوري [Life Imprisonment, Among Other Things, for a Crime Against Humanity and for a Murder - A Sentence Against an Element Who Is Supposed to Belong to the Syrian Intelligence Service], LANDESREGIERUNG VON RHEINLAND-PFALZ (Jan. 13, 2022), https://olgko.justiz.rlp.de/fileadmin/justiz/Gerichte/Ordentliche_Gerichte/Oberlandesgericht_e/Koblenz/Dokumente/Presse/Pressemitteilung_Urteil_gegen_Anwar_R_in_arabischer_Sprache.pdf; Higher Regional Court Koblenz, *supra* note 69.

128. *See, e.g.*, *supra* notes 81–100, 102–114.

129. *See, e.g.*, SIKKINK, *supra* note 15, at 24–25; KJERSTI LOHNE, *ADVOCATES OF HUMANITY* 2 (2019).

federal prosecutors, who had filed the charges in this trial that had attracted worldwide attention. The defense had pleaded for a non-guilty verdict.

The federal prosecutors were convinced that Raslan, in his role as military commander, had assigned tasks and determined courses of action of the interrogators and guards of the infamous prison.¹³²

In Western countries generally, beyond Germany, the trial against Anwar Raslan evoked substantial media reporting. A Proquest U.S. Newsstream search yielded more than 100 hits pertaining to the case, almost all from the years of the trial.¹³³ Reporting was extensive in high visibility newspapers such as the *Washington Post* and the *New York Times*.¹³⁴ The narrative transmitted in these papers generally matched that which the Koblenz Court relayed in its news releases. Consider the following quotation from the *Washington Post* on January 14, 2022:

Anwar Raslan, 58, was convicted on charges including murder, grievous bodily harm, sexual assault, deprivation of liberty and hostage-taking in connection with his work, according to a news release from the court in the western German city of Koblenz. The crimes took place while he was head of investigations in the notorious Branch 251 of Syria's General Intelligence Directorate, as the country slid toward civil war.

The verdict was the most significant step so far in more than a decade of seeking justice for those who suffered at the hands of the Syrian state apparatus as it brutally sought to suppress mass protests during the Arab Spring

132. *Lebenslange Haft in Koblenzer Prozess um Staatsfolter in Syrien*, FRANKFURTER ALLGEMEINE ZEITUNG (Jan. 13, 2022), <https://www.faz.net/-gpg-ajzzw> (authors' translation).

133. PROQUEST INT'L NEWSSTREAM, <https://www.proquest.com/internationalnews1> (search "Anwar Raslan torture," filter to magazine and newspaper articles) (yielding 165 search results) (last visited July 4, 2022).

134. *E.g.*, Ben Hubbard & Katrin Bennhold, *Murder, Torture, Rape: A Landmark Conviction on State Violence in Syria*, N.Y. TIMES (Jan. 13, 2022), <https://www.nytimes.com/2022/01/13/world/middleeast/verdict-syria-war-crime.html>.

and fought years of bloody conflict

. . . .

The court found him guilty of complicity in 27 murders while he was an official at the Branch 251 detention center, as part of what the court described as the Syrian government’s “extensive and systematic” attack on its own population beginning in April 2011.

According to the court’s findings, at least 4,000 prisoners where [sic] held in the detention center attached to Raslan’s interrogation unit while he worked there.

“The inmates were brutally tortured during their interrogation in various ways,” the court said, including with electric shocks. Sexual violence was also used, it said, and prisoners could hear constant screams from other inmates suffering torture. Medical care was denied and food was inadequate.

While he did not physically carry out the crimes, Raslan was deemed responsible as a result of his position of authority, said court spokesperson Anne-Christina Brodöfel.¹³⁵

This and other articles reporting on the trial and the verdict most certainly direct the readers’ attention to the defendant. Yet, in line with the court’s news releases, the reporting clearly places the defendant in the context of the repressive Syrian regime under President al-Assad.

2. Reporting for Syrians: News Media in Syria, Lebanon, and Jordan

While reporting in the trial country and its political allies’ matters, we were especially interested in the communication of

135. Loveday Morris & Vanessa Guinan-Bank, *Syrian Intelligence Officer Is Convicted of Crimes Against Humanity, Gets Life in Prison in Landmark German Trial*, WASH. POST (Jan. 13, 2022, 2:34 P.M.) <https://www.washingtonpost.com/world/2022/01/13/germany-syria-war-crimes-trial/>.

the Koblenz Court's narrative into the Middle East, specifically toward Syrian populations, many of whom seek to survive the repression as refugees in neighboring countries. We thus examined the diffusion of the court proceedings in Syria, as well as Lebanon and Jordan, where many Syrian refugees reside temporarily.

Government-controlled Syrian media altogether ignored the Koblenz trial. According to our research, prominent newspapers such as *al-Baath*, the official paper of the ruling party, or *Tishrin*, a government-owned daily, did not publish any pieces on the trial. In an interview with the Russian RT-UK TV channel, President Bashar al-Assad responded to a question about Anwar Raslan by denying the existence of torture units or torture policy in Syria: "We don't have torture units. We don't have torture policy in Syria."¹³⁶ Referring to allegations against Anwar Raslan, he remarked, "[i]f you talk about individual incidents, this is only an individual incident that could be done by anyone for revenge[.]"¹³⁷

Independent Syrian media and regional media in countries with large numbers of Syrian refugees report a different story about the trial. In this preliminary analysis, we examined articles published online by *Al Ra'i*, a government-owned daily newspaper published in Jordan, and *An-Nahar*, a center-left Arabic-language newspaper published in Lebanon. To examine independent media coverage in Syria, we analyzed articles published by *Enab Baladi*, an independent media organization founded in 2011. Along with a digitally accessible pdf, the weekly newspaper is printed in Turkey and distributed among Syrian refugees in Turkey and shipped to Northern Syria, which is not under the control of the Syrian regime.

Regional articles in Lebanon and Jordan were published on the occasion of important dates such as the initiation of the trial and the sentencing of Anwar Raslan.¹³⁸ However, the Syrian newspaper *Enab Baladi*, featured articles that extensively chronicled the details of the trials and ensuing legal and popular debates. Consistent reporting about the inclusion of sexual violence and exclusion of enforced disappearance was

136. *President al-Assad in an Interview with Russian RT-UK TV Channel: In Spite of All Aggression, Majority of Syrian People Support Their Government, Russia Helps Syria as Terrorism and its Ideology Have No Borders*, SYRIAN ARAB NEWS AGENCY (Nov. 11, 2019), <https://www.sana.sy/en/?p=178031>.

137. *Id.*

138. See *infra* notes 151–152 and accompanying text.

particularly prominent. For example, *Enab Baladi* published an article on enforced disappearance when the NGO Syrian Network for Human Rights issued a statement calling for the inclusion of charges for enforced disappearance at the Koblenz court.¹³⁹ The journalist explained the legal impetus, “these claims are based on a belief that there is an organic link between arbitrary detention and enforced disappearance in all detention centers of the Syrian regime (translation from Arabic by authors).” One month later, *Enab Baladi* published another article explaining the significance of including these charges.¹⁴⁰ The journalist explained that the charges would enforce the claims made by many victims and support the extensive efforts of several organizations in documenting enforced disappearances in Syria.¹⁴¹ Similarly, sexual violence was the subject of several articles, including those that detailed witness testimonies and the significance of including sexual violence in the charges.¹⁴²

In the limited coverage of the trial, journalists from regional newspapers typically focused on the individual role of Anwar Raslan and his crimes. Only when they cited the court’s decision and quoted Syrians, did their articles provide a more contextualized and historicized understanding of the crimes as part of a widespread and systematic assault unfolding within the context of the Syrian civil war. In one article published in *An-Nahar*, for example, the journalist cites the court’s acknowledgement of the widespread and systematic attack against civilians “launched by Assad’s regime against Syrians since they took to the streets calling for democracy in March

139. *Enab Baladi* مطالب حقوقية بتضمين اتهام “الاختفاء القسري” ضد أنور رسلان - *Enab Baladi* [Human Rights Demands Include Accusation of “Enforced Disappearance” Against Anwar Raslan], ENAB BALADI (Nov. 9, 2021, 8:01 P.M.), <https://www.enabbaladi.net/archives/524854> (Syria).

140. *Enab Baladi* لماذا يجب تضمين “الاختفاء القسري” في محاكمة “كوبلنز” الألمانية - *Enab Baladi* [Why “Enforced Disappearances” Should Be Included in the German “Klobenz” Trial], ENAB BALADI (Dec. 1, 2021, 9:56 A.M.), <https://www.enabbaladi.net/archives/529248> (Syria).

141. *Id.*

142. Ninar Khalifa *Enab Baladi* - شهادة تواجه أنور رسلان بجرائم العنف الجنسي - *Enab Baladi* [In the Koblenz Court, a Witness Confronting Anwar Raslan with Crimes of Sexual Violence], ENAB BALADI (Nov. 22, 2020, 12:35 P.M.), <https://www.enabbaladi.net/archives/433582> (Syria); Ninar Khalifa الألمانية.. العدالة [Germany.. Justice Pursues Perpetrators of “Sexual Crimes” in Syria], ENAB BALADI (June 21, 2020, 12:08 P.M.), <https://www.enabbaladi.net/archives/394931> (Syria).

2011.”¹⁴³ Although (or even because) the court’s historicizing and contextualizing Anwar’s crimes contrasted with the institutional logic of criminal law, this emphasis was reflected in reporting on the trial. In another article in *Enab Baladi*, the journalist paraphrased Patrick Crocker, the plaintiff’s lawyer, who remarked that the significance of the trial as the “first time that evidence of violations by the Syrian regime will be addressed and discussed, and the ruling issued by the court will address the systematic repression of the regime and will not be limited to the innocence or guilt of the accused.”¹⁴⁴

Citation practices also played a key role in contextualizing and historicizing the trial through the lens of those directly involved, including witnesses, plaintiffs, and lawyers, as well as the broader Syrian community, especially those involved in civil society mobilization. In another article published in *An-Nahar*, the journalist quotes Fadel Abdel Ghani, founder of the Syrian Network for Human Rights, an NGO, saying, “these crimes against humanity are widespread and systematic, and no one individual person can commit them; they are the politics of an entire regime, and therefore, this is a condemnation of the entire regime; foremost is the head of the regime, Bashar al Assad.”¹⁴⁵ Providing more background on the Syrian civil war, the author adds that “[m]illions have been displaced in the war, which began with anti-Assad protests in 2011, and tens of thousands have been killed, entire cities and towns have been destroyed.”¹⁴⁶

Even though the crimes of Anwar Raslan were portrayed as reflecting systemic repression by the Syrian regime, some journalists offered a more complex perspective by citing Syrians who cautioned against approaching these trials as the ultimate form of justice. In one article in *Enab Baladi*, the journalist cites Mustafa Sejri, the leader of the Syrian Front of Liberation, an

143. AFP, *بعد ارتكابه جرائم ضد الإنسانية . . . حكم ألماني بحق ضابط سوري* [After Committing Crimes Against Humanity . . . German Sentence for Syrian Officer], AN-NAHAR (Jan. 13, 2022), <https://www.annahar.com/arabic/section/10-13012/دوليانت/022094905542> (Leb.) (authors’ translation).

144. *عنب بلدي يستأنف العام المقبل.. انتهاء 51 جلسة من محاكمات رسلان والغريب في ألمانيا* [It’s Going to Resume Next Year - 51 Sessions of Raslan and Al-Gharib trials end in Germany], ENAB BALADI (Dec. 17, 2020, 7:41 A.M.), <https://www.enabbaladi.net/archives/440857> (Syria) (author’s translation).

145. Reuters, *المعارضة السورية ترحب بحكم الإدانة الصادر في ألمانيا على ضابط سابق: “العدالة تبدأ بمحاسبة الأسد ومساعديه* [Syrian Opposition Welcomes Germany’s Conviction of Former Officer: “Justice Begins with Holding Assad and his Aides Accountable”], AN-NAHAR (Jan 14, 2022), <https://www.annahar.com/arabic/section/80-14012022033340972/العالم-العربي/> (Leb.) (author’s translation).

146. *Id.* (authors’ translation).

armed opposition group, as saying:

We welcome the decision and justice of the German court. We also congratulate the families of the torture victims who were killed by Anwar Raslan We also warn against selective justice that pursues low-level killers and criminals (that have fled) from the system of terrorism and tyranny instead of its high-level leaders. Justice begins by holding Assad and his senior men, associates, and supporters publicly accountable for backing him and his crimes and terrorism.¹⁴⁷

Enab Baladi represented the trial not as relevant only for Syrians, but one with broader significance. It dedicated an entire article to situating the Koblenz trial within a broader history of accountability in the face of war crimes.¹⁴⁸ It drew on the examples of the Nuremberg trials, Iraq’s Saddam Hussein trial, Sudan’s al-Bashir trial, and Ethiopia’s Mengistu Mariam’s trial.¹⁴⁹ By focusing on the International Criminal Court, the article shed light on the obstacles faced in the U.N. Security Council due to Russia’s veto power.¹⁵⁰ Another article published in *An-Nahar* simply listed all ongoing lawsuits against the Syrian regime that have been launched across the European continent.¹⁵¹ Articles also reported on the reception of the case in Germany and by the international community. In the only article published on the trial by the Jordanian newspaper *Al Rai*, the journalist cites the German Foreign Minister praising the trial because “impunity must end[.]”¹⁵² By situating the Koblenz trial within broader trends toward transitional justice, journalists amplify the significance and meaning of this one

147. *Id.*

148. *Including Syria: Attempts at Justice After “War Crimes” Around the World*, ENAB BALADI (May 31, 2020, 6:53 P.M.), <https://www.enabbaladi.net/archives/389485> (Syria).

149. *Id.*

150. *Id.*

151. AFP, *دعاوى قضائية عدة تستهدف النظام السوري في أوروبا* [Several Lawsuits Targeting the Syrian Regime in Europe], AN-NAHAR (Jan. 10, 2022, 5:57 P.M.), <https://www.annahar.com/arabic/section/10-10012022035710683/دوليات> (Leb.).

152. *Germany to Try Former Syrian Officials for War Crimes*, AL RAI (Feb. 24, 2021, 9:55 A.M.), <https://alrai.com/article/10578868/Arab-and-international/Germany-trial-previous-Syrian-officials-on-charge-of-war-crimes> (authors’ translation) (Jordan).

case.

Additionally, articles published on the trial repeatedly acknowledged the critical role that Syrian refugees in Germany and Syrian human rights organizations played in bringing the accused to trial. One article in *Enab Baladi* stated, “[b]ecause of the large number of asylum seekers and Syrian refugees in Germany, information about victims, witnesses, physical evidence that was not previously available, and even some suspects, is now within the reach of the judicial authorities there.”¹⁵³ Articles also acknowledged the limitations of witness protection and how many witnesses feared transnational repression. As an article in *An-Nahar* put it, “[h]owever, other witnesses refused to appear before the court, while yet others agreed to testify on the condition that their identities not be revealed, so they hid their faces or wore a wig, for fear that their relatives who were still in Syria would be subjected to reprisals.”¹⁵⁴

Along with reporting about the details of the trial and its broader significance, newspaper articles, especially by the Syrian *Enab Baladi*, shed light on the challenges and limitations experienced throughout the duration of the Koblenz trial.¹⁵⁵ The newspaper addressed the controversy surrounding the court’s decision to neither document the trial nor translate it to Arabic for a general audience.¹⁵⁶ It quoted Mansour al-Omari, a Syrian journalist, as saying, “It is necessary to preserve the trial for future generations, especially for us Syrians. Actions in Germany can form a basis for addressing the crimes committed in Syria, for recovery processes for future generations, as well as for the establishment of a collective memory.”¹⁵⁷ Throughout the article, *Enab Baladi* described the missed opportunity to document and translate the proceedings, especially given the significance of the trial as the first of its kind against the Syrian

153. Saleh Malas, *عنب بلدي، ماذا يعني بدء محاكمة رسلان والغريب في ألمانيا - عنب بلدي* [What Does the Trial of Raslan and Al-Ghareeb Mean in Germany?], ENAB BALADI (Apr. 24, 2020, 10:33 A.M.), <https://www.enabbaladi.net/archives/379049> (authors’ translation) (Syria).

154. *After Committing Crimes Against Humanity . . . German Sentence for Syrian Officer*, *supra* note 143 (authors’ translation).

155. *عنب بلدي، “أكاديميون يطالبون بتسجيلات صوتية للمراحل الأخيرة من محاكمات كوبلنز”* [Academics Demand Audio Recording of Final Stages of Koblenz Trials], ENAB BALADI (July 1, 2021, 4:35 P.M.), <https://www.enabbaladi.net/archives/490702> (Syria).

156. *Id.*

157. *Id.* (authors’ translation).

reports about important debates, media releases after key decisions, and trial monitoring summaries. In this analysis, we focus on reporting by the Syria Justice and Accountability Center (Washington, D.C.), the Center for Legal Studies and Research (Germany), and the Caesar Families Association (Germany).

Diasporic Syrian NGOs portrayed the trial as “historic.”¹⁶² After the ruling against Anwar Raslan, the Center for Legal Studies and Research published a press release welcoming the court’s decision and describing it as historic for being the first time that an officer was convicted in the context of ongoing crimes committed by a regime still in power, and for being the first time that justice was rendered prior to the enactment of any political solutions.¹⁶³ The press release also discussed the significance of justice being pursued as a direct response to demands by victims and civil society, without the intervention of the international community or any specific states.¹⁶⁴ The emphasis on the role of diasporic Syrians in universal jurisdiction cases in several publications by NGOs, described below, reflects the extent to which civil society organizations see these trials as one of the key successes of the Syrian transitional justice movement.

Indeed, many of the articles relayed the complexity of reactions by Syrians. The Caesar Families Association, by publishing a joint statement by five Syrian organizations, portrayed the trial as merely the first step on the long road to justice, especially in a context in which crimes against humanity are still being committed and Syrians continue to be disappeared and imprisoned.¹⁶⁵ The statement described the ruling as “bittersweet. Thousands in Syria remain missing and behind bars, and our satisfaction at this verdict is overshadowed by our long and continuing suffering as we seek our missing loved ones and demand justice for the crimes against us.”¹⁶⁶ Reports and press releases by Syrian NGOs reflect a nuanced debate about

162. See, e.g., *Press Release: The Ruling Against Anwar Raslan Is the First Historic Step in the Long Path of Justice*, SYRIAN CTR. LEGAL STUD. & RSCH. (Jan. 13, 2022), <https://sl-center.org/language/en/archives/2382>.

163. *Id.*

164. *Id.*

165. *Syrian War Criminal Jailing “Bittersweet” for Victims, Survivors, and Families*, CAESAR FAMILIES ASS’N (Jan. 14, 2022), <https://www.caesarfamilies.org/a-statement-by-five-associations-of-syrian-victims-survivors-and-family-members/>.

166. *Id.*

Justice and reconciliation are most effective when the victimized communities are engaged in the process. Yet, most Syrians learned of these arrests from the news media, and early reports have been confusing and, in some cases, contradictory. Much discussion around Raslan's identity has taken place through word of mouth on social media, and little concrete information is available, particularly in Arabic. This lack of communication, paired with mixed emotions around the decision to arrest Raslan, threatens to create disillusionment among a Syrian populace already discouraged about the potential for criminal accountability.¹⁷²

In short, coverage by Syrian NGOs situate the Koblenz trial within a broader call for transitional justice in the face of ongoing widespread and systemic assaults by a regime that is still in power. While the trial is heralded as historic, with significance for Syrians and the global transitional justice movement, it is nevertheless depicted as only one step in a long road for justice. Coverage of the trial, therefore, reflects complex and mixed reactions among Syrians grappling to make sense of the meaning of justice and accountability. Importantly, these reactions also reflect a perception among Syrians that the trial's purpose is to confirm widespread attacks and establish collective memory, though it failed to do so fully given its lack of accessibility for Syrians.

IV. CONCLUSIONS: A REPRESENTATIONAL GLASS HALF FULL AND HALF EMPTY

Universal jurisdiction is part of the twentieth century's wave of innovation in the fight against grave violations of human rights.¹⁷³ It is a contributor to "the justice cascade."¹⁷⁴ Not only is UJ one element in the tool kit of new legal instruments, but its role in international criminal justice has increased

172. *Justice or Forgiveness? The Case of Anwar Raslan*, SYRIA JUST. & ACCOUNTABILITY CTR. (Feb. 27, 2019), <https://syriaaccountability.org/updates/2019/02/27/justice-or-forgiveness-the-case-of-anwar-raslan/>.

173. See generally MINOW, *supra* note 13 (discussing the use of international law to address mass atrocities).

174. SIKKINK, *supra* note 15, at 5.

substantially in recent decades.¹⁷⁵ In this contribution, we thus set out to inquire for UJ proceedings what scholarship has investigated for justice interventions against perpetrators of massive violations of human rights generally: the epistemic power of legal proceedings, their ability to shape representations, knowledge, and—eventually—the collective memory of mass atrocities.

Generating public knowledge about mass atrocities through trials has been on the agenda of political leaders for some time. Not concerned with the normative justification of the principle, but with its empirical validity, researchers have explored the epistemic effect of prosecutions and trials against perpetrators for some time.¹⁷⁶ They have found significant impact, but also raised reservations. Yes, criminal justice proceedings often advance knowledge about mass atrocities, but the knowledge they produce is skewed due to the institutional logic of criminal law. This logic includes its evidentiary rules, its focus on a relatively small number of individuals, at times those lower in the hierarchy of perpetration, its blindness to larger structural and cultural forces, and its binary logic of guilty versus not guilty. Examples are studies on the Frankfurt Auschwitz trial,¹⁷⁷ the Nuremberg Doctor's Trial,¹⁷⁸ the ICTY,¹⁷⁹ the My Lai trial,¹⁸⁰ and the ICC prosecutions against perpetrators of human rights violations in Darfur.¹⁸¹

This article explored how such affirmative and skeptical assessments of the epistemic power of criminal proceedings against perpetrators of human rights norms apply in cases prosecuted under UJ. Langer and Eason after all tell us that the expansion of UJ, while substantial, has been a quiet one.¹⁸² UJ

175. Langer & Eason, *supra* note 1, at 817.

176. DOUGLAS, *supra* note 4, at 1–7; Marrus, *supra* note 4, at 103–04; OSIEL, *supra* note 4, at 240; *see generally* PENDAS, *supra* note 4 (giving an example through a case study of the Frankfurt Auschwitz Trial); Savelsberg & Nyseth Brehm, *supra* note 4 (discussing how the ICC influences knowledge about mass atrocity); SAVELSBERG & KING, *supra* note 4, at 4; Savelsberg, *supra* note 4 (discussing epistemic effect of prosecutions and trials through case studies); SMITH, *supra* note 4 (attempting to explaining the cultural meaning of punishment).

177. PENDAS, *supra* note 4, at 288.

178. Marrus, *supra* note 4, at 104.

179. HAGAN, *supra* note 36, at 231–33.

180. SAVELSBERG & KING, *supra* note 4, at 40–41.

181. SAVELSBERG, *supra* note 4, at 1–2.

182. *See* Langer & Eason, *supra* note 1, at 817.

trials often proceed without much fanfare, different indeed from the Eichmann trial, its early exemplar. Our case study of the Koblenz court's trial against Anwar Raslan, a former colonel of the Syrian intelligence services, instead shows that court proceedings under UJ can have substantial epistemic effects. The trial awakened, or re-awakened, public awareness of the massive violations of human rights committed by the regime of President Bashar al-Assad. Even if only a single individual was found guilty in this trial (following the earlier conviction of his lower-ranked co-defendant), he was convicted for having committed crimes against humanity, a charge that speaks, by definition, to the systematic and widespread character of offending. In addition, the court's media releases explicate that Raslan's crimes were part of the systematic repression of human rights by the regime which he served. Importantly, the court's decisions were widely publicized. Media in the trial country, Germany, reported prominently about the case, as did media in other Western countries. In the Middle East, reporting on the Koblenz trial was mixed. While independent Syrian media covered the trial extensively, news in other countries across the region, even those with high numbers of Syrian refugees, had less coverage. Nevertheless, news media that covered the trial presented a complex and nuanced story of a perpetrator held accountable for crimes against humanity in a broader context of ongoing suffering caused by a regime still in power. Importantly, Syrian human rights NGOs contributed substantially to the spread of the news through trial monitoring reports as well as coverage of the trial proceedings and debates surrounding it.

We must end on two cautionary notes. The Koblenz court, in its proceedings against Anwar Raslan, did proceed with some element of caution, in line with Langer and Eason's general observations. Syrian human rights NGOs complained, for example, about the lack of translation of the proceedings into Arabic. Further, they highlighted the limited insights of this trial against one single mid-level defendant, the court's insistence on physical traces of torture, and its dismissal of charges of forced disappearances. They used the Raslan case to make their point about the criminal character of the al-Assad regime, but stressed that justice, knowledge, and—eventually—collective memory would only be served if international responses targeted the regime as a whole and made transitional justice processes publicly available and accessible, especially to Syrians.

Finally, our empirical examination explored only one single

case. If publicity was achieved in this case, if the court thus demonstrated epistemic power, this was the result of a perfect storm. Contributors to this storm were several factors: a) the trial was held in Germany, a highly visible country with substantial sensitivities—fed by its own history of perpetration—to issues of human rights, crimes against humanity and genocide; b) the trial country hosts a substantial number of refugees, including defendants, victims, and witnesses; c) highly mobilized Syrian, US, and German NGOs played a significant role in initiating and contributing to the trial, observing it, and publicizing its proceedings; and d) Syrian NGOs constitute victims of the perpetrating regime and are closely allied against Bashar al-Assad’s war machine. Future research should systematically investigate the weight of these factors as they contribute to the epistemic power of criminal proceedings against perpetrators of human rights abuses under the principle of universal jurisdiction.