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# THE KAPO ON FILM: TRAGIC PERPETRATORS AND IMPERFECT VICTIMS

MARK A DRUMBL\*

*The Nazis coerced and enlisted detainees into the administration of the labour and death camps. These detainees were called Kapos. The Kapos constitute a particularly contested, and at times tabooified, element of Holocaust remembrance. Some Kapos deployed their situational authority to ease the conditions of other prisoners, while others acted cruelly and committed abuse. This project explores treatment of the Kapo on film. This paper considers two films: Kapò (1959, directed by Pontecorvo, Italy) and Kapo (2000, directed by Setton, Israel). These two films vary in genre: Kapò (1959) is a feature fiction movie, whereas Kapo (2000) is a documentary. Both films nonetheless vivify themes of agency, blame, survival, shame, sacrifice, and recrimination. This paper interrogates how these creative works speak of victims who victimise others and the pain that results; how these works contribute to history, memory, and recollection; and didactically how they explain 'what happened,' 'why,' and 'what to do now'. This paper additionally contrasts cinematographic accounts and criminal law's accounts, in particular, those in Israel's Kapo trials. In the 1950's, the Knesset passed legislation — the Nazi and Nazi Collaboration Punishment Act — to criminally charge suspected Jewish Kapos who had immigrated to the state of Israel following the Holocaust. Authorities conducted approximately forty prosecutions. The trials were awkward, the language of judgment gnarly, the absolutes of conviction or acquittal crudely reductionist, and the judges 'trembled' at having to sentence. This paper contends that cinematographic depictions of victim-*

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*victimisers can sooth the criminal law's anxieties by filling spaces it poorly serves.*

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## I INTRODUCTION

[E]ither one counts the cadavers or one tells the story of the victims.<sup>1</sup>

Nazi concentration and forced labour camps, as well as Jewish ghettos, required relatively limited SS (*Schutzstaffel*) oversight. Instead, the Nazis deployed inmates and ghetto residents in “prisoner self-administration”. Some concentration camps involved up to ten per cent of the prison population in this regulatory structure.<sup>2</sup> Participants in prisoner self-administration straddled a broad spectrum. The *Sonderkommando* (“special squads”) precariously occupied the lowest echelons. They cleared the dead from the gas chambers and incinerated the corpses. *Sonderkommando* mainly worked in this capacity for just a few months before the SS murdered them. The *Prominenz* (“Prominents”)<sup>3</sup> stood above the *Sonderkommando*, while the *Kapos* — who supervised forced labourers and the barracks — stood further above still.<sup>4</sup>

The origin of the term *Kapo* has been alternately attributed to the Italian word “capo” (meaning “head” or “boss”) or as a contraction of the German term *Kameradschaft polizei* (“comrade police”). Many *Kapos* were compelled to serve, but others made their services

<sup>1</sup> Paul Ricoeur, *Time and Narrative* (Kathleen McLaughlin and David Pellauer trans, University of Chicago Press, 1988) vol 2, 188–189.

<sup>2</sup> Yizhak Ahren, *Revital Ludewig-Kedmi: Opfer und Täter zugleich?* (2002) Leo Baeck Bookshop <<http://www.leo-baeck.org/leobaeck/sachbuchallgemein/buch-03917.html>>.

<sup>3</sup> This category included ‘doctors, messengers, musicians, interpreters, kitchen hands, shoemakers’ and ‘comprised the majority of survivors’: Adam Brown, *Judging “Privileged” Jews: Holocaust Ethics, Representation and the “Grey Zone”* (Berghahn, 2015) 12.

<sup>4</sup> Cf Michael Marrus, *The Holocaust in History* (New York, Penguin, 1987) 129: describing the *Kapo* as ‘[t]he Nazis ... empowered camp elders, clerks, block leaders, and so forth to supervise the inmates and assume primary responsibility for the routines of daily life’.

available — at times readily — so as to prolong their lives or the lives of their families. Kapos were organised in pyramidal fashion. More influential Kapos included the *Blockälteste* (mid-level barracks “elder”) going up to the chief Kapo. While still tenuously positioned, and always occupying liminal spaces;<sup>5</sup> more senior Kapos exercised considerable situational authority. Referencing all Kapos, Primo Levi noted that ‘the power of these small satraps was absolute’.<sup>6</sup>

In the concentration and labour camps, the ranks of the Kapos initially were filled by inmates detained on account of criminal behaviour (marked with green inverted triangles), political prisoners (red triangles), and asocials (black triangles). Over time, Kapos entered from other inmate categories, including Jewish inmates (two yellow triangles).<sup>7</sup> In the ghettos, moreover, Jews were routinely enlisted as police (*Ordnungsdienst*) and other supervisory functionaries: they maintained “order”, enforced Nazi regulations through truncheons and whips, escorted persons selected to be transported to the death camps, and arrested resisters.

The Kapos, notably Jewish Kapos, ‘have proven an especially controversial subject’.<sup>8</sup> Some Kapos were very cruel. Others did what they could to ease the lives of the prisoners under their watch. Some Kapos were sadistic one day and merciful the next. In the end, most Kapos were killed by the Nazis, although at a lower rate than other prisoner categories. Some were assailed by inmates — or by the Red Army — following the liberation of the camps. Some committed suicide, and some surviving Kapos emigrated outside Europe after the war, including to the newly-established state of Israel. Despite, or perhaps because of, this controversial position, ‘the *Kapo* is an omnipresent figure in [Holocaust] survivor testimonies’.<sup>9</sup>

In the 1950s, the Israeli Knesset passed legislation — entitled the *Nazi and Nazi Collaborators Punishment Act* — to criminally charge suspected Jewish Kapos and

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<sup>5</sup> Brown, *Judging “Privileged” Jews*, above n 3, 12: ‘Kapos were subject to punishment by Nazi guards for any problems arising from the prisoners they were responsible for’.

<sup>6</sup> Primo Levi, *The Drowned and the Saved* (Raymond Rosenthal trans, Michael Joseph, 1<sup>st</sup> ed, 1988) 31.

<sup>7</sup> The vast majority of the *Sonderkommando* were Jewish.

<sup>8</sup> Adam Brown, “‘No One Will Ever Know’: The Holocaust, “Privileged” Jews and the “Grey Zone”” (2011) 8(3) *History Australia* 95, 99; See also Brown, *Judging “Privileged” Jews*, above n 3, 12: ‘Kapos are infamous in survivor literature for their brutal treatment of their subordinates, with some even taking part in “selections” for the gas chambers’.

<sup>9</sup> Brown, *Judging “Privileged” Jews*, above n 3, 55.

collaborators who had come to Israel in the wake of the Holocaust.<sup>10</sup> Authorities conducted approximately 40 prosecutions.<sup>11</sup> These trials, however, were painfully awkward. The legislators' refusal to legally distinguish Nazis from persecuted collaborators proved too crude. The criminal law flailed in its attempt to conceptualise Kapo violence. Law lacked the vocabulary or finesse; the courtroom was a poor conduit. Many of the records of the Kapo proceedings have since been sealed (for 70 years as of the time of the judgment). Records of other proceedings were destroyed in a flood. Documentation nonetheless exists regarding 23 of the Kapo indictments: nine of these ended up in acquittals following a trial, 14 in convictions.<sup>12</sup> Acquittals proved as unsatisfying as convictions.

In a recently published paper, I juxtapose Holocaust literature (authored by Levi, Frankl, Kertész, Ka-Tzetnik) with Holocaust judging (the Kapo collaboration trials in Israel) in how they come to terms with the agency of the Kapo and the hunger of victims to transcend their suffering at the hands of Kapos.<sup>13</sup> Ultimately, identifying the logics and aesthetics of criminal law and literature to be in tension on this subject, I urge a *juris silentium* — that is, for criminal law to recede rather than always to regale. I recommend that it is best for certain actors, survivors, and perpetrators to lie beyond criminal law's remit and, hence, to remain non-justiciable. A *juris silentium* is not a world without sound or speech or image. It is a space shorn of the at times domineering fix-it commands of criminal law. This space, however, remains crimped so long as the accoutrements of the criminal law — courtrooms, verdicts, and jailhouses — expand as the iconic way in which to imagine post-conflict justice and solemnly authenticate the past. Law's restraint, then, might encourage other voices to fill the space — lively, animated voices.

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<sup>10</sup> The original title of the legislation was 'Act Against Jewish War Criminals'. The legislation was presented by the Justice Minister to the Knesset as applying to 'those who implemented the Nazis' will', some of whom 'unfortunately may be in our midst' and thereby 'contribute to cleansing the air among the survivors who have immigrated to Eretz Israel': Statement of Pinhas Rosen, cited in H Yablonka, 'The Development of Holocaust Consciousness in Israel: The Nuremberg, Kapos, Kastner, and Eichmann Trials' (2003) 8 *Israel Studies* 1, 11.

<sup>11</sup> The only German Nazi convicted under the law was Adolf Eichmann. John Demjanjuk, a Ukrainian prisoner of war, also was tried under the law, albeit unsuccessfully.

<sup>12</sup> I Levin, *Kapo on Allenby Street* (Yad Ben Tzvi & Moreshet Publications, 2015).

<sup>13</sup> Mark A Drumbl, 'Victims Who Victimise' (2016) 4(2) *London Review of International Law* 217; Trials of Kapos were also conducted in displaced persons' camps after the war, as well as in countries other than Israel in mostly informal but also formal proceedings: On this latter note, see Peter Wyden, *Stella* (Simon and Schuster, 1992); Bob Moore, *Victims and Survivors: The Nazi Persecution of the Jews in the Netherlands 1940–1945* (Arnold, 1997).

This current article explores the treatment of the Kapo in film. What kind of stories do films about Kapos tell? How do these stories contrast with criminal law's stories? Instead of "counting cadavers" — and viewing victims as indiscriminate, interchangeable statistics accreting into a faceless monolith — film can humanise victims by recounting their stories, thereby differentiating them *inter se*, unpacking their relationships, and recounting their varied experiences. If law struggles with judgment, can filmic representations soften judgment? Suspend it, even? If not, is the "judgment" delivered in film sufficiently different than the "judgment" delivered in court?

The *Shoah* has been featured in a vast number of films. Kapos, "privileged" Jews, and low-level Nazi collaborators have, however, appeared as characters only in a small number of these productions.<sup>14</sup> Brown, for example, remarks that '[t]he ethical dilemmas faced by "privileged" prisoners in the camps and ghettos are rarely explored in Holocaust documentaries in a substantial manner'.<sup>15</sup> Films that depict Kapos nevertheless are sufficient in number to reflect diverse genres and styles and to have been received in wildly different ways.<sup>16</sup> *Son of Saul*, for example, involves a day-and-a-half in the life of an Auschwitz *Sonderkommando* who fixates on giving a boy a proper Jewish burial.<sup>17</sup> *Son of*

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<sup>14</sup> See, eg, *Nuit et Brouillard* (Directed by Alain Resnais, Argos Films, 1955); *Shoah* (Directed by Claude Lanzmann, New Yorker Films, 1985); *The Counterfeiters* (Directed by Stefan Ruzowitzky, Magnolia Filmproduktion, 2007); In *The Pianist* (Directed by Roman Polanski, Canal+, 2002), the protagonist Spielmann survives a selection for the camps only because a Jewish policeman, consistently snubbed by other ghetto inhabitants, suddenly and without any forewarning pushes him — and him alone — out of the line and tells him to run away.

<sup>15</sup> Brown, *Judging "Privileged" Jews*, above n 3, 130.

<sup>16</sup> Some derive from personal memoirs: See, eg, *Out of the Ashes* (Directed by Joseph Sargent, Ardent Productions, 2003) which is a made-for-cable film about Gisella Perl, a prisoner doctor at Auschwitz who performed a large number of secret abortions and also assisted Mengele in his medical 'experiments'. This film was based upon Perl's 1948 memoir called *I Was a Doctor in Auschwitz*. For extensive discussion of this film, see Brown, "'No One Will Ever Know'", above n 8, 96 (noting that in committing the abortions, 'Perl saved the lives of the mothers, who would invariably have been sent to the gas chambers had the Nazis discovered their pregnancies'). In her memoirs, Perl also mentions that she 'fak[ed] blood tests to protect prisoners suffering from typhoid, who, if discovered, would have been killed immediately': Brown, "'No One Will Ever Know'", above n 8, 107. Subject to investigations after the war ended, Perl was eventually admitted to the USA. Perl worked as a gynaecologist in New York, then relocated to Israel; she died in 1988: Brown, "'No One Will Ever Know'", above n 8, 107–108.

<sup>17</sup> Kapos — Biedermann and Mietek — appear in *Son of Saul* (Directed by László Nemes, Hungarian National Film Fund, 2015). They act in both protective and exploitative fashion. While eschewing an uprising, Biedermann develops a plan to photograph atrocities and send the images outside of the camp. The anguished look on his face, however, when informed by the SS that he has to provide a list of seventy men that were no longer needed reflects the revolving nature of victims and victimisers even within the upper echelons of these lower rungs. The fact that a Kapo, moreover, could wield such power to determine who lives, for now, or dies reveals the situational nature of authority. Biedermann is killed by the SS in any event. Mietek as well plays an ambiguous, oscillating role. László Nemes, the film's director,

*Saul* has achieved popular success and has garnered considerable adulation, winning an Oscar, a Golden Globe, and the jury prize at Cannes. *Schindler's List* (Directed by Steven Spielberg, Amblin Entertainment, 1993), a blockbuster that has been critically chastened,<sup>18</sup> and *The Grey Zone* (Directed by Tim Blake Nelson, Millennium Films, 2001), a more obscure endeavour that has been critically lauded, are two other examples involving Kapos and *Sonderkommando*.

I present two films in this article: *Kapò* (Directed by Gillo Pontecorvo, Cineriz, 1959) and *Kapo* (Directed by Dan Setton, SET Productions, 2000). Neither film has enjoyed much in the way of popular success. Both have in fact been dismissed by critics. That said, each production squarely addresses the “choiceless choices” of the Kapo in a manner that is forthright and forthcoming.<sup>19</sup> I believe the stories these two films tell are worthy of examination and serve as pivots for pedagogy. One film is fictional kitsch involving glamorous actors (*Kapò* (1959)), the other a documentary reportage featuring actual Kapos (*Kapo* (2000)).<sup>20</sup> Selecting these artistic works thereby contrasts how documentaries and fictional feature films address tragic perpetrators. Documentaries are generally more preoccupied with asserting claims about the “truth” and exposing the “real” and the “actual,”<sup>21</sup> though fictional feature films, despite deploying actors, do at times intersperse (and certainly may base themselves upon) history, events, and testimony.

I am interested in interrogating how these two productions portray victim-perpetrator circularity; and didactically how they explain ‘what happened’ or, in other words, the kinds of stories they tell and how they manage to tell them. Protagonists and antagonists are far more complex (and liminal) constructs than accused and accuser or plaintiff and defendant. The complexity of these constructs renders victims much more than statistics

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based the film on accounts rendered by *Sonderkommando* members of their own experiences in the camps.

<sup>18</sup> Brown, *Judging “Privileged” Jews*, above n 3, 154, 169: Imre Kertész, a Nobel Laureate who authored the superb autobiographical book, *Fatelessness*, about the experiences of a teenage boy in Auschwitz, lambasted *Schindler's List* as a ‘totally fake interpretation, a lie’.

<sup>19</sup> Holocaust scholar, Lawrence Langer, coined the phrase ‘choiceless choices’ which he defined as ‘crucial decisions ... between one form of abnormal response and another, both imposed by a situation that was in no way of the victim’s own choosing’: Lawrence L Langer, *Versions of Survival: The Holocaust and the Human Spirit* (SUNY Press, 1982) 72.

<sup>20</sup> One source dates this documentary to 1999; Brown, *Judging “Privileged” Jews*, above n 3, 110.

<sup>21</sup> For general discussion of traditional boundaries of fiction and non-fiction in the context of social representation in film, see Bill Nichols, *Blurred Boundaries* (Indiana University Press, 1995).

— whether cadavers or survivors. Trials require a verdict: guilt or innocence; they necessitate the imposition of a sentence in the case of a finding of guilt. Film and literature lack any such mandates.<sup>22</sup> Law and film may both condemn, but only law punishes. And punish law must in order for justice to be done. In his opening statement at Nuremberg, after all, Robert Jackson evoked the need for steadfastness in the face of '[t]he wrongs which we seek to condemn and punish'.<sup>23</sup>

To foreshadow, *Kapò* (1959) and *Kapo* (2000) each unpack intertwined themes of survival, sacrifice/suicide, and pursuit of the lesser evil. They do so amid the “choiceless choices” that Kapos may have faced, albeit while recognising that other prisoners may have been impacted in overwhelming ways by how a Kapo at any given time chose to exercise his or her discretionary “choicelessness”. These works also give considerable space to women Kapos as key actors and thereby depart from judicial narratives that tend to focus on male perpetrators, masculinities, and the agency of men amid mass atrocity.

These creative works address the primal quest for food and warmth and how becoming a Kapo advanced that quest. Becoming a Kapo, then, was self-evident — it was the thing to do to survive. In the words of Frances, a Kapo featured in Setton’s 2000 documentary, it would simply be “stupid” not to have agreed to become a Kapo — she sees herself as fated to have been selected to be a Kapo and to have survived accordingly. Hence, for her it was not a “choice” to become a Kapo because only a “fool” would eschew the opportunity. Another common theme is that of sacrifice, and the blurry line between sacrifice and suicide in the case of Kapos roiled with trauma and guilt. Not all Kapos could rationalise their conduct as necessary to survive. Sacrificial suicide is vivified by Edith in *Kapò* (1959). Another thread is the nature of Kapo violence, at times justified by Kapos as necessary to maintain order and, thereby, minimise the likelihood that the SS would enter the zones of prisoner or ghetto self-administration and impose much greater violence. Kapos such as Magda in *Kapo* (2000) justify much of their conduct in this fashion.

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<sup>22</sup> For comparative discussion of how criminal trials and truth commissions approach victim-victimisers in Sierra Leone, see Valerie Oosteveld, ‘Gender and the Sierra Leone TRC’, Forum on Transition and Reconciliation, Laval University (October 1, 2016) (remarks on file with the author).

<sup>23</sup> Robert H Jackson, ‘Opening Statement before the International Military Tribunal’, *The Trial of German Major War Criminals — Proceedings of the International Military Tribunal Sitting at Nuremberg* 49 (1945).

Kitsch may soften the harshness of the experience and thereby help audiences stay put and not shut down. Assuredly, much is lost in this process of “softening”, but kitsch ironically may serve as a vehicle to deliver serious moral quandaries to the public as archival footage (often graphic in nature) or films that harrowingly detail how the sight, smell, and taste of atrocity may simply overwhelm the senses. The Vietnamese shot silent archival footage upon entering the S-21 prison in Phnom Penh, Cambodia, to record the horrific torture there. This footage — entirely accurate and faithful to what “happened” — was so disturbing that, in my case when I watched it, I had difficulty conceiving it as anything but aberrational or, even, contrived. The viewer may simply black out. It may be too much. Kitsch, on the other hand, may depict the victims as much more than the sum of the brutalities inflicted upon them and, in the campy love, implausible romanticism, and naïve attachments of *Kapò* (1959), may engage audiences in longstanding moral debates rather than repel them. To survive, after all, may mean craving more than just food, shelter, and water. In this regard, then, one of the impressionistic outputs of this article is to reclaim the value of kitsch, melodrama, and pulp.

The bulk of this article is concerned with exposition, that is, to share the stories told by each of these two films, beginning with *Kapò* (1959). This exposition serves as a way to “screen” the film for readers, who become viewers. Giving space and place to these films matters, in that ‘[i]n the future, the memory of the Holocaust will be defined less by the recollections of the survivors than by the representations of the filmmakers’.<sup>24</sup> This discussion is sprinkled with my reactions, derived by watching the films and in turn the act of expressing them in text for others. Throughout, I include some images. I set out the films in two sequential sections and refrain from comparing them — I prefer any comparison, if effected, to be left to readers. A final section concludes by gesturing towards some wider themes as to the interplay between film and law.

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<sup>24</sup> Frank Stern, ‘Facing the Past: Representations of the Holocaust in German Cinema Since 1945’, Lecture, United States Holocaust Memorial Museum: Center for Advanced Holocaust Studies (14 June 2000).



Adolf Frankl, 'Verbrennungsofen — Leichenträger', Special Exhibit 'Kunst Gegen Das Vergessen', (depicting *Sonderkommando*), München NS-Dokuzentrum (visited on 28 July 2016).

## II MELODRAMA, KITSCH, AND A FEATURE FILM

'I get enough food and sleep, I don't work, and I'm exempted from selections ... What else is there?'<sup>25</sup>

Gillo Pontecorvo (1919–2006) directed this film, an Italian-French production, which he wrote with Franco Solinas. A Jewish member of the Italian Communist party, Pontecorvo fought in the anti-fascist resistance during World War II. He subsequently made the film,

<sup>25</sup> *Kapò* (Directed by Gillo Pontecorvo, Cineriz, 1959).

*The Battle of Algiers* (Rialto Pictures), in 1966. This film illustrates the brutality of the French occupation of Algeria including extensive suppression efforts.

*Kapo* was re-released in 2010 on DVD through Criterion's Essential Art House Line. *Kapo*'s protagonist is Edith, a fourteen-year old Parisian Jew. Upon arrival at a camp, Edith is immediately able to impersonate Nicole, a recently deceased asocial prisoner. At an early *Sortierung* ("selection"), where the weak go to the right to face extermination and the remainder to the left to face more work, Nicole arrives with desiccated, bloody hands. At the fateful moment where she is to show her hands to the SS officer, she instead pulls off her prisoner's shirt and bares her breasts. Nicole thereafter comes to navigate camp life through survival sex with the SS. Soon, however, Nicole becomes a Kapo, set in her ways, until she meets a dashing Soviet prisoner of war ('POW') named Sasha. Nicole has him tortured, though the torture may have saved Sasha from an immediate death. Nicole nevertheless regrets how Sasha suffered. The two soon "fall in love" — Hollywood or Bollywood style. Nicole, who morphs back to Edith, ultimately sacrifices herself to save Sasha and all the other prisoners. Perhaps because of its hefty schmaltz, this film offers a campy burlesque of the intersections of atrocity and femininities, romanticism, identity, and heroism. At the same time however, this film also melodramatically navigates the fraught terrain of the Kapo in a way — worthy of recovery — that the Israeli Kapo trials were never able to scale. In this regard, this film reclaims the didactic value of kitsch.



*Kapò* has been described as a 'concentration-camp drama'.<sup>26</sup> It is shot in black and white, *chiaroscuro* fashion. The actors routinely deploy exaggerated facial expressions. They resemble characters in a silent movie. The film has manneristic overtones.

The plot begins with Edith taking piano lessons in Nazi-occupied Paris. Edith plays elegantly, and she is elegantly played by Susan Strasberg, who also originated the title role in Broadway's *The Diary of Anne Frank* (Cort Theatre, 1955). The lesson ends. It is time for Edith to go, so she leaves. Her piano teacher then receives a disturbing phone call. The caller asks if Edith had already left. The teacher says yes, goes to the window, and pulls back the curtain. Edith is no longer to be seen on the street. The teacher returns to the phone only to discover that the line has gone dead — the call is no more.

Edith skips home. She arrives on her street-corner only to discover German soldiers arresting people and pushing them into the back of a military truck. A crowd — quiet, passive, sorrowful — gathers to watch. Edith approaches the edge of the crowd. An elderly woman implores her to stay back. Edith however sees her parents herded onto the truck. She calls out to them, runs to them — against the cries of her mother for her to turn away — and is caught.

The next scene is of trains chugging; the musical score is the sound of rushing trains. The train stops in Poland. All occupants disembark at a concentration camp. The typical procedures begin: selections, separations, reorganisations, the horror-stricken faces, the right-left zigzag.

The family is dismembered. Edith is in a room with other children and teenagers. A baby cries. Edith holds the baby. She speaks to a friend, a boy. She notices a door is left ajar, clearly an oversight. Edith walks out undisturbed. She wanders around aimlessly only to end up in a barrack. The head, an older woman called Sofia, cannot take her in — there is not a square inch of space and, besides, why would she? But Sofia takes Edith to the doctor, another Kapo. The kindly doctor has a reputation for saving people.<sup>27</sup> Sofia brings

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<sup>26</sup> Dennis Lim, 'Kapò': Portraying the Unthinkable in Art', *Los Angeles Times* (online), 11 April 2010 <<http://articles.latimes.com/2010/apr/11/entertainment/la-ca-secondlook11-2010apr11>>.

<sup>27</sup> The role of prisoners as doctors is among the more unsettled areas of complicity and resistance in the concentration camps. Miklos Nyiszli, a pathologist in Birkenau and assistant to Mengele, was a Hungarian Jew who, in his memoirs, recounts his dissections of twins and also the health care he provided to the SS: Miklós Nyiszli, *Auschwitz: A Doctor's Eyewitness Account* (Tibere Kremer and Richard Seaver trans, Arcade

him Edith for something in exchange, anything — alcohol even — which the doctor does not provide. Sofia says that she knows a work transport is departing tomorrow that she would be able to get Edith on. It is a good transport: to decent work and apparently solid rations. Better, far better, than remaining in the death camp.

Edith is fortunate amid her misfortune. The doctor tells her that an inmate — an asocial prisoner called Nicole Niepas, a French woman — had died last night. Nicole is a black triangle prisoner; 10099 is her number. Nicole had not yet been registered as dead. The doctor peels Nicole's uniform from her corpse and hands it to Edith. He tells her that from now on she is Nicole and she is no longer a Jew. He tells her Nicole's name and tattoos her arm with Nicole's numbers. He shears her hair. Edith becomes Nicole.

In the morning, Nicole looks out the filthy window. She sees naked bodies running by, including her parents, scurrying to the gas chambers. Nicole shrieks, in garishly dramatic fashion, though the window blocks her cries. Her parents are soon dead.

The doctor pleads with Nicole to please do everything to survive: 'Live and think of nothing else.' 'You're no longer a Jew, understand?' he adds. Nicole ends up on the transport to the labour camp.

Some other characters are introduced. The countess Terese, played by Emmanuelle Riva, is an educated woman who serves as a translator. Terese is poised and principled; she insists on always washing. She refuses to let them turn her into an animal ('they can't take away our dignity') but then ultimately herself steals food from another prisoner, having been on half-rations for far too long, only to be reprimanded ('I told you so') by then Kapo Nicole. Terese ultimately throws herself on the electric wire and, in a fiercely criticised scene, commits suicide.

Sofia fails to survive one of the film's first selections. Left or right — which is the direction to the gas and which is the direction to tomorrow? — the women frantically ask afterwards among themselves. The direction of the infirm, the grey (despite rubbing soot into their hair), the injured — that is the direction of despair for the rest. The goal is to do the opposite of malingering — the goal is to pretend to be healthy. Yet Sofia is sent to

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Publishing, 1993). This book is the basis for the film, *The Grey Zone*, and Nyiszli is the doctor in that film; See also Brown, "No One Will Ever Know", above n 8 (discussing Gisella Perl).

the right: the path of death. On the way to the gas, Sofia invokes her final moments to taunt the SS — calling them what they are, namely ‘murderous scum’, and to scorn the surviving women (those sent to the left) for no longer being able to look her in the eye. Sofia is shot by the SS. Nicole and some other women pick up and dump her body. Sofia dies with pride. Nicole callously pilfers her stockings from her limp legs after having received a tacitly approving nod from a Kapo.

Another character is an elderly Russian woman, babbling constantly that the Red Army is going to come. She is ultimately proven right. The Red Army’s arrival destabilises the entire camp.

Nicole is a survivor. The film’s plot is about her ‘savage struggle for survival at any cost’.<sup>28</sup> In the pouring rain, and amid terrible penury, she sees the little Kapo wooden shack, in which it is warm, where there are warm things to drink, and where dryness crackles. The Kapos have coats. The Kapos leave; Nicole breaks in. She hugs the heat. The Kapos see her and beat her. Nicole is punished with reduced rations. Days later, Nicole returns to the barracks. The countess Terese had sold some clothes for a potato. Terese roasts the potato — lovingly, tantalisingly. As if in a trance, Nicole enters the barracks; at that very moment, the countess is asked to come forward to translate. Nicole walks to the heater, sees the countess’ potato, and eats it — she steals it. The countess is furious. But the potato is no more.

Time comes for the next selection. Nicole’s feet are fine. Her face is fine. But she has terribly cut hands. They are so gashed she cannot even wash them. Surely this is cause for elimination, for Nicole to be weeded out of the work group. At the fateful moment where she is to show her hands to the SS officer, she instead pulls off her prisoner’s shirt. She bares her breasts. She never reveals her hands. She returns to the barracks, screaming triumphantly: ‘I showed all of you.’

Nicole comes to navigate camp life through survival sex with the SS. ‘If I go will they feed me?’ she asks upon being invited to the SS lodge for the first time. Terese, the translator, is incredulous that Nicole will do this. But Nicole does. She goes, on her own, after having

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<sup>28</sup> David Bathrick, ‘Teaching Visual Culture and the Holocaust’ in Marianne Hirsch and Irene Kacandes (eds), *Teaching the Representation of the Holocaust* (Modern Language Association of the USA, 2004) 286, 292.

set events in motion at the selection. Nicole loses her virginity to an SS officer. Afterwards, she asks for the food she was promised. The SS officer says tomorrow. Nicole mutters 'tomorrow', her doe-eyed stare hollow and empty, and vanishes like a spectre as the camera pans away.

Time fast-forwards. It is the Christmas season. Nicole now looks well-fed, with long hair, and resonant in her sultry voice. She is "vamped-out", so to speak, but still a teenager, to be sure. She hangs around the SS room as a courtesan. Smoking a cigarette, gazing out a window at the other prisoners, she evokes Marlene Dietrich's Shanghai Lily. Nicole befriends Karl, a maimed officer (he has only one good hand), who is not interested in sex. She and Karl play cards. Karl is committed to his country and to the successful waging of the armed conflict. That is his motivation. He wants to get back to the front. Karl becomes the last person to be with Edith (the person to whom she returns at the film's finale) while she dies. Karl and Edith, in the end, both recognise that they have been used by the Nazis, discarded in the ignominy of a searingly lost war.

The film continues: more work scenes, more brutalities, more transitions. Nicole befriends the women Kapos. Ultimately, she is asked to become one. She agrees, uneventfully. While Nicole is not the cruellest Kapo, she is not a kind Kapo — she is cold and controlling in her ways. The countess Terese, meanwhile, joins the ranks of camp saboteurs. Terese's spirit is broken when she has to translate at a public execution of one of her co-conspirators who dies yoked with a board affirming that she is an 'enemy of the Reich'. The countess cannot bring herself to say 'it is right to execute a saboteur': she stammers, she refuses, she is thrown aside, so the statements are exclaimed by the camp commander in German only. The saboteur is executed. The countess faces punishment — sharply reduced rations amid the other prisoners who get their full rations.

Then the Russian male POW's arrive. The camp transforms. The Russians arrive singing, boisterous and proudly patriotic. They begin by helping rebuild deteriorated barracks.<sup>29</sup> The women swarm them, bursting with questions of impending victory by the Allies, of Stalingrad, of D-Day, of English bombers, and of infantry advances from the East. The old

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<sup>29</sup> The implausibility of Russian POWs ending up at a women's forced labour camp is neither addressed nor explained.

Russian woman hugs them. Nicole is uneasy. The Russians are too open, the women too receptive.

Soon, however, the Russian soldiers become conscripted into heavy and arduous labour. Moving rocks, quarrying — the kind of harsh treatment it is forbidden to impose upon prisoners of war. They struggle. One day, at the quarry, a woman wants to send a letter out of the camp. A horse and cart arrive; she runs to the driver and presses the note to him. Nicole sees. Nicole rages. The attempted communication is foiled. The woman shrieks. Sasha — a handsome Russian POW — dashes to the scene. He grabs Nicole by the arms and devastatingly asks her why she is doing all this treachery. Nicole screams, so the SS come. They beat Sasha, kick him in the dust. Nicole lies, she says it was Sasha who sought to pass a letter. Sasha faces severe punishment: to spend the night standing in a tiny box, assembled of tape affixed to the ground, inches from the electric fence and just under the watchtower. One step out of the box, he will be shot. To fall asleep and tip forward, he will die. The night comes. Nicole, half-heartedly partying with other Kapos, feels remorse. She gazes at Sasha through the window. He is still standing, shirtless, like a breathing sculpture; his breath exhaling in the cold air. Later, she looks again — the same. Sasha endures taunts from the guard. He does not flinch. Later still, an SS officer comes by intending to do what must ordinarily be done, namely to push the tortured into the electric fence. He raises his hand. Mercurially, another SS officer says: stop, this guy might actually make it, let us wait. Sasha makes it. He smiles at the break of dawn. Nicole sees him, relieved. He staggers back to roll call, shoved along by the SS. They do not shoot him, perhaps out of grudging respect.

Although Nicole has Sasha tortured, she also saves his life. She saves his life because she lies to the SS that he tried to send a letter. Had she told them what he actually did, namely attack her physically, he would have been shot to death on the spot. Although she never articulates any of this, the fact remains that Nicole — like other Kapos — triggered some violence to avoid greater violence.

Miraculously, Sasha survives the work day afterwards. In the next scene, he seems recuperated and more handsome than ever, with bright eyes and a lean jaw.

Nicole is smitten. Their passion begins. It is adolescent passion — unsurprising because she is an adolescent (sixteen years old at the time) — never consummated with more than a hug or an arm around the shoulders, but it is passion nonetheless, born within a forced labour camp. The two talk about marriage and about returning home, though Nicole knows she has no home to return to. They plot and plan as only desperate lovers can. The pap is foamy and effervescent.

Then the film slides into the final sequence: escape. Artillery shells are heard in the distance. The front lines are not far away and are in fact inching closer. The war will soon be over, but the most harrowing part of life in the camps is about to begin. The prisoners think they will be released, but the SS and Kapos know better — they all will be slaughtered. Nicole leaks the news.

The Russians develop an escape plan. Part of it will entail shutting off the electric fence; then all the prisoners will swarm to the fence and cut, claw, and dig their way out. But someone has to turn off the electricity.

The women churn with contempt for their overseers. They butcher the SS's black cat, Faust, which Nicole adores, and then they mockingly hand her the limp body. Nicole knows they will all be killed though, unless she stops it. Yet the murder of her cat does not alter her thinking.

So Nicole volunteers. She can walk to the generator, enter it, and shut it off. The plan is hatched. A copy of the key is made.

Hiccups occur. The first time the plan is to be executed, a last-minute change arises. Instead of being taken elsewhere to be killed, the order comes from above to slaughter all the prisoners *in situ* and bury them there. A roll call is announced at the very moment when Nicole was to go to shut off the electricity.

A second hiccup, though, is more troubling. Sasha learns that, as soon as the power is shut off to the fence, a massive siren will wail. This means that whoever is in the unit turning off the electricity will become immediately identified and promptly killed by the SS who will race to restore the power. Sasha knows, then, that Nicole will die. She will not be able to meet him afterwards as planned under the tall tree on the camp to begin her new life as a Russian war bride returning home to meet Sasha's parents — to be welcomed by the

father who says too little and the mother who speaks too much. Sasha is tormented. His co-conspirators get nervous. Sasha's access to Nicole has inveigled her into their sedition, but at the same time his feelings for her could now compromise the entire affair. An older conspirator counsels Sasha that there are times when the needs of the many outweigh the needs of the few or the one; 'all these other women have a right to live, too, don't they?' he exhorts. Sasha wavers, but he agrees to remain silent. He swears to it. The plan continues.

Nicole is to head to the electrical unit. At that very moment, Nicole reminds Sasha about meeting up at the tall tree following the *melée* that is sure to ensue once the power is cut. Sasha can no longer stomach it. He tells her that the siren will go off and that she will be killed, and he tells her that she needs to go do it anyway: it is the right thing to do so she must do it. She must sacrifice herself for the greater good, including implicitly the greater good of his own survival. Nicole is upset, distraught, and incredulous. She also knows, as she had told Karl earlier in morose conversations, that she has no home, no future: as a collaborator and impersonator she has no path forward. She bet it all on the Nazis and lost. Clad now in an actual Nazi uniform (since she and another female Kapo were supposed to get immigration paperwork to return to Germany for a desk job and a good life), she decides to flip the switch anyway.

Digging his own grave, which is what the SS and Kapos had all the other prisoners do collectively, Sasha is spat upon by another Russian POW who calls him a traitor for telling Nicole that this is a suicide mission. It is somewhat curious that the prisoners find sacrificing Nicole to be morally acceptable in the case of their own survival but conceptualise Nicole's decision to tread upon others to become a Kapo as morally reprehensible.

By this time though, Nicole has told Sasha that her real name is Edith and has shared her own story. Sasha has accepted it. He does not judge it or her. He embraces her for who she is.

To his fellow prisoner of war who spits on him, Sasha simply reassures by saying that Nicole will do it anyway, to which Nicole actually does; she not only yanks the power off, but she slashes the cables, so there is no way to restore.

The siren blares. A *levée en masse* occurs. Everyone flees for the fences; en route, they attack the SS with their shovels. The camera pans to the many escapees who are mercilessly machine-gunned by the handful of remaining guards positioned in the turrets. This is shooting of the most utterly pointless kind, gratuitous shooting: so many prisoners die. Eventually the guards in their posts are shot by rifles pilfered from SS members who had been disabled by shovel attacks.

Karl is among those who run to the electric unit. Nicole has been all torn up by bullets. She sacrifices herself. In this way, she follows the path of the courageous warrior — ready to put the interests of the many over the interests of the one. Or, perhaps, she simply commits suicide. Many Kapos, taunted and traumatised, killed themselves in real-time. Edith, for her part, simply helped save many others along the way.

Karl carries her limp body outside. Nicole begs Karl to remove the Nazi insignia from her uniform. He obliges her. The decal comes off easily. ‘They screwed us over, Karl, they screwed us both over,’ she mutters, referencing the Nazis. She dies in his arms, chanting the Shema Yisrael. She rediscovers her dignity (her ‘status as a loving human being’)<sup>30</sup> and identity, in particular her Jewish identity, in death. On this note, she is like Terese and Sofia, yet unlike these two other women, her death is impactful, immediately consequential, in improving the survival chances of others.

The camera’s gaze shifts to Sasha. In a wildly stylised scene, his face etches with pain. Her sacrifice, her martyrdom, her suicide — it may be too much for him to bear. Yet Nicole dies with Karl, not Sasha. Her final thoughts and words are with (and to) Karl.

*Kapò* was nominated for the Academy Award as Best Foreign Language Film in the year it was made. Reviews of *Kapò* have nonetheless been negative to middling. Dennis Lim describes it in the *Los Angeles Times* as ‘neither a great nor a terrible movie’, though acknowledges that ‘it is not without powerful moments’.<sup>31</sup> Lim also recognises, however, that it ‘has a special place in the history of Holocaust films (and of film criticism). It is a flash point in a long-running debate ... about the responsibilities and the limitations of cinema when it comes to depicting a historical atrocity.’<sup>32</sup> Jacques Rivette, writing in 1961

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<sup>30</sup> Bathrick, above n 28, 292.

<sup>31</sup> Lim, above n 26.

<sup>32</sup> *Ibid.*

in the French journal, *Cahiers du cinéma*, pilloried the film for Terese's death scene, notably the gratuitousness and vulgarity with which her corpse is reframed and attention drawn to her dangling hand. Serge Daney, writing in 1992, revisited this scene and scalded it as well. All told, Lim ably encapsulates the discussion: '[T]he unease the film provokes, beyond its dubious cinematographic flourishes, has to do with the indecency of moulding real-life atrocity to conform to narrative clichés and contrivances.'<sup>33</sup> It is not that the Holocaust should be off limits to art, but rather that this film fails to execute it well, thereby invoking well-worn refrains that distinguish obscenity from erotica. Lim ends his review on a broader note:

There is no exact science to the relationship between ethics and aesthetics. But it is also not that complicated. In figuring out how one feels when confronted with abject spectacles on-screen, it is often a relatively simple matter of questioning — to borrow Daney's memorable phrase — 'the difference between what is just and what is beautiful'.<sup>34</sup>

Lim notes that '[s]ome have argued that art is fundamentally ill-equipped to capture a horror as unthinkable as the Holocaust'.<sup>35</sup> He references Theodor Adorno's "assertion" that 'to write poetry after Auschwitz is barbaric' and notes that '*Kapò* has often been held up as an exhibit' for a 'simplified moral injunction against art about the Holocaust'.<sup>36</sup>

A rich literature examines tricky questions as to whether cinema, art, and literature ever can represent the Holocaust. Without weighing in on whether this representation ever might be possible, if we concede the possibilities that film might have in this regard, then I find Lim's indictment of *Kapò* to be excessively harsh. Sure, *Kapò* is melodramatic and somewhat H/Bollywoodised; moreover, it can be chided 'for its ideologically motivated folding of the Holocaust survival story into a socialist realist morality play about the beauty of collective death'.<sup>37</sup> All that said, I do not find *Kapò* unsalvageable, irretrievable, or irrevocably condemned because of its pap. This campy film relates, assuredly through

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<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Bathrick, above n 28, 292; For general discussion of kitsch and melodrama as a vehicle for delivering serious moral quandaries, see Thomas Elsaesser, 'Tales of Sound and Fury: Observations on the Family Melodrama' (1972) 4 *Monogram* 2; Peter Brooks, *The Melodramatic Imagination* (Yale University Press, London, 1976).

a highly stylised frame, a tale of the ambiguity of the Kapo, of the limits of collaboration, of the contingency of where one throws one's lot, of the hunger for survival that is all-consuming (devouring even the countess Terese), and of redemption, dually born out of selfishness and self-awareness. For some viewers, perhaps, *Kapò* is nothing more than a pulpy love story. In the end, however, ridiculing it as a love story diminishes what it is. By introducing the prospect of love in the camps — a love with only the slightest of physicality, a love in which sex is stayed — *Kapò* challenges and ruptures. It suggests the possibility of the human spirit to find beauty and passion within the most invidious of circumstances, and the human capacity to plan a conventional future away from these disorientingly unconventional circumstances. The everyday of lovers surreptitiously meeting and dreaming upends the hopelessness of the forced labour camps and the endlessness of death. Suddenly, something normal happens in the most abnormal of places. *Kapò* thereby fills the screen with life, with optimism. From the implausibility of the love story — and the simple suddenness of Edith's redemption — emerges the tangibility of the resilience of the human condition: of the hunger not only for bread and water but also for connection, for touch, for gentleness, and to be held (and to hold) gingerly. All this renders *Kapò* all the more watchable. Viewers feel a little safe and so they keep on watching. They may even laugh and dare to hope. They will not shut down. They mourn but depart the filmic experience with some gleam rather than mired in hopelessness. The implausible fictionalisation comforts the viewer yet, in turn, serves instructional and didactic functions.

Despite wincing gender tropes, this film also features women in prominent roles with multiple identities as both victims, victimisers, and resisters. The fact that women occupy many different roles contrasts with international criminal law's predilection to treat women as static, passive recipients of the pain inflicted by others — the "perfect" victims, so to speak. The polycentric treatment of women as active agents maps onto a broader pattern found in other Kapo films, notably Setton's production from 2000, that in turn also confronts the prevailing texture of international criminal law in which women's agency and roles, other than that of victim, tend to be systematically underdeveloped or wildly tabooified.<sup>38</sup> *Kapò* also touches on questions of adolescent social navigation amid

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<sup>38</sup> *Kapo* (2000) never overtly gestures towards gender as a theme however.

the most invidious of spaces in a way that unsettles dominant humanitarian assumptions about the passivity and fragility of young people in times of armed conflict.

Another thread that weaves through the film is that of futility: the futility of the camps, of the meaningless and relentless deaths, the futility of love, the futility of caring about anyone or anything (Sasha, Karl, or Faust; or Terese's initial affection for Nicole), and the futility of self-sacrifice when so many intended beneficiaries are gratuitously slaughtered regardless.

And yet another thread is the loneliness of being a Kapo. The Kapos get to style their hair, sport stockings, and attend parties with each other. They may be warm and have full bellies, but they are never comfortable. On the one hand, with the exception of Karl, the SS do not respect them. Nicole is treated as a sexual courtesan or, at best, as an acolyte. The SS objectify the Kapos and lead them on with lies. On the other hand, the prisoners loathe the Kapos — they see them as traitorous. The presence of the Kapo as a figure worthy of scorn surfaces in other media as well, for example in the drawings of Dachau survivor, Georg Tauber, discussed at the end of this article. Sasha, however, manages to develop empathy and understanding for Nicole over time, and in this vein, Sasha serves as somewhat of a parallel to Thea, an interviewee in the *Kapo* (2000) documentary. Still, the loneliness — the *anomie* — of the Kapo overwhelms.

### III INTERVIEWS, VOICEOVERS, AND A DOCUMENTARY

'Our friendship started with two slaps on the face.'<sup>39</sup>

*Kapo*, a documentary (55 minutes), is shot on location in Germany, Israel, Poland, and Australia. It includes archival footage from other films of concentration camps, ghettos, and Israeli Kapo trials. Sometimes, the footage is invoked in slightly misleading fashion, in that it portrays scenes and places that have nothing to do with the actual topic being discussed at that moment in the documentary.<sup>40</sup> Written, directed, and produced by Dan Setton with Tor Ben Mayor and Daniel Paran (director and researcher), *Kapo* was produced in conjunction with German Spiegel TV and Rai 3 of Italy. Hannah Yablonka, an academic who has written extensively about Kapos, is thanked in the credits. *Kapo* was

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<sup>39</sup> *Kapo* (Directed by Dan Setton, SET Productions, 2000).

<sup>40</sup> Brown, *Judging "Privileged" Jews*, above n 3, 133–142.

the first Israeli film to win an International Emmy Award, in its case in the category of Best Documentary. That said, *Kapo* was also controversially received. It remains difficult to locate today. It has been reprimanded in the literature as being too judgmental and too representational and for hewing too closely to the Kapo trials — and hence law’s angularity — in contrast to other Holocaust documentaries such as Claude Lanzmann’s *Shoah* (New Yorker Films, 1985).<sup>41</sup>

*Kapo* proceeds primarily through interviews with former Kapos and survivors affected (and afflicted) by the actions of former Kapos. To be sure, the film is not limited only to Kapos *stricto sensu* in that members of the *Ordnungsdienst*, *Judenräte*, and other camp functionaries also appear as subjects. These interviews and eye-witness accounts are interspersed with images of legal documents and footage from the Israeli Kapo trials. Many of the survivors sit and talk with numbered tattoos visible on their forearms. Cigarettes dangle from their fingers; smoke swirls. Media reports indicate that while Setton and Paran were able to locate interviewees world-wide who were comfortable discussing their erstwhile roles as Kapos, many others refused to participate and often expressed their discomfort at having been asked.<sup>42</sup> The producers regularly deploy the device of a male narrator, whose authoritative baritone guides the documentary and whose intonation tilts towards condemnation and recrimination. While neither prosecutorial nor adjudicative, this voiceover certainly sets the background and nudges the viewer along in a fashion that constricts the viewer’s autonomy.

Setton reports that, at a screening in Munich before a Jewish audience, older audience members were outraged while younger ones were curious.<sup>43</sup> German television aired a version of the film, but it was censored out of fear of negative public reaction.<sup>44</sup> When the film was screened in France, public reaction was so negative that the show on which the documentary was shown was simply taken off the air.<sup>45</sup>

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<sup>41</sup> Ibid 133–142; For a discussion of *Shoah*, see Bathrick, above n 28, 295–298.

<sup>42</sup> Yoav Birenberg, ‘Our Own Emmy’, *Yediot Ahronot* (Tel Aviv), 22 November 2000.

<sup>43</sup> Barry Davis, ‘A Feast for the Eyes and Ears’, *Arts and Entertainment, Jerusalem Post* (Jerusalem), 17 September 1999, 22. Davis’ review of *Kapo* is a positive one, noting that ‘[t]he surprising aspect of all these interviews is the wide range of the interviewees’ reactions, both to the culpability of the collaborators and the acceptability of collaboration with the Nazis in the circumstances of World War II. This is a documentary which will leave the viewer with much food for thought.’

<sup>44</sup> Birenberg, above n 42.

<sup>45</sup> Ibid.

Setton and Paran had previously collaborated on a number of Holocaust-themed films, including ones about Eichmann, Mengele, and Bormann. They were inspired to examine the Kapos after having read a newspaper article about the trials that had taken place in Israel in the 1950s. Paran stated that he was shocked to learn about these trials and the fact that they had been initiated by survivors. Reportedly he felt that Kapos had always been victims. Both Paran and Setton disclaimed in media reports any intention to judge the Kapos; for them, responsibility lay with the Germans.<sup>46</sup> The goal of the film was only to introduce the theme of the Kapo. Yet in media reports both Setton and Paran also note that, after collecting and listening to the stories of the Kapos they had interviewed, they too became shocked with what they learned.

*Kapo* predictably begins with a kinetic scene of trains undergirded with a solemn musical score and shot through a narrow aperture from another moving train compartment. This is promptly followed by footage from the concentration camps and then stills from the camps. The musical score, which — like the narrator's voiceover — plays an important guiding role throughout the documentary, is ominous.<sup>47</sup> Also central to the film is the device of introducing archival footage and photographs, at times manipulatively and misleadingly, at select moments for emphasis and direction.<sup>48</sup>

Momentum quickly shifts to the Eichmann trial (held in 1961). A woman testifies. She falters, only to support herself by placing her hand on the wall. She is examined, in-chief it seems. Counsel shows her pictures and drawings of Kapos — surly and muscular, holding clubs and sticks, beating naked prisoners. The Kapos in the drawings are both women and men. Counsel asks the witness for clarification: 'Women too?' 'Yes,' the witness responds, women beat and were beaten. In the questioning, the witness is asked who these people are — she replies, 'Kapos' — and she is further asked whether these things really happened. 'Yes,' she replies, exhausted and dismissive by the end.

The documentary pivots to sunny street scenes of Tel Aviv in the early 1960s. Busy scenes, hectic streets full of life and productivity, and also accompanied with restful and

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<sup>46</sup> Ibid.

<sup>47</sup> The musical score is orchestral. In contrast, Tim Blake Nelson's *The Grey Zone* (2001) deploys a constant ambient noise — that of roaring crematoria furnaces — that, much like some of the background noise in *Son of Saul* (2015) reminds the viewer of the automaticity of genocide that envelopes all prisoners including Kapos.

<sup>48</sup> See, eg, Brown, *Judging "Privileged" Jews*, above n 3, 135.

joyous moments on the beach. The narrator intones through voiceover that the Eichmann trial was preceded by other trials that portended a “serious examination” implying ‘serious introspection for the state of Israel’. These trials involved Jewish defendants and charges of collaboration. The narrator continues in solemn voice: ‘This is a film about them.’

Barnblatt is introduced. He was a pianist, a conductor, who had served as a commander of the police force in a Polish ghetto (Benedine or Będzin). The Nazis had simply enlisted the entire ghetto orchestra into the police force. That is how Barnblatt ended up in that position. In this regard, Barnblatt became an accidental perpetrator, whose tragic imperfections arose by happenstance, whose choiceless choices indeed were in no way of their own initial choosing. The documentary references the randomness of Barnblatt’s appointment.

Reuben Vaxelman, a child Holocaust survivor, is interviewed. Vaxelman re-encountered Barnblatt in Tel Aviv well after the war; Vaxelman had endured Barenblatt’s war-time brutalities in Benedine. Upon the re-encounter, Vaxelman complains to the Israeli authorities. Barnblatt is arrested in the opera.

Vaxelman is firm and unyielding in his disdain for Kapos and his hatred of Barnblatt in particular. But for Barnblatt’s immediate arrest, Vaxelman gloats that he would have killed him. Vaxelman remains angry. Vaxelman suffers from what philosopher Jill Stauffer calls ‘ethical loneliness’ — he had been abandoned by humanity as a child and then doubly abandoned as an adult in that he now lacks space to tell his story of suffering after the fact; in other words, he is not being heard — *truly* heard — in talking about what happened (to him).<sup>49</sup> As a result, he itches to tell his story. It is hard to tell the story and find a sympathetic listener, however, because the pain visited upon him came at the hands of a Jewish police officer and not a German SS. Vaxelman’s eyes are dark — they portend no possibility for forgiveness, no possibility for peace in the afterlife. The camera is his interlocutor. It offers him therapy and release. Vaxelman insists that Kapos who cooperated received excellent conditions, food, and comfort. Vaxelman pounces. He seizes on the opportunity the director provides to expiate his ethical loneliness and tell the story of how Barnblatt killed his brother, Adash. Vaxelman says that Barnblatt

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<sup>49</sup> Jill Stauffer, *Ethical Loneliness: The Injustice of Not Being Heard* (Columbia University Press, 2015).

personally stopped Vaxelman's father from trying to save Adash and, instead, compelled his deportation and death. Vaxelmann condemns, and the documentary gives him license to do so.

We learn later on that Barnblatt eventually is acquitted, on the basis of duress, in an Israeli court. He remarries and moves to Germany where he lives a "quiet life". He refused to be interviewed for the film. While the viewer learns this information, the camera pans to a distant shot of an elderly man, sitting and reading the newspaper in the lobby of a building — he has thick, rich grey hair; might it be Barnblatt? We do not learn from the documentary, however, that 'during Barenblat[t]'s 1961 trial, [the] prosecutor conceded that he had saved between 10 and 20 Jews'.<sup>50</sup>

Vaxelman's last chance is the camera. The courts could not process his story; the courts failed to validate his suffering because of Barnblatt's own victimhood, Barnblatt's own suffering, and Barnblatt's own tragedy. Yet the film offers Vaxelman space to (re)testify, which he eagerly does.

The narrator indicates that roughly 40 Kapo trials occurred in Israel although hundreds of complaints had been fielded. Until 1950, complaints led to brief detention followed with release. Why? Because there was no law. Then the 1950 law came, in part in response. Trials ensued. But these trials were relegated to the back-pages of the press. Footage is introduced of those trials. Unlike what I have seen of many war crimes trials, the accused in the Kapo trials — despite the back-page nature of the press coverage — cover up their faces; they enter through the bowels of the courtroom; they button their coats over their heads. They exude shame, and are ashamed, or fearful for what happens if they are released or acquitted. They conduct themselves like accused child molesters. They do not strut.

The narrator tells us that people became Kapos 'either voluntarily or by force'. Initially Kapos were Poles and Germans, but as the war continued Jews were compelled or made themselves available. Germans created two social ranks in the ghettos and in the camps: *Muselmänner* and their overlords, both indentured — to be sure — but to starkly different degrees. *Muselmänner*, a term adapted from the German word for Muslim that is deployed

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<sup>50</sup> Brown, *Judging "Privileged" Jews*, above n 3, 136.

in survival literature (including in Primo Levi's writings), refers to a starved, demolished, barely functioning, spectral and half-dead human being; in the words of Jean Améry, a 'staggering corpse ... in its last convulsions'.<sup>51</sup>

After the war, being a Kapo became a "curse". Some Kapos, in the immediate aftermath of the liberation, were attacked, mocked, and sentenced to death by former inmates. Many former Kapos fretted and worried about getting caught, in particular, those who assumed the mantle of being survivors and who moved to Israel.

Vera Alexander — a chain-smoking bespectacled *Blockälteste* in Auschwitz — is interviewed. She was recruited into her position by Madga Hellinger, who had a very high position for a Jew in the concentration camps, that is, commander of a women's sub-camp at Auschwitz (*Blockälteste* and then *Lagerälteste*). Brown reports that Madga 'at one point became responsible for 30,000 women'.<sup>52</sup>

Magda lives in Australia. She is largely unrepentant for what she did. It becomes obvious that her fear of becoming noticed prompted her to leave Israel with her husband and two young daughters. The filmmakers track her down in Australia. She is introduced to the viewer while polishing her silver.

Vera Alexander presents differently in this documentary than she did as a witness in the Eichmann trial. At the Eichmann trial, the prosecution deployed former Kapos as witnesses to unpack the perfidy of the Nazi extirpation system, expose the depravity of having victims orchestrate the victimisation of others, and voice a nation's moral outrage at Eichmann for having engineered it all. As part of this process, Kapo testimony, including Alexander's, highlighted the structural nature of prisoner self-administration paired with accounts of Kapo exercises of agency, however slight, for good, for better, and towards altruism, mercy, stealing on behalf of the prisoners, and saving them from death. For example:

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<sup>51</sup> Jean Améry, *At the Mind's Limits: Contemplations by a Survivor on Auschwitz and Its Realities* (Sidney Rosenfeld and Stella P Rosenfeld trans, Indiana University Press, 1980) 9.

<sup>52</sup> Brown, *Judging "Privileged" Jews*, above n 3, 137 (noting also that Magda 'survived three and a half years in Auschwitz').

Attorney General: Tell me, Mrs Alexander, how was it possible to be a *Blockälteste* in Auschwitz and to maintain the stance of being created in God's image and maintain the image of a human being?

Witness Alexander: It was not easy. One needed a lot of tact and much maneuvering. On the one hand, one had to obey orders and to fulfill them, and, on the other hand, to harm the prisoners as little as possible and to assist them.

...

Attorney General: We have been told that you saved women from being put to death. How did you do that? Tell us of some cases?

Witness Alexander: There were cases after a selection, where women were selected for death, and I knew which block they were supposed to enter. I tried, not always successfully, to remove them from the ranks. Sometimes I managed to place girls in a commando which was going out from Auschwitz to work. This was not heroism on my part — it was my duty. I don't remember all the instances, and I don't remember how I did it.<sup>53</sup>

In the documentary, however, Alexander's statements seem much more self-serving and craven, redolent with her agency to inflict harm and further brutalist survivalism. Both the trial and the documentary appear to sculpt their narratives for different didactic motivations. Alexander's linkage of heroism to duty in her trial testimony suggests a structural reclassification of what it means to be a Kapo and a revision of the very job of being a Kapo: the Kapo is presented as a shield and saviour. This linkage is absent in the footage that appears in the 2000 documentary.

Who is a survivor? Is a Kapo a survivor? Kapos who came to Israel after the war see themselves as survivors too. That is why some came. Others, however, perceived Kapos quite differently. Hence the tension, and hence the need for the *Nazi and Nazi Collaborators and Punishment Act* to purge and cleanse. The *Nazi and Nazi Collaborators and Punishment Act*, however, did not distinguish textually between the Nazis, on the one hand, and collaborators (including Jewish Kapos) on the other hand.

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<sup>53</sup> David Thompson, 'The Auschwitz Testimony of Vera Alexander' on *Axis History Forum* (6 June 2004) (on file with the author) <<https://forum.axishistory.com/viewtopic.php?t=51878>>.

The narrator returns to intone that the demonic nature of the Nazi concentration camp system was such that the ‘victims facilitated their own destruction’. The *Judenräte* are mentioned — Hannah Arendt’s point: namely that the Jews were tricked by the Nazis into “self-rule” when officials and leaders were simply priming a population for extirpation. The film tethers self-rule to the construct of genocide. One Kapo diarist remarks: ‘We have to accept the will of the German God.’ On this note, in addition to the live footage of interviews, some of the diaries of Kapos are introduced into the film and read aloud by the narrator. These diary excerpts reveal a more empathetic voice than those of the live interviewees. The diary entries tend to show the anguish of the Kapo. That said, in one instance involving a ghetto leader, the documentary plays recordings of his radio broadcasts in Yiddish aimed at ghetto inhabitants asking them for the children, requesting the children, so that they could be handed over to the Nazis. The listeners refuse, so the Germans take everyone.

The next tranche of footage involves Michael Gilad — a survivor and war crimes investigator with the Israeli government. Gilad is an authoritative figure, somewhat like the anonymous narrative voiceover. Gilad posits that ‘they could have refused’ if they had been selected to serve as Kapos, although the consequences would have been drastic. Gilad is pensive. He says that the actions of one Kapo saved his life. Gilad relates how one day in the camp he bent down, then straightened up, and ended up coincidentally looking directly into the eyes of an SS man — a terrible offence, punishable by immediate execution. Gilad recounts how Kapo Fritz rushed over and slapped Gilad hard in the face — ‘get back to work now’. Fritz bellowed — such that the tumultuous moment passed, lapsed even, without any shot being fired. Gilad says he believes that Kapo Fritz saved his life then and there. Gilad adds that some Kapos were merciful. Some maintained their dignity and humanity. However, he adds that these Kapos were the exceptions. Gilad emphasises that many Kapos were cruel and sadistic. Gilad underscores the tension between prisoners abiding by moral principles or becoming ‘creatures who do anything they can to survive’ (he mutters the latter with a touch of sarcasm). Other testimonials from other interviewees further describe Kapo sadism and ferocious beatings.

Another investigator who questioned Kapos confides in the camera how he asked them, as part of his examinations, why they felt the need to hit. Why did they have to hit the man who spilled his soup and asked for more? Why?

Noach Flug, another survivor, unwraps the power of hunger. Flug's words are juxtaposed with footage of an old man eating some spilled ugliness off the street with a spoon, his empty eyes drifting and then hauntingly locked onto the camera. Flug references the different planet of the concentration camp: Ka-Tzetnik's planet Auschwitz, so to speak. Hunger is such a powerful engine on planet Auschwitz. Hunger, too, is a key theme in *Kapò* (1959). Nicole is motivated by hunger — she does what she needs to do for her food: trade sex, trade honour. Tellingly though, when she feels remorse for her role in Sasha's torture, she seeks to make it up to him — to atone — by offering him food, on the sly, which he bats out of her hands while denouncing her for thinking that this putative gift would make up for what she had done. But in her mind perhaps it would. Food was so important to her that her offering of food could very well signal genuine remorse rather than a contrived apology.

'Jewish solidarity is broken' — most Kapos 'broke the rules of Jewish solidarity'. Herein is another theme in the 2000 documentary. As the oppression continues, the gap between leaders and the rest grows. Those Jews who join the police, according to the film, have no worry about food, and in any event their pockets are full of bribes.

Another assistant Kapo, bespectacled and not smoking, describes how he was young and strong and therefore muscled away two other prisoners who were trying to take a shower near him. This invariably meant that those other two, already lice-ridden and emaciated, got beaten. This assistant Kapo, too, talks about hunger. If presented with the chance to become a full Kapo (a question asked by the filmmaker in one of the few occasions in the film that his voice arises), this assistant Kapo says that he 'would grab that offer with both hands'.

Madga is authoritarian. She is candid and proud, yet often speaks in euphemisms. She describes how upon arrival she was asked to go for a "job". She leveraged her "job" into the highest-ranking position possible for her, namely to be commander of the women's camp at Auschwitz. 'I was very strict', she affirms, 'I want a camp where nobody would find anything wrong.' She recollects how she "punished". The narrative voice-over chimes in to chide her.

Madga recruits Vera. Vera recalls: 'Our friendship started with two slaps on the face.' Vera had drawn on a wall; in response, Madga berates her for damaging German property. The next day, Vera gets a stubby pencil and some paper from Magda. Now Vera can draw. This pulls her, in turn, into the camp hierarchy. *Kapo* does not reference many details of Magda's life and time in the concentration camps, which — according to Adam Brown's detailed research — reveal her as a much more nuanced and textured individual. Brown reports that Magda '[b]arely surviv[ed] both malaria and paratyphus', that she 'narrowly escaped several "selections" and was even pulled from a line heading for the gas chamber'.<sup>54</sup> He also contrasts the filmic portrayal of her with video testimony she recorded for the Jewish Holocaust Centre in Melbourne, Australia, where she 'represents herself as consistently generous, self-sacrificing, and protective of others'.<sup>55</sup> A similar contrast arises as with Vera Alexander, in which the *Kapo* presents herself differently — or is presented differently by others — in different settings.

Frances Kousal comes on.<sup>56</sup> Frances has an angular face and very sharp pale eyes. Frances was a block commander. She says that one would have to be 'stupid', 'stupid' again and again, one more time over dastardly 'stupid', not to have agreed to be a *Kapo* if offered the chance. Some former *Kapos*, such as Frances and Magda, believe that this was their destiny; it was their fate to be a *Kapo* and their fate to survive in this fashion. 'Why would you refuse?' Frances asks, incredulously. Once again, it would be the 'stupidest thing to do'. 'To refuse would be stupid'. Frances relishes order — 'Can you imagine a world without people in charge?', she rhetorically asks. Frances fancies people in charge. For Frances, then, being a *Kapo*, ironically perhaps, 'made her feel more like a human being'.

The camera pans back to Magda, who prattles on about resistance, sedition, and rebellion. She does not like it now; she fully despised it then. The documentary is not kind to (nor magnanimous with) her. Magda returns to her euphemisms, noting that there were times when the women were 'brewing' and 'brewing' — by this I gather she means that they were plotting in the pleats available to them as inmates, incubating resistance. Magda recalls that she came on the scene, lifted her stick, and told them to stop. And, indeed, they stopped. Magda's eyes light up before the camera — if the 'brewing' continued, she

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<sup>54</sup> Brown, *Judging "Privileged" Jews*, above n 3, 137.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid* 140: Brown spells her name Francis.

says, then the SS would come. Madga is so 'strong'; she can dispel the brewing just by taking a step forward, but she adds that, later when back in 'her room', she 'cried and cried and cried'. After the war, in Israel, she recalls how she is out with her little children. She is recognised there as a Kapo by other women. Upon noticing her, Magda recounts how these women, too, begin to 'brew'. The 'brewing' recurs. Magda is anxious in Israel. Who might recognise her? Expose her? Kill her and her children? So she leaves Israel. She flees to Australia. This move, too, she sees as fated. She opines about how she was chosen by fate to survive, somehow.

The documentary includes an interview with Haim Cohen, a judge who presided over Kapo trials. Cohen says: 'We cannot condemn these people'. He adds that it is unnatural to expect solidarity to one's people over solidarity to oneself or to one's children first. 'I had trouble sleeping for over a year', Judge Cohen ruefully adds, signalling the enormous weight of having to adjudicate these cases. Skittishness and erraticism pervade the text and tone of the Kapo judgments.<sup>57</sup> It is interesting that one of the major moments of vacillation in the documentary in which the frailty of judgment arises involved a judge who presided over the very trials that proved so unsatisfactory. Here, then, is the depth of the perfidy of the Final Solution: the recruitment of the persecuted in the persecution, the shattering of solidarity among victims, the orchestration of the worst among some of the least. This perfidy is not well-served by prosecuting the Kapo; rather, it became aired when Kapos testified against the architect of the entire regime of prisoner self-administration, notably Adolf Eichmann.

The film concludes with a summary of where the interviewees, and some of the diarists whose work was orally excerpted, ended up.

One died fighting for the Israeli army — it is suspected that he was killed purposely through "friendly fire".

Vera is still in Israel, in northern Israel to be precise, where she gardens. She experiences no moral discomfort. She lauds herself for her own 'passion to survive'.

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<sup>57</sup> See Drumbl, above n 13.

Frances is in Australia, as is Magda. Although Magda was questioned in Israel, authorities never initiated any criminal charges.

Thea Kimla, who I have not yet spoken of, is the most compassionate and compelling character. Thea has a melodious voice and earthy mannerisms. She was a prisoner, albeit with no status, in Auschwitz: bottom rung and lorded over by Frances. Now the two — both in Australia — are good friends. Thea is empathetic. She discusses the spark of life. Seated diagonally across from Frances in a living room, Thea says that all Frances wanted to do, understandably, was to survive. That is why Frances, according to Thea, took her position as a Kapo. Thea's face and voice brim with humanity. 'The will to survive was very strong in Auschwitz', she says. Thea sees Frances as a prisoner, like her, who took a position to survive. Thea redeems Frances. Or, at least, she reclaims Frances' humanity.

Michael Gilad reports that the more he researches the topic, the less he understands. He himself is grateful, in his own words, that he was able to preserve his human dignity. He notes that not many did.

*Kapo* (2000) is a documentary that, while unsettling in certain of its methodologies, unpacks the extreme violence of an architecture in which the victims were indentured, and some responded by victimising each other. The destruction of this group solidarity attests to the heinousness of genocide, the elimination from within. A focus on victims as victimisers could perhaps deepen the culpability of those who create the structures to enable genocidal violence to metastasise. Conscripting of group members in the group's own demise, frankly, may be the greatest of the genocidal iniquities and legacies. That said, the need for victims of Kapo violence to expiate their ethical loneliness may not be achieved when their tormentors serve as witnesses and, hence, become insulated from responsibility other than the responsibility to testify about what they did *because* of the highest leadership. *Quaere* the contrast between Vera Alexander as an Eichmann trial witness and Vera Alexander as an interviewee in the documentary.

On the other hand, this documentary muddles the structural nature of the violence and unsettles the explanatory capacity of structure by emphasising individual decisions and agency. This documentary fields the exhortations of many survivors that blaming the system, blaming the Germans, is just not enough — there must also be some room to finger individuals, to differentiate among victims. The interviewed Kapos themselves do

not seem to believe in their own thoughts and words that they were powerless or lacked any agency. Magda, in fact, routinely emphasises that she used violence to mitigate greater violence. In this regard, *Kapo* is opinionated. Brown flatly concludes that it ‘does not subscribe to Levi’s pronouncement on the need to suspend judgment’.<sup>58</sup> Although a real-life documentary involving real life people, *Kapo* also includes some sleights-of-hand, omissions, and archival footage juxtapositions that do play with the “facts” and, in this vein, direct the viewer towards intended didactic outcomes. Voice-overs and recourse to baritone authority figures (Gilad and the narrator) channel the viewer to the film’s intended normative destination. That said, whatever judgment pervades *Kapo* and whatever contortions it makes to massage its narrative, the film remains far more subtle and far more empowering of spectator autonomy than the Kapo trials. Brown’s assessment may be too firm. I did not have the impression of *Kapo* as fuelled by an ‘unquestioning mode of expository address [that] result[s] in clear-cut judgments’ with only “brief” references to ‘ethical uncertainty’.<sup>59</sup> Some of the documentary’s most powerful moments — for example, the interchange between Thea and Frances — are all about the pointlessness of penal (or even moral) condemnation. While *Kapo* may judge, it does not leave the viewer with a lasting impression that legal judgment in a courtroom is appropriate or suitable. Ironically, perhaps, the presence and words of the one judicial figure, Cohen, best encapsulate this documentary’s embedded reluctance to condemn the Kapo through criminal law.

#### IV CONCLUSION: MOVING FROM COUNTING CADAVERS TO TELLING VICTIM STORIES

Victims are not uniform. Some benefit from a semblance of privilege, which these two films unpack.<sup>60</sup> This privilege permits (or requires) some victims to victimise others. Film therefore creates space for those others not to be “othered”; this space in turn nudges them to recount their suffering and expiate their ethical loneliness. Film may narrate

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<sup>58</sup> Brown, *Judging “Privileged” Jews*, above n 3, 133 (noting also that ‘the film’s preoccupation with legal judgment hastily transforms into a moral evaluation of its subjects’).

<sup>59</sup> *Ibid* 141.

<sup>60</sup> For discussion of the term ‘privilege’ among Jewish concentration camp inmates, see Brown, “No One Will Ever Know”, above n 8, 96 ([w]hen confronted with the traumatic circumstances of ‘privileged’ Jews, the practice of casting judgment becomes highly contentious’).

many other kinds of stories as well, including stories of acquiescent side-standers and benefitting bystanders.<sup>61</sup>

Regardless of the kind of story, and its nature, film may help elucidate ‘what happened’. Film is not without many limits in this regard, to be sure; film — like any medium — retains the capacity to distort.<sup>62</sup> Film (whether documentary or fictional feature in genre) and stage plays nevertheless serve as ways in which art reaches the public, various publics — both proximate and distant from atrocity.<sup>63</sup> Olivera Simić, among the very leading voices examining the intersectionality between art and transitional justice, notes that art ‘cannot replace formal judicial mechanisms or material reparation’ but ‘offer[s] a significant and distinctive reparative contribution’, as well as symbolism.<sup>64</sup> But what about situations — possibly the case with the Kapos — where law cannot speak, or speaks so clumsily, because it lacks the requisite finesse? What about contexts where law suffers from language paralysis? Here, literary and filmic portrayals may serve as the primary mode of representation. For Simić, art advances the right to truth embedded in international law. She posits art, in particular theatre, as among the ‘communicative acts that strive to bring forward survivors’ experiences of war and violence’.<sup>65</sup> Artistic truth ‘calls for reflecting, rethinking and sharing’.<sup>66</sup> To varying degrees, each of the creative works discussed in this article contributes to these truths.

Relatedly, much has been written about how film provides ‘critical reenactment’.<sup>67</sup> According to Esquith, critical reenactments ‘prompt the audience to adopt a more active,

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<sup>61</sup> See Stephen L Esquith, ‘Reframing the Responsibilities of Bystanders through Film,’ (2011) (manuscript on file with the author) which discusses the films of Claude Lanzmann, Rithy Panh, and Yael Hersonski on the Holocaust and Cambodian killing fields.

<sup>62</sup> See, eg, Duygu Alpan Cakmak, ‘The Role of Turkish Cinema in Collective Memory Formation regarding the Cyprus Question’ (Working Paper Series No 11, Historical Dialogues, Justice, and Memory Network, December 2016) (concluding that ‘Cyprus films in the Turkish cinema produced between 1959 and 1975 provide a sizable body of material on how cinema can provide symbols and images of a skewed, one-sided representation of both the past and present, [and] thus contribute to the standardization and reproduction of the Turkish collective memory on the Cyprus dispute’).

<sup>63</sup> Cf Shoshana Feldman, ‘Theaters of Justice: Arendt in Jerusalem, the Eichmann Trial, and the Redefinition of Legal Meaning in the Wake of the Holocaust’ (2001) 27(2) *Critical Inquiry* 202 (‘Law distances the Holocaust. Art brings it closer’).

<sup>64</sup> Olivera Simić, ‘“They Say that Justice Takes Time”: Taking Stock of Truth Seeking in Peru, Argentina and Serbia’ (2016) 42(1) *Australian Feminist Law Journal* 137, 137; Olivera Simić and Zala Volcic, ‘In the Land of Wartime Rape: Bosnia, Cinema, and Reparation’ 2014 2(2) *Griffith Journal of Law & Human Dignity* 377, 396 (discussing film as contributing to ‘symbolic reparation’).

<sup>65</sup> Simić, ‘“They Say That Justice Takes Time”’, above n 64, 145.

<sup>66</sup> *Ibid.*

<sup>67</sup> Esquith, above n 61, 12.

participatory role ... [t]hey neither indict nor exonerate'.<sup>68</sup> The energy is expository, the goal to 'involve ... viewers in critical self-reflection'.<sup>69</sup> The two films discussed in this article are not reenactments in the sense of Rithy Panh's *S21: The Khmer Rouge Killing Machine*,<sup>70</sup> Joshua Oppenheimer's *An Act of Killing*,<sup>71</sup> or Fujii Hikaru's *The Educational System of an Empire*.<sup>72</sup> Nor do they deploy the same devices as Claude Lanzmann's documentary, *Shoah*, in which former *Sonderkommando* Abraham Bomba recreates barber scenes of prisoners getting their hair sheared prior to their deaths, or Yael Hersonski's *A Film Unfinished*,<sup>73</sup> in which she reenacts the making of a German film, *Das Ghetto*,<sup>74</sup> specifically the involvement of the head of the Jewish Council in Warsaw in the original film prior to his anguished suicide in 1942.

The concept of reenactment, however, is capacious, and Setton's and Pontecorvo's works serve illustrative purposes in setting out the life of the Kapo in the camps, the lives of Kapos after the camps and the struggle for rehabilitation, and also the lives of those who toiled under the Kapos and bear that scar afterwards. These works do so in a way that transcends the juridified binaries of "guilty" or "innocent", of "victim" or "perpetrator", or of "passive witness" or "active agent". These works render the viewer unsure of how he or she would have reacted in the same situation. They expose the ill-fitting nature of categorising or classing Kapos and interrogate the kinds of adjectives that could be deployed to describe their conduct or the adverbs best equipped to contextualise how they acted. Themes such as the sacrifice of the privileged prisoner, the deployment of violence putatively for the lesser evil, and the quest for survival suffuse these films.

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<sup>68</sup> Ibid 13.

<sup>69</sup> Ibid

<sup>70</sup> *S21: The Khmer Rouge Killing Machine* (Directed by Rithy Panh, Institut National de L'Audiovisuel, 2003).

<sup>71</sup> *An Act of Killing* (Directed by Joshua Oppenheimer, Final Cut for Real, 2012).

<sup>72</sup> *The Educational System of an Empire: Roppongi Crossing 2016: My Body, Your Voice* (Directed by Fujii Hikaru, Mori Art Museum, Tokyo, 2016) 69: Fujii Hikaru's 2016 film depicts South Korean high school students reenacting torture undertaken by Japanese troops in Korea during World War II. The students viewed reels of archival footage of this violence and then reenacted the scenes amongst themselves under Fujii's supervision in a high school gymnasium. These reenactments are interspersed with excerpts from a US propaganda film from the time about how Japanese children were taught and socialised in school. The film thereby explores overlapping power relations during the war: the US and the Empire of Japan, the Empire and its subjects, Japan and Korea, and Fujii and the students. On this latter note: 'When urged by Fujii to reenact the historical events, [the students] are visibly hesitant, uninterested, as manifested in incoherent physical reactions and uncomfortable expressions.'

<sup>73</sup> *A Film Unfinished* (Directed by Yael Hersonski, Oscilloscope Pictures, 2010).

<sup>74</sup> Archival footage, 1942.

These films also lead to broader debates — historical, representational, and theoretical — related to critical victimology. “Counting cadavers” and counting survivors negates the interstitial realities that how one lived as a victim, and what one did, mattered at the time and continue to matter thereafter. It also matters how a victim was classed, even if the process of classification lay entirely outside the victim’s control.

One of the most poignant special exhibits in Bavaria’s KZ Dachau features the work of Georg Tauber, a Dachau prisoner and survivor. Through his art, Tauber memorialised inmate life, and through his activism he sought to ensure that all prisoners — regardless of classification within the Nazi heuristic — were seen as victims. Yet Tauber was unsuccessful in this regard. The Nazi typology of prisoners into various categories lingered, after the fact, and directly affected who could be categorised as a victim of Nazi persecution and, thereby, preordained the various paths to reintegration and rehabilitation. Tauber references the plight of *die Vergessenen* — the forgotten prisoners — to wit, the asocials (black triangles), homosexuals (pink triangles), and professional criminals (green triangles).<sup>75</sup> The 1953 *German Federal Law on Compensation for Victims of National Socialist Persecution* (BEG) defined a victim of Nazi persecution as ‘a person who was persecuted for reasons of political opposition to National Socialism or for reasons of race, religious belief or worldview, and subjected to acts of violence perpetrated by National Socialists, from which this person has suffered harm and injury to life, body, health, freedom, property, assets, in professional, or economic advancement’. Following the liberation of Dachau by the Americans, political prisoners and Jews were seen as victims, but the asocials, professional criminals, and homosexuals were not. Political prisoners ‘strictly distanced’ themselves from peers in other categories so as to gain social recognition, such that ‘the different persecuted groups become embroiled in a rivalry as to their respective victim status’.<sup>76</sup> The estimated 6500 professional criminals (people determined to have repeatedly broken the law) and 10 000 asocials (homeless, unemployed, beggars, addicts, Sinti, and Roma) who were imprisoned at Dachau continued to face social discrimination after the war in that their persecution was not considered to be a generic feature of the Nazi system.<sup>77</sup> They were

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<sup>75</sup> While Dachau served as a model or prototype for the architecture and structure of other Nazi labour and concentration camps, its demographics are not representative of those of other camps in that the percentage of Jewish inmates in Dachau was far lower than elsewhere.

<sup>76</sup> Exhibit at Dachau (visited 30 July 2016).

<sup>77</sup> *Ibid.*

refused assistance by the general support office, so Tauber responsively set up an office for them (and himself, in that he had not been issued an ID pass as a victim because of how the Nazis had classed him).<sup>78</sup> It was only in the 1980s that these inmate categories acquired any standing to claim compensation.<sup>79</sup>

The Nazi categorisation rendered certain kinds of prisoners ethically lonely after the fact. Ironically, many of the Kapos at Dachau were political prisoners,<sup>80</sup> meaning that they would be able to be seen as victims after the fact even though they were despised by the other prisoners, on the one hand, and the SS, on the other, as portrayed in Tauber's drawing below:



Georg Tauber, drawing (1945), Kapo as a dishonorable person (Exhibit at Dachau, visited July 30, 2016)

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Exhibit at Dachau (visited 30 July 2016): 'In the Dachau concentration camp it is mostly the political prisoners who the SS entrust with the task of heading a work detail. Many of these kapos act humanely and are ready to help their fellow prisoners; others exploit their privileged position and turn into brutal henchmen of the SS'.

The exhibits at Dachau's memorial center and museum capture Kapo brutality. Heiden Sepp, a political prisoner from St Pölten, Austria, and 'capo of the sick bay', is presented as a 'fat man clothed in a white coat' who 'kicked and kicked a prisoner ... again and again and his face was completely contorted by rage'.<sup>81</sup> Sepp is also depicted as having struck prisoners with wet towels, wrapped them in heavy woolen blankets while immobilising them under cold showers for many hours, such that the 'woolen blankets would get soaked and the patient would die with fever and high fever and freezing'.<sup>82</sup> Another Kapo, Max Schnell, is described in a panel as having 'dragged a half dead Jew' only to 'beat him with the truncheon, and heaped him with such insults ... that Jew died the following day'.<sup>83</sup> In one of the two Dachau barracks that still remain standing, the following placard appears in the "eating" area referencing the block leader (a Kapo) and remarking:

Not even the smallest spot is allowed to get on the wood, for if the block leader sees it, he will write up a report for punishment right away ... The tableware also has to be completely clean ... You can get an hour of pole hanging if even a single drop of coffee can be seen on a cup.<sup>84</sup>

Primo Levi, who coined the phrase the 'grey zone' (*la zona grigia*) to describe the ambiguities of connivance in the concentration camps, was not much of a fan of film.<sup>85</sup> Levi worried that cinematographic representations, in particular those disseminated by fiction film, trivialised and unduly simplified the Holocaust. Levi's concerns indeed are wise.

Yet I am not so sure that film and theatre deserve, as media, to be intrinsically cast as devoid (or wanting) of capacity to elucidate the 'grey zone'. Film conveys the horrific ethical dilemmas faced by the persecuted who themselves persecute. Taking the Kapo as subject, each of the two films discussed in this paper manage, however clumsily at times, to deliver some subtlety, equivocation, and nuance. These films distinguish between the

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<sup>81</sup> Prisoner account of Hermann Langbein, 'The Stronger One' (1949) (visited 30 July 2016).

<sup>82</sup> Evidence given by Heinrich Stöhr in the 1945 Dachau Trial (visited 30 July 2016).

<sup>83</sup> Secret diary entry by Karel Kašák (18 March 1941) (visited 30 July 2016).

<sup>84</sup> Prisoner's report by Edgar Kupfer-Koberwitz, 'The Powerful and the Helpless' (1957) (visited 30 July 2016).

<sup>85</sup> Levi mentions *Kapò* (1959) *en passant* in 'The Grey Zone' without adding any comment regarding the Kapos in the film.

Kapo and the Nazi in a way that the Israeli *Nazi and Nazi Collaborators Punishment Act* failed to achieve. They represent the Kapo as a liminal figure. Of course, film is a medium, and like any other medium it may trend towards the same foibles that plague legal judgment in unraveling the liminality of victim-victimisers, including selectivity, excessive redirection, and narrative control.<sup>86</sup> Yet film has the clear potential to transcend law's anxieties in dealing with, and representing, the vacillations of the tragic perpetrator and the oscillations of the imperfect victim.

Film empowers those on the outside of the 'grey zone' — those who have not lived it — to come to their own place in thinking about victims who, while living in it, have the power to have others tortured over a "single drop of coffee". For those tortured over that drop — and those who tortured along with those who refrained from exercising their power to torture when they could — film, too, opens a representational space to curate, narrate, and remember.

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<sup>86</sup> Cf Adam Brown, 'Narratives of Judgement: Representations of "Privileged" Jews in Holocaust Documentaries' (2014) 7(1) *Literature, History of Ideas, Images and Societies of the English-Speaking World* 1 (on file with the author) (noting at paragraph 12: 'The clear narrative trajectory and expository mode of address of many films, which rely on devices such as narrative voiceover, archival footage and the construction of authoritative "witnesses", frequently evoke the kinds of clear-cut opinions that Levi warns against.').

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