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Recognizing Victimhood

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I. Introduction*

The category of victimhood resonates deeply with many contemporary struggles for recognition without, however, receiving similar attention by political theories of recognition.[1] Many "struggles for recognition" are fought with explicit reference to massive injustice that have ceased without having been publicly recognized as injustices. The state responses to claims for the recognition of victimhood mirror, I will argue, the state's dominant conceptions of justice and injustice. In many cases, the state affirms its conceptions of injustice and moral innocence through the selective recognition of victims. For example, the U.S. government has granted Japanese-Americans interned during the Second World War an apology and modest reparations.[2] Demands for apologies and compensation for slavery have been met with uneasy quasi-apologies and moral indifference.[3] The Canadian government has recently announced reparations for Aboriginals who were subjected to the cruel and degrading residential schooling practice.[4] At the same time, reparation demands by Chinese-Canadians who had to pay a "head tax" based on their ethnicity have been turned down by Ontario

courts.[5]

Who is a victim? Do victims need or deserve recognition? And what would the state's proper recognition of victims entail? This paper argues that political theories of recognition can be successfully mobilized to understand and critique the politics that underlie claims to victimhood as well as state responses to such claims.

The paper examines administrative rehabilitations for human rights violations in post-unification Germany as a case in which the politics of victimhood and the politics of recognition intersect. During the reign of "actually existing socialism" in the German Democratic Republic from 1949 to 1989, many people were convicted to prison sentences for activities as such as discussing George Orwell's *1984*, expressing the wish to leave the country, or opposing the Cold War arms race. Others tried to cross the border to West Germany, thus committing a crime according to the East German criminal code. Hundreds of those who attempted the crime of "fleeing the Republic" were killed, and others who were caught alive were imprisoned for this act of civic treason. The East German state defined them as criminals. Were they still criminals after the collapse of that state? Many came forward identifying themselves as victims of criminal human rights violations. They asked the new unified German state for the recognition of their victimization as well as for nullifications of the court decisions, compensation, and the prosecution of those who were responsible.

At first glance, theories of recognition say very little about victims. Insofar as recognition theories can be brought to bear on claims about victimhood, they expose themselves to the criticism that they only entrench the recognized injury as identity, leading to the "codification of injury and powerlessness"[6] instead of overcoming them. In spite of their silence on victimhood, I argue, recognition theories can provide important insight into the politics of victimhood and human rights. The inability of many recognition theorists to attend to victimhood is, I will argue, due to three

systemic problems in mainstream recognition theories.

First, many theories conceptualize recognition as the recognition of one's real *identity*.[7] Theorists like Nancy Fraser who treat recognition as a problem of social *status*, in contrast, are potentially better able to attend to the recognition problems posed by victimization and victimhood.[8] Second, recognition theories too often lose sight of the state. Recognition is usually imagined as an intersubjective activity taking place among persons or societal groups. If associations or the state are tacitly included as participants in exchanges of recognition, the special role of the state in claiming the authority to adjudicate claims of injustice and victimization is neglected.[9] Third, a related problem arises once recognition theories try to explain what recognition means and entails. Is it being recognized as who you really are? Or as who you want to be?[10] Or is it being recognized as someone who is legitimately different from the majority? Or is it being recognized as a human being? Or even as a peer, as an equal citizen?[11] Moreover, recognition seems to have a cognitive dimension of 'recognizing as seeing' as well as a constructive dimension in which "recognition's very object is shaped or brought into being."[12] There are many possible answers to the question of what recognition entails, and the task is to examine whether and how they suit different projects of recognition. Finally, the state's acts of recognition will have a different "grammar" than acts of interpersonal recognition: the state constantly recognizes, identifies, and categorizes persons. These categories of recognition are primarily tied to projects of governance, but they also have effects on the contours of social and interpersonal recognition. Once recognition theories address these three problems, they are capable of countering the criticism that the politics of victimhood inevitably implies the enactment of *ressentiment* and the codification of powerlessness.[13] Still, the state's role in recognition politics is not unproblematic. Instead of enshrining victimhood, I argue, the state is more likely to take the selective and conditional embrace of victims as an opportunity to reiterate the moral and political boundaries of

the nation. In response to injustices, the state shapes the category of recognized victimhood in its own image of justice. The recognition of victimhood thus implies a recognition transaction between victims and the state. State responses to victimhood claims are necessary, and they are also necessarily problematic because they risk fixing an identity instead of granting a status, and because they risk shaping the contours of victimhood according to dominant views of justice. Yet the state's control over the politics and status of victimhood is not complete.[14] In the interactions with the state, victims exercise agency that goes beyond taking up the sovereign's offer of recognition. The state is not entirely free in determining the terms of recognition.

This paper examines specific cases in which the politics of recognition and politics of victimhood intersect. Here, the state was the primary addressee of the recognition claims that were framed in the language of law. Moreover, the claimants in these cases use in the language of injustice and victimhood more than they use the vocabulary of identity. This distinguishes them from other groups that connect victimhood claims to stronger assertions of a particular cultural identity.[15] Thus, this paper challenges recognition theories through an examination of cases that were not within the purview of the classic formulations of recognition as the dialogical and intersubjective recognition of identities.[16] The goal of this paper is not to say that all struggles for recognition emphasize social status, injury, and the state more than they emphasize identity and interpersonal recognition. Rather, my claim is that cases like those of victims of human rights violations are not properly addressed by theories of recognition, but that they could and should be analyzed in this framework. Moreover, the perspective of recognition helps to shed a different light on the policies of addressing human rights violations. These policies turn out to be exercises in shaping the moral boundaries of the nation cloaked in the language of legal empathy for victims.

In section two of this paper, I will offer a glimpse at the problems posed by the demand for

the recognition of victimhood in times of political change. Section three will examine the theoretical foundations of recognizing victimhood. I will argue that although victimhood combines elements of identity and status, it should primarily be viewed as a social status category. Section four will examine German post-1989 politics of recognizing victims in order to turn the focus to the role of the state. I will conclude with thoughts about the promises and dangers involved in the politics of recognizing victims.

II. Traitors, Criminals, and Victims in Times of Political Change

When states fall apart and take their normative designations of justice and injustice with them, claims to victimhood are part of the struggle for the normative contours of the new political system. "It is the task of *ideology* to identify victims and victimizers at any given occasion,"[17] wrote Judith Shklar. Yet the task of identifying victims (and victimizers) cannot be fulfilled by the normative edifices of political ideologies alone. Rather, these ideologies aim to translate their judgments on victimhood into law. When the certainties of a dominant ideology disappear, the law has to take on the double burden of finding new normative grounds for its legitimacy and adjudicating claims that arise from the shift in the basis of legitimacy. In these situations, the law's embrace of certain victims is guided by its shifting understandings of its basis of normative validity.

The German Democratic Republic (GDR, better known as East Germany) collapsed and merged with the Federal Republic of Germany (FRG, better known as West Germany) in 1989-1990. From this point on, many who had been at the receiving end of East German state coercion came forward to claim that they were victims of human rights violations. They demanded a legal recognition that they were in fact victims. They might not have been so insistent on a legal recognition if their claims had been uncontroversial within East German society: in fact, many of those whom the East

German state had treated as criminals or traitors were widely believed to be just that. Karin Gueffroy, whose son Chris was the last person to be killed at the Berlin Wall, stated: "I am sick of still being told by many in the former GDR that my son should have known that fleeing across the border was illegal."[18] And many of those who were after 1989 accused of being perpetrators of the crimes committed against the victim claimants now claimed to be victims of a new Western political persecution. Irmgard Jendretzky was a judge who had participated in the 1950 "Waldheim Trials" in which more than 3000 of persons were convicted to harsh penalties—32 of them to death sentences—on the basis of often flimsy evidence of their participation in Nazi policies. In 1997, she deeply resented being facing a criminal court for her participation in these trials. She did not feel she had done anything wrong in following what she understood as an international obligation to prosecute Nazis. At her 1997 trial for miscarriage of justice in 52 cases and homicide in 5 cases, her lawyer declared that she deserved "recognition and appreciation, not punishment."[19] In the midst of deep normative uncertainty about justice and injustice, the legal recognition of victimhood did matter. It could offer guidance on whether Chris Gueffroy was a victim or a criminal, and on whether Irmgard Jendretzky had done justice or committed a crime in sending people to the gallows. But the post-1990 courts were not immune from the social conflicts about the meaning of justice, injustice, and suffering.

A few cases can illustrate the complications and stakes of recognizing victims of a prior political regime: Robert Havemann had joined the Communist Party in the early 1930s, worked in the underground resistance, and survived the Second World War on death row due to luck and influential friends. After his liberation by the Soviet Red Army, he became a professor of chemistry and was very active in political, cultural, and academic life, initially sharing the Stalinist views of the SED. When he started to publicly advocate a more democratic socialism, he was successively excluded from the SED,

the university, and the Academy of Sciences.[20] When he protested the verdict of forced exile against his close friend, the singer and songwriter Wolf Biermann, Havemann was sentenced to a "restriction of residence" to his own house for an unspecified period of time. One day in November 1976, the police came to Havemann's house and drove him away—to the Fürstenwalde District Court (*Kreisgericht*), as it turned out. Havemann was not aware of any charges before arriving in court. So he had little chance of contesting the allegations against him. The District Court Fürstenwalde thus decided that "Robert Havemann developed activities that threaten public security and order" by writing a newspaper article "in which he incites to actions against the public security and tranquility in the GDR," and thus thought it necessary to banish him from the entire territory of the GDR with the exception of his own house.[21] This is the only time that the sanction of house arrest was ever applied in the GDR. In a slightly more regular court decision in 1979, Havemann was found guilty of violations of currency control laws: he had published essays and a book in the FRG and, the GDR authorities claimed, received royalty payments without their authorization. The secret police was aware that Havemann's statements in the books published abroad would suffice for convicting him of "anti-state incitement" [*staatsfeindliche Hetze*], but this charge would be too obviously political. A conviction for the violation of currency restrictions was better suited for discrediting Havemann while disclaiming a political motive for the trial.[22] Robert Havemann died in 1982. He had committed all the acts of for which he was convicted in court proceedings orchestrated by the Party Leadership and Secret Police. So was he a victim? And how should this question be resolved?

There are cases that complicate the line between victims and perpetrators even more systematically. After the end of the Second World War, Margot Pietzner was convicted to death for war crimes by a Soviet Military Tribunal.[23] The death sentence was later transformed into a life sentence, of which she served ten years in Soviet prison camps and East German prisons. Soviet

Military Tribunals are not known for due process or appreciating legal subtleties in their definition of war crimes. Persons convicted by these tribunals were therefore usually rehabilitated in post-unification Germany. Margot Pietzner, however, had indeed been a member of the SS.[24] In 1944 and 1945 she served as a concentration camp guard in Ravensbrück and various other camps. Witnesses described her as one of the most brutal guards. Was her trial in 1945 an injustice? Is she therefore a victim of the Stalinist terror justice, as she claimed? Can her claim to victimhood be separated from her actions as a concentration camp guard?

If victimhood depends in part on its authoritative recognition, there is no easy answer to the question of which responses would be appropriate to these cases. And my aim here is not to find an acceptable solution to these intractable legal and moral problems. Instead, I will examine the process by which the questions of victimhood in these cases were settled—though not necessarily answered.

Ultimately, the state's recognition of categories of victims depends on a "political and moral decision" made by state institutions about where to locate criminality (John Borneman). The new regime inevitably reconstructs the relevant facts and laws from its own temporal and moral perspective. Courts that suddenly find themselves in a liberal constitutional state will not use the same methods of legal interpretation as their predecessors in the old East Germany. After all, repeating GDR legal doctrine would mean repeating and validating GDR legalized injustices after a successful revolution against them. Instead, courts create a gap between the past and present legal interpretations, and they look to moral principles to justify the existence, scope, and shape of the gap between past and present legal interpretation.

In situations of radical political change, the state legitimates itself not through the adherence to allegedly impartial procedures, but "through a prior decision: where it locates criminality and accountability." This decision involves a "moral and political choice" about what to recognize as

injustice.[25] Thus, the state can choose to grant or withhold the victim status from Margot Pietzner and other former concentration camp guards. Likewise, the state can invalidate or affirm the laws that Robert Havemann a criminal in the GDR. These decisions are made and revised in a longer process involving judicial institutions and social actors. In this process, the state seeks to constitute the political community "as a moral community"[26] and to legitimate its benevolent power and authority vis-à-vis those whom it recognizes as victims. The recognition of victimhood is part of a recognition transaction for which the state sets the terms: in order for the state's recognition of victimhood to have any social purchase, the state itself needs to be recognized as a legitimate authority on matters of justice and injustice.[27] Because victims often depend on the state recognition of their status, they also depend on the state. Yet the state's embrace of victims does not always recognize them in the way they want to be recognized. The state shapes and recognizes victims in its own image of justice. Some self-identified victims don't fit the state's conception of injustice or are placed outside the asserted moral boundaries of the political community. These self-identified victims are not legally recognized as victims at all.

I will argue that claims to victimhood, understood not as enactments of *ressentiment* but as quests for civic equality, are intensely political. This dimension is especially visible in the disputes over the classification and prosecution of injustices that were committed by state agents. These deeds carried the imprint of state authority, and they marked those on the receiving end as criminals, traitors, or enemies, in short, as persons outside the moral boundaries of the political community. Claims to victimhood in such cases imply a demand for the reversal or transformation of the normative categories originally assigned by the state. For example, the relatives of the persons who were shot at the border pleaded for a legal re-evaluation of the shootings in accordance with their moral judgments: "it cannot be that the perpetrators become victims, and the victims become

perpetrators."[28] Karin Gueffroy was sure she knew who the real victims were, and she asked the courts to confirm her view against the view of others who argued that the border guards were to be pitied rather than blamed for having shot at unarmed civilians. In fact, the self-identified victims asked the courts reverse the original designations of "victim (or hero) and criminal (or villain)"[29] made by the GDR institutions. These claims imply that the victims were indeed exemplary citizens while the perpetrators were not. The claims are attempts to determine the shape of the political community as a moral community through the selective recognition of victimhood.

III. Victimhood between Identity and Status

What does it mean to be a victim of an injustice? In this section I will argue that victimhood combines subjective and intersubjective elements. As a social category, victimhood can be viewed as an *identity*—thus stressing the subjective "sense of injustice"[30] element. Victimhood can also be understood as a *social status* (a measure of one's standing and access to societal institutions), stressing the intersubjective dimension of victimhood. I will argue that for purposes of addressing injustices, victimhood should primarily be treated as a status rather than an identity. Furthermore, the recognition of victimhood therefore needs to take account of the peculiar role of the state in recognition transactions as well as of the temporal index that is attached to recognition claims: the recognition of a marginal social status aims not to fix and reify that status, but to recognize the existence and roots of a social subordination in conjunction with the legitimate expectation of civic equality. Thus, the focus on the intersubjective and status-related elements of victimhood allows us to circumvent recognition's alleged fixation on pre-existing identities that would only entrench the memory of injury as a recognized identity. This understanding of victimhood and recognition, I

contend, is prominent in the politics of legal rehabilitations.

Common understandings of victimhood combine a subjective “sense of injustice” (Shklar) with an intersubjectively verifiable breach of legitimate expectations and resulting psychological and/or physical suffering.[31] The subjective dimension of victimhood, the “sense of injustice” allows persons to self-identify as victims. Self-identified victims may or may not seek or receive public recognition of and redress for the wrongs committed against them. Such a recognition is tied to a specific legal or ethical context and entails the judgment that the victims’ suffering was indeed unjustified. The public recognition of victimhood often requires judgments on the victims’ moral blamelessness: it is demanded that the victims are innocent in all relevant aspects.

Complaints about injustice are usually tied to an expectation that others concur in the self-identified victims’ assessment of the undeserved suffering, and respond with socially appropriate reactions of empathy, indignation at the injustice, or solidarity. In reality, however, the self-identified victims’ fellow citizens often express indifference or suspicions that the suffering was not unjustified. When self-identified victims direct their claims toward public institutions, in turn, they expect not empathy but an authoritative acknowledgment that they were wronged. In short, they want to be recognized as victims. This recognition, I contend, should not be a recognition of victimhood as an identity, but as a status.

Victimhood, Identity, Status

In practice, the conceptualizations of victimhood as identity and as status cannot be completely separated, and they often yield similar results in adjudicating who is a victim. The crucial difference between these two ways of thinking about victimhood becomes apparent when claims of

victimhood are socially contested, and when we have to think about what it would mean to recognize victims. The separation between 'victimhood as identity' and 'victimhood as status' in this paper is made for analytical purposes only.

Victimhood as identity stresses the subjective dimension of victimhood, the "sense of injustice." This "sense of injustice," as Judith Shklar reminds us, is not reducible to a verifiable claim that a legitimate expectation was not met.[32] Rather, it expresses the disappointment that "we do not get what we believe to be our due."[33] Yet public expressions of victimhood as identity will most likely take the form of claiming that a valid norm was violated. Victimhood as an identity depends, obviously, on the existence of the subjective sense of injustice more than it does on an externally verifiable breach of a rule to the detriment of the self-identified victim.

But is victimhood an identity? Insofar as victimhood depends on the personal "sense of injustice" that drives the quest for the public recognition of victimhood, it is undoubtedly an identity. Furthermore, victims of similar forms of injustices often unite to make their voices heard. Their experiences of injustice, and often of public indifference to this injustice, lead them to develop a strong group solidarity, a common identity as victims of particular injustices. In many human rights organizations, direct victims play an important role. Some organizations, like the *Madres de Plaza de Mayo* in Argentina and the *Khulumani Support Group* in South Africa, define themselves almost exclusively as organizations of victims and survivors.[34] Some of these organizations are open not only to direct victims and family members, but also to their friends, persons who sympathize with the plight of the direct victims, and persons who share certain political commitments.[35] Thus, the line between the identity *as* a victim and identification *with* victims can become impossible to draw.

Victimhood as a category of social identification and identity can have strong political currency. "Claims of victims" are often invoked, although often not by the direct victims. The

identification with victimhood is overlapping but not identical with actual experiences of suffering: many who were direct victims do not want to identify themselves as such because victimhood carries overtones of passivity and vulnerability. They prefer to think of themselves, for example, as members of a former opposition movement who were penalized for their actions that eventually helped to bring down the old regime, and not as "innocent" and "unsuspecting" victims. Others think that their victimhood should be acknowledged, but that policies of addressing past injustices should enable them to move out of the social condition that ties their lives to the experience of victimization. Still others have not shared the experience of suffering but identify with the direct victims out of solidarity. Thus, persons vary enormously in their approaches towards victimhood as a category of identification.[36] This complexity counsels against seeing victimhood as identity for the purposes of addressing injustices.

Moreover, if victimhood is an identity, it is obviously not a chosen identity. Victims of human rights violation were targeted because of their common suspected or imagined traits. These traits were publicly identified as markers of danger and deviance. The allegedly common traits and the common experiences of this identity group are neither positive nor voluntary: "Victimhood happens to us: it is not a quality."[37] Identities built on common victimization by state agents are therefore the result of "uninvited external description."[38] In general, such "imposed identities" form categories comprising persons who "do not share convictions but experiences,"[39] such as racism, homophobia, or other social exclusions and vulnerabilities. Shared vulnerabilities do not necessarily imply common goals. Responses to such external classifications might well be based on a wholesale rejection of the categories that led to the victimization in the first place.[40] Quite often, "imposed identities" are more readily seen from the outside than from inside the alleged identity group. Persons who have been imprisoned or tortured share not "what they 'are,' but what was done to them,"[41] and they might

assign these experiences different meanings in their respective life stories. Insofar as victims are strangers to one another lumped together by somewhat similar experiences of cruelty and the resulting marginalization, I contend, victimhood should not primarily be viewed as an identity, but as a social status. Not only is the conception of victimhood as an identity built on shaky theoretical and empirical grounds, but it would moreover lead to proposing the wrong means of addressing injustices. The recognition and valuation of despised imposed identities is likely to entrench an identity that relies on the memory of the original injury without addressing the deeper problems of civic inequality that are inevitably tied to state-sponsored degradation and violence.

Insofar as theories of recognition treat victimhood as an identity, they indeed provide troubling suggestions about how to recognize victims. Thinking about victimhood as a social status, in contrast, yields a more plausible account of the politics of recognizing victims. This perspective does not deny that victimhood can be a social identity, but it focuses on the status effects of the victimization. Such an account is based on a prior argument that state-sponsored human rights violations have a systematic impact on their targets' social and legal status: Human rights violations are publicly approved exercises in social domination and subordination that last beyond the immediate violation. They jeopardize or deny the legal personality of the victims because they have a public, a political dimension. While the perpetrator of a "private" violation "gains a form of dominance"[42] over the victim, publicly authorized perpetrators exercise dominance over their victims with apparent public approval. Here, the state is a source of recognition injustices in the form of marginalization and political exclusion.[43] The experience of vulnerability is at odds with the assertion that each person is free to choose and pursue their own life plans: "In dictatorial regimes, the state systematically represses the pursuit of individual ideals and values it considers undesirable. As members of the

community abandon walks of life that make existence meaningful to them, they surrender self-respect and esteem."[44] In short: "The oppressor kills our ideals, our self-respect, the perception of our rights."[45]

In short, crimes that are human rights violations diminish the civic status of the victims by demonstrating the dominance of the perpetrator, leading to an intersubjective perception that the victims (and persons who resemble them in a relevant way) are not owed the respect that other persons are owed. The state accordingly constructs the persons at the receiving end of human rights violations as less than full citizens: often as enemies, traitors, or dangerous criminals.[46] They are thought not to deserve the rights, respect, and trust that others enjoy. As a consequence of such legalized public expression of disrespect, other actors start considering victims of human rights violations as deserving of their misfortune. These are some of the social consequences of systematic human rights violations. The status group of victims of human rights violations comprises individuals who had suffered directly and others who were "merely" affected by the broader stigmatization and marginalization of certain groups of persons that were the deliberate product of human rights violations. Even if the status group of victims is not homogeneous, it is still coherent enough to consider it a non-derivative status group.

Accordingly, the systematic diminishment of some persons' humanity through state-inflicted suffering shows all the marks of a status distinction: it is a publicly constructed and upheld assignment of social (dis)honour for a particular group of persons.[47] Or, to put it differently, there are clearly "institutionalized patterns of cultural value" that "constitute some actors as inferior, excluded, wholly other, or simply invisible."[48] Treating victimhood as a matter of status, and not of identification, makes it easier to use victimhood as a starting point for addressing injustices. To be sure, there will be a significant overlap between those who publicly identify as victims, and those whose social status is

that of victims of human rights violations. But treating victimhood as a matter of a diminished civic status allows us to abstract from the politics of self-identifications. It also allows us to scrutinize the state response to victims' claims as an exercise in conferring or withholding civic standing.

Recognizing What?

If victimhood is only partially a matter of (imposed) identity, but otherwise a social status, what can recognition theories tell us about the recognition of victimhood? Or, what can the recognition of victimhood tell us about recognition more in general?

Once victimhood is viewed as a social status rather than an identity, the goal of recognition changes. The goal is no longer recognizing the claimants for who they really are. Or, more correctly, a "cognitive recognition"[49] of the things that happened is part of the overall recognition, but the recognition of victimhood as a social status does not stop there. What would it mean, for example, to "recognize" that Manfred Schledermann, who in 1959 was sentenced to 6 years in prison for reading non-socialist literature and lending it to other students, was a victim of a human rights violation?[50] Such a recognition would certainly entail a statement that he was indeed sent to prison for these actions, and that the evidence included his private diaries and coerced confessions. But Schledermann's identity was not necessarily constituted and certainly not exhausted by this experience of injustice. Next, a proper recognition according to Nancy Fraser's status model of recognition would demand a change to the state designation of Schledermann as a criminal. He is not a criminal, we would say, but actually a victim of an injustice.[51] The morally wrong designation of Schledermann as a criminal, moreover, pushed him to the margins of society. In fact, he was unable to find proper employment and finally had to leave the country for West Germany. There, he received different forms of public recognition of his victimhood, and his standard of living improved significantly, but

he would have preferred staying in East Germany. Moreover, for the state to properly recognize Manfred Schledermann as a victim, it would have to promise to remedy the social marginalization that resulted from the GDR prison sentence. Thus, we would expect the state to recognize Manfred Schledermann's aspiration to civic equality. Finally, the state might be expected to investigate whether the secret police officers, informers, prosecutors, and judges have committed not only injustices but crimes: Thus, if there is a reasonable suspicion that in pretending to do justice they not only did injustice but also violated the law, we would expect the state to prosecute them. Only the identification of responsible perpetrators allows the state to recognize someone as a victim of a crime, and not merely an ordinary injustice.

In this example, the term "recognition" is used in two different ways. First, recognition can be "cognition." In this case, the object of recognition precedes the recognition and is independent from it.[52] Whether the state recognizes it or not, Manfred Schledermann spent 6 years in prison. Still, such recognition might be controversial and important where "brute facts" are denied by those in power. For example, the mistreatment of prisoners and the "shoot-to-kill-orders" at the border were constantly concealed and denied by the East German government. To recognize that these things happened is to acknowledge the factual basis for the victims' claims. Second, recognition can be "the constructive act through which recognition's very object is shaped or brought into being."[53] This constructive recognition is the key to understanding the recognition of victimhood as a social and legal status. Like vulnerability, victimhood "takes on another meaning at the moment it is recognized."[54] Victimhood as a legal category—unlike victimhood as an identity—depends on its public recognition. The legal recognition of victims should simultaneously acknowledge the existing status inequality and the legitimate aspirations to status equality. To ask for the recognition of victimhood is, in Judith Butler's words, "to solicit a becoming, to instigate a transformation."[55] Thus,

the recognition of victimhood always partakes in both the cognition and the construction of its various objects.[56]

What does this mean for the recognition of victimhood specifically? If recognition always involves cognitive and constructive aspects, we can conclude that it is possible to both recognize (in a cognitive sense) the precarious situation of persons or groups and recognize them (in a constructive sense) as full and equal members of the political community. To be sure, victims of human rights violations are not turned into equal citizens overnight. Thus the recognition of injustice and victimhood has a complex temporal index. Since such a recognition is both cognitive and constructive with the view of transforming a set of social relations, it assigns specific meanings to events in the past, the present condition, and aspirations for the future. The legal and moral recognition of victimhood is not an attempt to enshrine the memory of the injury as the basis for victims' future ascribed identity, Wendy Brown's warnings notwithstanding. Rather, the recognition of victimhood should involve a *cognitive* recognition of the *past injuries*, a *constructive* recognition of these injuries as *injustices*, a cognitive recognition of the social effects of the initial injustices, and the *constructive* recognition of the victims as *equal members* of the political community. The latter aspect connects the victimhood anchored in past injury with a present and future promise of equal membership. This membership is independent from the injury, but the injury does not have to be negated for such equal membership to be possible. Thus, this form of recognition has a "transformative … attitude"[57] towards the status and social identities of victims. Victimhood becomes a matter of public concern without reducing victims to their injuries: "Discourses of recognition resituate the injurious experience from the sphere of purely individual, personal matters into the public sphere that addresses and concerns all: insiders and outsiders, strangers and locals, victims and perpetrators."[58] Without a public acknowledgment that what is claimed to have happened did in fact occur, and was an injustice, "there

does not seem to be an exit from the states of injury of the past."[59] A "transformative attitude" to victimhood aims to add dimensions of civic belonging to persons' identity, not have the identity as a victim recognized, fixed, and enshrined. But does, as Judith Butler envisions, asking for recognition always mean "to petition the future always in relation to the Other?"[60] Or, to re-focus the question: if recognition creates a relationship of mutuality, what role does the state play in relation to the petitioners for recognition?

IV. Acts of Recognition: Legal Rehabilitation

The rehabilitation policies originated in claims made early in the 1989-1990 political transformation period. Rehabilitations—or vindications—were part of the legal and political repertoire of many political regimes, including 20th century Eastern European states. For example, the post-Stalinist Soviet Union rehabilitated some of Stalin's victims. And even during Stalinist times, people who were administratively disenfranchised could apply for the reinstatement of their civic status. In their applications, they often invoked the same moral and political categories that had been used to disenfranchise them, unwittingly confirming the condemnatory power of these designations.[61]

Legal rehabilitation was designed to restore the status of the person who was convicted while portraying the overturned decision as a "mistake." Notably, rehabilitations involved little or no blame for the "mistakes" whose victims they vindicated. This form of vindication was sought by many who came forward during the year between 1989 and 1990 in which the GDR was reforming but continued to exist. Many of the petitioners were committed socialists and cast their claims in terms that appealed to the GDR's official identity as a socialist state. The state's recognition of these victims had the potential of legitimating the reforming state in the eyes of the victims as an understanding and benign authority. The state, in turn, chose "its" victims whose trust it deemed essential to its

legitimacy. This pattern of recognition transactions between a state with a particular official identity and victims whose stories and values suited this identity was observable in the last months of the GDR as well as in the rehabilitation proceedings initiated by the unified FRG. The cases of Manfred Schledermann and Robert Havemann illustrate the mutual attraction and alienation of victims and the state.

While Manfred Schledermann was spending most of his prison term in the infamous Bautzen prison, he scoffed at the state's goal of "rehabilitating" and "reeducating" him through criminal punishment. Not he should change, but the political elites should change their mind, he thought. Thus he petitioned the GDR Politbüro for a formal rehabilitation: "I did not want to be released from prison ahead of time for good behavior. I wanted to be released early because they revise their view that I am a horrible anticommunist."[62] He petitioned the Politbüro because he wanted to be recognized as a good socialist, and because he credited the GDR with a moderate degree of legitimacy and a potential for justice. If he had thought that the GDR was the incarnation of injustice—*Unrechtsstaat*, as many others called it—he would not have cared for or expected rehabilitation from the GDR. Indeed, he hoped "that the [GDR] society would finally take a more positive development,"[63] and saw his quest for vindication as a possible step in this direction. Needless to say, the state did not enter into the recognition transaction that Schledermann sought to establish.

Why do persons who think they have been victimized petition for a legal rehabilitation? And what does such a verdict mean to them? A verdict of legal rehabilitation is valued in proportion to the perceived authority and legitimacy of the granting authority. By asking for the recognition of their victimhood, victims also recognize the authority of the State to adjudicate matters of justice and injustice. They establish ties of mutual recognition under conditions of unequal power with the state. States take petitions for recognition of victimhood as occasions for shaping the moral boundaries of

the political community by "identifying legitimate victims and defining wrongdoing."[64] In principle, victims can choose to demand such recognition or not. They are certainly aware of the state's interest in recognizing or rejecting their claims. However, insofar as the legacies of the injustices constitute victims as persons with a precarious social and legal status, they might not be able to withhold their demands for recognition. The effects of the victimization increase their dependency on the state for taking steps towards civic equality. While victims can sometimes choose not to petition the state for recognition, they can rarely transform the terms under which such "exchanges of recognition" take place.[65] Such challenges to the terms and conditions of legal recognition can only occur on the basis of the challengers' relatively secure social status.

When Manfred Schledermann was released from prison after his unsuccessful petitions to the Politbüro, he initially tried to build a new life in the GDR. When he realized the scope of the continued Stasi harassment, however, he petitioned to leave the country. It was then realized that the FRG had already "bought his freedom" while he was incarcerated,[66] so he could leave. Yet, he says: "for me, the petition to leave to the West is a mark of resignation, of surrender."[67] Once he arrived in the FRG, the court verdict against him was automatically considered nullified from the perspective of the FRG legal system.[68] This was important "because otherwise I would have had a criminal record in the West as well." Yet morally, the nullification of his GDR prison sentence by FRG authorities "did not mean a lot"[69] to him. When the political changes in the GDR started in 1989, however, Schledermann restarted his efforts to achieve a legal rehabilitation:

> As long as the GDR still existed—it still existed a year past 1989—I really wanted to be rehabilitated by the GDR. I did not attach great importance to a vindication by West Germany. This is no big deal. So I wrote to the Attorney General of the GDR, and they accepted the petition for rehabilitation. But before anything could come out of it, the conditions changed a hundred percent. So nothing came out of it. But this is what I would have liked best. [*Pause*] [Getting it] before 1989 would have been even better.[70]

Thus, Manfred Schledermann was recognized as a victim several times by a state whose moral authority he questioned, but he never received the form of recognition that he had yearned for. He restarted his quest for a legal rehabilitation in 1989, taking advantage of the peculiar situation in which the GDR still existed but was reforming. The GDR was the authority from which he would have *liked* to receive a vindication, and the political situation had changed sufficiently so that the vindication would also be *likely*. Many others took advantage of this window of opportunity in the period between reform and unification. At the same time, the disintegrating GDR government aimed to boost its legitimacy by starting to respond to conceptions of injustice shared by many of its citizens. Prosecutors and courts started to annul court decisions in the area of "political criminal law" on their own initiative.

On January 15, 1990, judges and prosecutors at the Fürstenwalde District Court suggested that the 1976 verdict against Robert Havemann should be nullified because "wrong views on the security doctrine" had led to an "incorrect expansion of the laws."[71] The Attorney General agreed to this proposal. Katja Havemann, Robert's widow, also petitioned for a nullification of the sentences. But the GDR disappeared in the enlarged FRG before it could rehabilitate Robert Havemann as one of its victims. On July 3, 1991, the Potsdam Regional Court [*Bezirksgericht*], now part of the FRG legal system, continued the proceedings started in the GDR and formally nullified the sentences against Robert Havemann and posthumously acquitted him of all charges.[72] The 1991 Court argued that the 1976 and 1979 decisions "were based on grave violations of the laws that were valid in the former GDR." The proceedings had been "initiated with the goal of intimidating the accused, and of preventing him from criticizing the GDR and the ruling party SED in public."[73] The decision made special and repeated mention of Robert Havemann's rights under the GDR Constitution that were flagrantly violated by the two court decisions. Yet the decision made no judgment on the

responsibility of the judges and prosecutors in the 1976 and 1979 proceedings. (They were later prosecuted for miscarriage of justice. Two of them were convicted to prison terms on probation in 2000.)

Robert Havemann's rehabilitation was performed by a FRG court, but it was substantially based on GDR law. The interpretations of the GDR law changed significantly between 1976/1979 and 1991. The courts adjusted their yardsticks for the interpretation of GDR law from "socialist legality" to a vague commitment to liberal human rights. The old decisions are seen from the new perspective of a different political system and its dominant legal values, and they turn out to have been illegal even if measured against the laws under which they were passed. In the cases of Manfred Schledermann and Robert Havemann, we see a clear gap between the normative framework in which the first court decisions were made and the framework in which the court that later decided on legal rehabilitations operated. Yet this normative gap necessary for seeing and recognizing victims was granted only in relationship to some GDR court decisions; it was denied in other cases.

In recognizing victims and injustices, the state becomes an active participant in struggles for recognition. Its "official recognition commitment" in relation to victim claims is to offer redress for undeserved suffering, but the "practical recognition effect"[74] of many policies is to shape and affirm the state's normative identity through the selective embrace of victims. How did unified Germany decide on the relative merits of claims to victimhood?

The main tenets of legal rehabilitation process were governed by the *Criminal Justice Rehabilitation Law* (*Strafrechtliches Rehabilitierungsgesetz, StrRehaG*). The Rehabilitation Law provided a foil against which GDR court decisions and similar acts would be measured. It also provided a threshold for determining when an injustice was grave enough to merit legal rehabilitation. In addition, the Rehabilitation Law was directly engaged in circumscribing the categories of acts for which

rehabilitation was granted, and the categories of persons who could claim to be victims and receive compensation as victims.

The Rehabilitation Law allows for the nullification of GDR court decisions "insofar as they are incompatible with basic standards of a liberal order based on the rule of law" (sect.1, para.1). The law takes the FRG's self-description as a foil against which to measure the GDR's injustice. The threshold of injustice is met if the decision either "served political persecution" (sect.1 para.1 I.) or the punishment was "severely disproportionate" to the deed (sect.1, para.1, II.). The law lists eight GDR criminal law norms that "normally" indicate "political persecution" as the purpose of the court decision. One of these norms prohibited spying for Western powers, another norm penalized the refusal to serve in the Armed Forces, two of these norms criminalized certain forms of political speech, and four of these norms criminalized "fleeing the republic," i.e. crossing the border to the West, as well as actions supporting or preparing such escapes. The law does not provide comparable guidance for judges who have to decide which sentences were "severely disproportionate."

The Rehabilitation Law primarily aims to rehabilitate "political" acts, or acts whose prosecution can be seen as a form of political persecution. The Law's focus on border crossings and political speech as mirrors the two target areas of GDR repression that the FRG most passionately denounced. The two most obvious faults that the West German judicial and political elites found with the GDR were the suppression of free speech and the general prohibition on leaving the country. The two main recognized groups of victims complained about these faults: dissidents and fugitives. They "make ideal heroes because they suffered for embracing the very values that Socialism trampled under foot and that the rule of law holds out as shiny promises."[75] For other categories of self-identified victims, it was harder to frame their stories in terms that appealed to the dominant conceptions of injustice.

The Rehabilitation Law's focus on GDR *injustice* is narrowed down to *political persecution*, which is primarily understood as the repression of political speech and attempts to leave the country. For example, even though the GDR's strict prohibition against evading military service was listed by the Law as an instrument of political repression, soldiers who had deserted were often not granted rehabilitation. On balance, courts were more likely to rehabilitate soldiers who had been convicted for desertion in conjunction with attempting to "flee the republic" than they were to rehabilitate soldiers who deserted without wanting to leave the country.[76] Desertion is, after all, prohibited by all states that have armed forces, and only the step across the border signals the soldier's "proper" political motives. Likewise, "non-political" injustices have to meet the vague and demanding threshold of the sanctions' "severe disproportionality" to the underlying acts.[77] The courts were reluctant to nullify decisions that were based on norms that were not explicitly listed in the Rehabilitation Law as severely unjust. The Rehabilitation Law's focus, I contend, mirrors and affirms the FRG's official identity: the GDR practices that diverged most obviously from the FRG's policies are subject to nullification. Groups that were marginalized in the GDR as well as in the FRG, in contrast, found it difficult to be included in the law's empathy for victims of GDR repression.

Persons convicted for "asocial conduct detrimental to the public order," for example, would normally not be rehabilitated. The GDR category of "asocials" was devised in continuation of the Nazi criminalization of persons who were "strangers to the community." "Asocials" failed to take up regular work, were often absent or late for work, were found loitering in public places, were alcoholics, or did not fulfill state expectations of conduct in other ways. "Asocials" were, according to Inga Markovits, the largest single group of criminal convicts in the GDR.[78] The individual sentencing level for asocial conduct was not very high, but due to high rates of recidivism, many "asocials" spent significant portions of their lives in prisons or similar facilities. "Asocials" might have been even more

despised by the GDR general public than by the GDR criminal law: when GDR courts asked fellow workers of "asocials" for comments and evaluations, the colleagues would often remark that the proposed sentences were too lenient.[79]

"Asocials" truly suffered in East Germany, but were they victims? Was their suffering unjustified? The courts overwhelmingly found that the stigma of a criminal conviction attached to "asocials" should be lifted if the charge was "misused to criminalize persons who were public critics of the systems."[80] This standard was met, for example, in the application of the decree on the restriction of residence to Robert Havemann. It is the *mis*application—and not the mere application—of this norm that Havemann's former lawyer complained of to the FRG court that is trying the 1976 judges for miscarriage of justice: "Restrictions of residence were not used against political dissidents until that point. They were introduced into the penal law against asocial and dark elements."[81] The injustice of the application of this norm to this case was precisely that Havemann was not an "asocial and dark element." This claim is based on the legitimacy of restricting the residence of these other, despicable, persons. It does not challenge the category of the "asocial" or the measures that were routinely used against people who were deemed in this category of socially suspect beings. In the judicial practice of rehabilitation, a "regular" application of norms targeting "asocial conduct" would not necessarily have triggered a positive rehabilitation court decision. If the alleged "asocial" had consistently failed to pay the rent or utility bills, for example, the initial conviction would not be nullified.[82] The sentence might have been unjust, but not sufficiently unjust to warrant a positive rehabilitation decision. Given the FRG courts' moral indifference to these marginalized and poor persons and the Rehabilitation Law's focus on "political persecution" as the main form of injustice in need of legal rehabilitation, convicted "asocials" were mainly excluded from the status of recognized victims.

Upon spelling out the requirements and procedures for the state recognition of victimhood, the Rehabilitation Law determines the material benefits for those who are recognized as victims. Here, the Law establishes another mechanism for restricting the status of recognized victimhood to those whom the state wants to embrace: Section 16, para. 1 establishes a right to compensation payments, while the next paragraph withdraws the right to compensation payments from those who had "violated basic norms of humanity [*Menschlichkeit*] and the rule of law, or have gravely abused their positions for their own advantage or to the disadvantage of others." As a result, the material benefits of the victim status only accrue to those who have never committed relevant injustices. This exclusionary clause goes beyond the mere requirement that the victims' suffering is underserved. Here, the law demands not only that victims were morally blameless in relation to the direct victimization, but that they were morally innocent throughout their life. Victimhood may not be complicated by traces of moral culpability. Here, moral culpability is understood in political terms: the rationale for excluding recognized victims from the material benefits of victimhood is that they have collaborated with an unjust political regime. This exclusion targets not only former Concentration Camp guards like Margot Pietzner—who was initially granted full victim status but had to return the material compensation when her SS past was made public[83]—but also persons who had contributed to GDR policies before (or after) becoming the target of GDR repression. Robert Havemann's lawyer Götz Berger, for example, lost his special pension when it was revealed that he, too, had been a strict socialist judge in the early 1950s. Why is the Rehabilitation Law so exacting in distributing the material benefits of the victimhood status? This answer to this question has a historical and a moral component.

The Rehabilitation Law's approach to recognizing victims and injustices is informed by the FRG's earlier Reparation Laws. These laws aimed to recognize and compensate victims of the Nazi

rule. In practice, judges demanded that in order to be recognized as a victim of Nazi repression under these laws, the claimants must show that their acts were politically motivated. "Non-political" acts, such as contact with Eastern European forced laborers, violations of the Nuremberg Laws prohibiting sexual contact between "Aryans" and "Jews" insofar as they were committed by "Aryans," as well as social protests by teenagers, were often deemed outside the scope of "political" acts and persecution.[84] While the requirement of "political persecution" was restrictively interpreted, the laws also made a distinction between "worthy" and "unworthy" victims. The 1953 Law on Reparations, for example, provided that those who "provided support for the National Socialist or another form of dictatorship" or who "opposed the basic principles of freedom and democracy" are not entitled to compensation.[85] This cryptic exclusion clause meant that those who met the requirement of "political persecution" were categorized as "unworthy" victims if they had supported either the Nazi regime or—more relevant in the context of the application of the law—the East German GDR.[86] Many communists were excluded from the full victim status; some even had to pay back whatever reparations they had received. The exclusionary clauses were widely seen as expressions of disrespect for the predominantly socialist and communist German political resistance to the Nazi regime and one means of persecuting Communists in the FRG of the 1950s and 1960s.[87] In effect, the early FRG aimed to restrict victimhood to those whose political views were acceptable. The distinction between "worthy" and "unworthy" victims flew in the face of what reparation payments were meant to express: instead of compensating undeserved suffering regardless of the victims' motivations, reparation payments came to delineate the realm of presently acceptable political views. The victimhood of those who had, in the eyes of the law, proven themselves "unworthy" of recognition was concealed and denied. The reparation laws had the "practical recognition effect" (Fraser) of rewarding political loyalty and creating a class of saint-like political martyrs—politically too pure and

morally too innocent to be human.

The 1992 Rehabilitation Law picks up these threads of focusing on "political persecution" narrowly interpreted, and then foreclosing reparations to those who had "sinned" in addition to being victims. What is the theoretical significance of the state's obsession with the victims' moral purity? First, here the state insists that victim and perpetrator are mutually exclusive categories—and decides that whoever was a perpetrator cannot also have been a victim. The laws that are categorically excluding "impure" victims from reparations evade social complexity and normative ambiguities by erring on the side of keeping the category of worthy victims small. The definitional insistence on victims' moral purity, I argue, simultaneously idealizes victimhood and disparages victims. It idealizes victimhood as a category untainted by the moral confusion, it pictures victims as heroes. The state "look[s] to the victims for moral reassurance."[88] Thus, the victims "are forced to serve the onlookers"[89] as human beings beyond reproach. Actual self-identified victims predictably fail to live up to this idealized notion of victimhood. Their moral and political imperfections are then used to deny the recognition of their victimhood. Victims, like other people, are no saints. Yet their petition to be recognized as victims offers the state the opportunity to affirm its normative commitments by shaping the category of recognized victimhood in its own image of justice.

Can we avoid restrictions on and exclusions from the category of victimhood? Opening up the category of recognized victimhood to all who would like a share in it seems attractive. Yet we cannot go this path except for at the expense of getting rid of the category of victimhood itself. Victimhood, again, is connected to unjustified suffering. It depends on a contested but operational distinction between accidental, self-inflicted and justified suffering from unjustified suffering. This distinction is important because injustice (but not other suffering) triggers unique and broad duties of redress. If we were to abandon the distinction between recognized victimhood and other suffering, there would be

no resources for countering claims by those who want to claim victimhood and social marginalization without being marginalized. In other words, the line between injustice, misfortune, and legitimate state coercion will always be contested and include injustices, but it cannot be abandoned.

V. Conclusion: Recognition, Victimhood, and Citizenship

Legal rehabilitation proceedings are examples of the state's involvement in the politics of recognition. Facing claims for the legal recognition of victimhood, the state chooses the injustices and victims that it recognizes according to its own imperatives. The process involves exchanges of recognition between persons claiming victimhood and state institutions: If state institutions recognize these claims, the claimants are in turn asked to recognize the authority of the institutions to decide in matters of justice and injustice. The category of recognized victims and the identity of the state are shaped in accordance with dominant views on justice and legitimacy.

In post-1989 Germany, the legal recognition of selected victims is part of the state's project of building substantive legitimacy. This project is liable to idealize and therefore restrict the category of victimhood, thereby denying recognition to those whose victimhood is "marred" with moral and political ambiguities. Self-identified victims have few opportunities to challenge the state's terms of recognizing victimhood.

The "official recognition commitment" of policies like the German Rehabilitation Law is to acknowledge unjustified suffering. Yet the "practical recognition effect" of such policies likely includes a premium on narratives of victimization that fit the state's claim of political legitimacy. "The victims must redeem mankind,"[90] or at least the state that recognizes them. Thus the recognition of victimhood is not only a means of redeeming the victims, it is also involves "the redemption of the

redeemers."[91] A focus on the state in the politics of recognizing victimhood reveals the state's normative investment in the categories it creates. Yet could it be different? Could the state simply recognize all self-identified victims? Or could the state be less passionate in its embrace of certain victims?

The examination of the German policies of recognizing victims shows that the state could have made the category of victims more inclusive, less determined by the political nature and motivation of the deeds and the victimization, and less idealized. Yet the state cannot refuse to draw a line between the self-identified victims it recognizes as victims and others whom it does not grant the status of victims: some former Concentration Camp guards with penitentiary sentences from the GDR should not qualify for victimhood. But these judgments can be made in a more contextualized, individual manner than through the categorical exclusion of such claims by rehabilitation legislation. The victim category cannot become all-encompassing and still have moral purchase. But, more importantly, thinking about victimhood as a social status implies a commitment to redressing the status inequality for those who suffer from it—and only for them. If state-sponsored injustices reduce the social status of their victims, then the point of recognizing victims is to redress these inequalities. Thus, the status model of recognition can indeed offer preliminary answers to what the recognition of victims should entail. To recognize victims properly means to create conditions for civic equality—and not to reward political loyalty, entrench victimhood as an identity, or transform victims into martyrs. Yet victims will always face the danger of "being used untruthfully, as a means to nourish our self-esteem"[92] because the state wants recognition and moral reassurance as much as victims do.

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[1] The exceptions are, most notably, Judith Shklar in *The Faces of Injustice* (New Haven: Yale University Press, 1990), and "Putting Cruelty First" in *Ordinary Vices* (Cambridge, MA: Belknap, 1984). For further developments of Shklar's ideas, see Catherine Lu, "The One and Many Faces of Cosmopolitanism," *Journal of Political Philosophy*, Vol. 8, No. 2 (2000), 244-267.
[2] For an overview of different reparation claims and responses, see Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (Baltimore: Johns Hopkins University Press, 2000).
[3] See Lawrie Balfour, "Reparations *After* Identity Politics," *Political Theory*, Vol. 33, No. 6 (2005), 786-811.
[4] "Former students of native residential schools to get billions in compensation," The Canadian Press, 23 November 2005.
[5] *Mack v AG Canada*, 60 O.R. (3d), 737.
[6] Wendy Brown, *States of Injury* (Princeton: Princeton University Press, 1995), 27. Also see Patchen Markell, *Bound by Recognition* (Princeton: Princeton University Press, 2003), Carolin Emcke, "Between Choice and Coercion: Identities, Injuries, and Different Forms of Recognition," *Constellations*, Vol. 7, No. 4 (2000), 483-495, and James Tully, "Struggles over Recognition and Distribution," *Constellations*, Vol. 7, No. 4 (2000), 469-482.
[7] Taylor (1994), Honneth (2003)
[8] See, for example, Nancy Fraser, "Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation." In Nancy Fraser and Axel Honneth, *Redistribution or Recognition? A Political-Philosophical Exchange* (London and New York: Verso, 2003).
[9] Exceptions are Leonard Feldman, "Redistribution, Recognition, and the State," *Political Theory*, Vol. 30, No. 3 (2002), 410-440, and Patchen Markell, "The Recognition of Politics: A Comment on Emcke and Tully," *Constellations*, Vol. 7, No. 4 (2000), 496-506.
[10] See Carolin Emcke, "Between Choice and Coercion: Identities, Injuries, and Different Forms of Recognition," *Constellations*, Vol. 7, No. 4 (2000), 483-495.
[11] Nancy Fraser's "affirmative" as opposed to "transformative" remedies for recognition injustices are mainly grouped into the recognition of difference and the recognition of common humanity. See Fraser, "Social Justice in the Age of Identity Politics," 45-6. However, since her overall standard for successful recognition is "participatory parity" as the ability "to participate as peers in social life," *ibid*., 47, recognition refers on a more basic level to the recognition of someone as a peer in social life.
[12] Markell, "The Recognition of Politics," 496.
[13] See Brown, *States of Injury*, 27.
[14] For the limits of state power in struggles for recognition, see Moya Lloyd, "Butler, Antigone, and the State," *Contemporary Political Theory*, Vol. 4 (2005), 464.
[15] See, for example, Lawrie Balfour, "Reparations *After* Identity Politics," *Political Theory*, Vol. 33, No. 6 (2005), 786-811.
[16] See Taylor, *The Politics of Recognition*, 25-26.
[17] Shklar, "Putting Cruelty First," 22.
[18] Quoted from "Eigentlich prügeln sich hier nur noch Sieger," *Berliner Zeitung* (14 November 1991).
[19] Erich Buchholz, quoted from Helgard Kowitz, "Mit den Angeklagten gnadenlos umgesprungen," *Süddeutsche Zeitung* (29 November 1997).
[20] The exclusion from the Academy is documented in: Silvia Müller and Bernd Florath, ed., *Die Entlassung* (Berlin: Robert-Havemann-Gesellschaft, 1996).
[21] Kreisgericht Fürstenwalde, *Verfahren S 332/76*, November 26, 1976. Quoted from Bezirksgericht Potsdam, 2. Kassationssenat, *Beschluss in der Kassationssache Robert Havemann*, July 3, 1991. 2 BSK 83/90, p.3-4. Robert Havemann Archive, Berlin. RH 321.
[22] On the secret police's meticulous preparations for the trial, see Clemens Vollnhals, *Der Fall Havemann* (Berlin: Ch. Links Verlag, 2000), 86-110.
[23] The account relies on Thomas Moser, "Geschichts-Prozesse," *Kritische Justiz*, Vol. 34, No. 2 (2001), 222-227.
[24] She asserted that her incorporation into the SS was involuntary; historians claim that this might or might not have been the case. See Moser, "Geschichts-Prozesse," 226.
[25] Borneman, *Settling Accounts*, 13.
[26] Borneman, *Settling Accounts*, 13.
[27] For this dilemma in the case of post-dictatorship Argentina, see Jaime Malamud-Goti, "Punishing Human Rights Abuses in Fledgling Democracies: The Case of Argentina." In: *Impunity and Human Rights in International Law and Practice*, ed. by N. Roht-Arriaza (New York and Oxford: Oxford University Press, 1995), 163-4.
[28] Quoted from: *Berliner Zeitung*, "Eigentlich prügeln sich hier nur noch Sieger," November 14, 1991.
[29] Borneman, *Settling Accounts*, 74.
[30] Shklar, *Faces of Injustice*, 83.

[31] This section benefits from Rosemary Nagy's analysis of victimhood in "Post-Apartheid Justice: Can Cosmopolitanism and Nation-Building be Reconciled?" Manuscript., August 2005, and Catherine Lu's discussion of victimhood in "Giving Victims Their Due," Manuscript., 2005.
[32] Judith Shklar, *The Faces of Injustice* (New Haven: Yale University Press, 1990), 7.
[33] Shklar, *The Faces of Injustice*, 83.
[34] See Elizabeth Jelin, "The Politics of Memory: The Human Rights Movement and the Construction of Democracy in Argentina," *Latin American Perspectives*, Vol. 21 (1994), 38-58.
[35] The Argentine organization HIJOS, for example, draws on a strong sense of solidarity with the disappeared and their surviving children. Still, not all of their members are biological children of the disappeared, and their claim is more a claim of identification with these children by persons from the same generation. See Colectivo Situaciones, *¡Que se vayan todos!* (Berlin: Assoziation A, 2003), 176.
[36] See Ehrhart Neubert, "Opfer im strafrechtlich nicht fassbaren Bereich," in Ulrich Baumann and Helmut Kury, ed., *Politisch motivierte Verfolgung: Opfer von SED-Unrecht* (Freiburg: edition iuscrim, 1998).
[37] Shklar, "Putting Cruelty First," 17.
[38] Emcke, "Between Choice and Coercion," 485.
[39] Emcke, "Between Choice and Coercion," 486.
[40] See Fraser, "Redistribution or Recognition," 77.
[41] Emcke, "Between Choice and Coercion," 492.
[42] George Fletcher, "The Place of Victims in the Theory of Retribution," *Buffalo Criminal Law Review*, Vol. 3 (1999), 57.
[43] Leonard Feldman identifies political exclusion as an independent form of injustice. See Feldman, "Redistribution, Recognition, and the State."
[44] Jaime Malamud Goti, "Punishment and a Rights-Based Democracy," *Criminal Justice Ethics*, Summer/Fall 1991, 7.
[45] *Ibid.*
[46] See Ruth Jamieson and Kieran McEvoy, "State Crime by Proxy and Juridical Othering," *British Journal of Criminology*, Vol. 45 (2005), 504-527. The connection between a fragile legal personality and the denial of rights is apparent in the discussions about a "criminal law for enemies" separate from a "criminal law for citizens." There, the enemy is not regarded as a person and accordingly does not have a right to a full procedurally fair trial—although such a trial may be granted to enemies for reasons of political prudence. See Günther Jakobs, "Bürgerstrafrecht und Feindstrafrecht," HRRS 2004, 91-3.
[47] See Max Weber, "Class, Status, Party." In: *From Max Weber*, ed. by H.H. Gerth and C. Wright Mills (New York: Oxford University Press, 1946). 181-187.
[48] Nancy Fraser, "Rethinking Recognition," *New Left Review* (2000), 113.
[49] See Markell, "The Recognition of Politics," 496.
[50] My account relies on an interview with Manfred Schledermann (24 August 2004), the 1959 court decision, and a collection of letters to a friend in which he recounts his life prior to the trial.
[51] Whether persons like Manfred Schledermann were victims of crimes depends on whether the secret police officers, the prosecutors ore the judges can be found criminally responsible of mistreatment of prisoners or miscarriage of justice.
[52] Markell, "The Recognition of Politics," 496.
[53] Markell, "The Recognition of Politics," 496.
[54] Judith Butler, "Violence, Mourning, Politics," in *Precarious Life: The Powers of Mourning and Violence* (London and New York: 2004), 43.
[55] Butler, "Violence, Mourning, Politics," 44.
[56] See Markell, *Bound by Recognition*, 39-41.
[57] Emcke, "Between Choice and Coercion," 492.
[58] Emcke, "Between Choice and Coercion," 493.
[59] Emcke, "Between Choice and Coercion," 493.
[60] Butler, "Violence, Mourning, Politics," 44.
[61] See Golfo Alexopoulos, "Victim Talk: Defense Testimony and Denunciation under Stalin," *Law & Social Inquiry*, Vol. 24, No. 3 (1999), 637-654.
[62] Interview with Manfred Schledermann (24 August 2004).
[63] *Ibid.*
[64] Borneman, *Settling Accounts*, 13.
[65] See Markell, *Bound by Recognition*, 30.

[66] The FRG authorities paid for the release of many political prisoners irrespective of whether they had petitioned to leave the GDR. It was apparently assumed that the political prisoners would choose to go to the FRG rather than spend more time in prison.
[67] Manfred Schledermann, Interview. 24 August 2004.
[68] *Häftlingshilfegesetz*, section 10, para. 4.
[69] *Ibid.*
[70] *Ibid.*
[71] See Hubert Rottleuthner, "Vorwort," in *Das Havemann-Verfahren*, ed. by Hubert Rottleuthner (Baden-Baden: Nomos, 1999), 14-5.
[72] Bezirksgericht Potsdam, *Beschluss in der Kassationssache des Professors Dr. Robert Havemann.* July 3, 1991. 2 BSK 83/90. Robert Havemann Archive, Berlin. RH 321.
[73] Ibid., 2.
[74] Nancy Fraser, "From Redistribution to Recognition? Dilemmas of Justice in a 'Post-Socialist' Age," *New Left Review*, I/212 (1995), 83.
[75] Inga Markovits, "Selective Memory: How the Law Affects What We Remember and Forget about the Past – The Case of East Germany." *Law & Society Review*, Vol. 35, No. 3 (2001), 549.
[76] See Schröder, "Fahnenflucht, " 352-535, and Wolfgang Pfister, "Die Aufhebung von Willkürurteilen," in *Eine Diktatur vor Gericht: Aufarbeitung von SED-Unrecht durch die Justiz*, ed. by Jürgen Weber and Michael Piazolo (Munich: Olzog, 1995), 190.
[77] Michael Schröder, "Fahnenflucht," 350.
[78] Markovits, "Selective Memory," 550.
[79] *Ibid.*, 551.
[80] Pfister, "Die Aufhebung von Willkürurteilen," 193.
[81] Götz Berger. Witness statement in the case against Hauke et al., 12th day of hearings, March 6th, 1996. Quoted from notes taken at the trial by Katja Havemann. Robert Havemann Archive, RH 327.
[82] Pfister, "Die Aufhebung von Willkürurteilen," 193.
[83] See Moser, "Geschichts-Prozesse," 222-3.
[84] See Ingo Müller, *Hitler's Justice: The Courts of the Third Reich* (Cambridge: Harvard University Press, 1991), 265.
[85] Quoted from Müller, *Hitler's Justice*, 266.
[86] On the jurisprudence on the reparation entitlements, see Alexander von Brünneck, *Politische Justiz gegen Kommunisten in der Bundesrepublik Deutschland 1949-1968* (Frankfurt am Main: Suhrkamp, 1978), 296-8.
[87] Von Brünneck, *Politische Justiz*, 298.
[88] Shklar, "Putting Cruelty First," 13.
[89] Shklar, "Putting Cruelty First," 17.
[90] Shklar, "Putting Cruelty First," 15.
[91] Makau Mutua, 'Savages, Victims, and Saviors: The Metaphors of Human Rights," *Harvard International Law Journal*, Vol. 45 (2001), 207-8.
[92] Shklar, "Putting Cruelty First," 17.