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A Grave Responsibility: A Rhetorical Critique of the Opening Statement at Nuremberg Using the Narrative Perspective

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I. Introduction

135. This article examines the use of rhetoric by Robert H. Jackson during his opening statement for the prosecution at the first Nuremberg Trial through the lens of the narrative perspective. The resulting discovery was that the statement was designed to not only compel the trier of fact to find the defendants guilty, but also to justify to the world the creation of international criminal law.

136. British judge and politician, Norman Birkett, described the first Nuremberg Trial as "the greatest trial in history."[2] In large part, there is truth to this statement. International criminal law would not exist as it does today without the Nuremberg Trials. For the majority of the twentieth century, there was no law in existence to provide prosecution of the perpetrators of heinous international crimes, such as war

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2 Patricia M. Wald, *Running the Trial of the Century: The Nuremberg Legacy*, 27 Cardozo L. Rev. 1559, 1574 (2006).

crimes or crimes against humanity. Preceding modern history, interstate wars were so prevalent that it seemed futile to institute criminal proceedings against those responsible for engaging in them.[3] It was not until the First and Second Hague Conventions in 1899 and 1907 that sovereign states began to have conversations of regulating warfare internationally; however, these peace-driven discussions were constrained by the very states involved in them. Whenever the dialogue led to the topics of international law and international tribunals, the states' focus shifted, favoring state sovereignty in the end.[4] As the Nuremberg judges in 1946 indicated, "The Hague Convention nowhere designates such practices (methods of waging war) as criminal, nor is any sentence prescribed, nor any mention made of a court to try and punish offenders."[5]

137. The establishment of the Nuremberg Trials changed the international status quo on criminal law. In 1945, at the end of the second World War, the four nations who had emerged victorious—Britain, France, Russia, and the United States—held the responsibility to carry out retribution against the Nazis for some of the most horrendous atrocities ever committed against mankind.[6] This responsibility came into fruition with the four countries signing the London Agreement of August 8, 1945, which instituted a process for prosecuting the most major war criminals by way of an International Military Tribunal.[7] The Nuremberg Trial of the Major Nazi War Criminals, which occurred between November 1945 and October 1, 1946, was the first of the post-World War II trials maintained by this new international criminal tribunal system. The trial proved to be particularly paramount to international law post-judgment in December of 1946, when the General Assembly of the United Nations affirmed the implementation and decision of the court.[8]

138. The artifact of issue in this article is the Opening Statement of The Nuremberg Trial of the Major Nazi War Criminals by Chief Prosecutor for the United States of America, Mr. Robert H. Jackson. Jackson, a United States Associate Supreme Court Justice at the time of the trial, delivered the first words for the side prosecuting the people most responsible for an estimated eleven million killings inside of Nazi

3 Christian Tomuschat, *The Legacy of Nuremberg*, 4 J. Int'l Crim. Just. 830 (2006).

4 Benjamin B. Ferencz, *International Criminal Courts: The Legacy of Nuremberg, in* COALITION FOR THE INTERNATIONAL CRIMINAL COURT 1, 3–4 (1997).

5 PHILIPPE SANDS, FROM NUREMBERG TO THE HAGUE, THE FUTURE OF INTERNATIONAL CRIMINAL JUSTICE 31 (2003).

6 Susan Mary Twist, *Retrospectivity at Nuremberg: The Nature and Limits of a Schmittian Analysis* (Doctoral Thesis, University of Central Lancashire 2012).

7 London Agreement of August 8th, 1945.

8 WHITNEY R. HARRIS, TYRANNY ON TRIAL: THE TRIAL OF THE MAJOR GERMAN WAR CRIMINALS AT THE END OF THE WORLD WAR II AT NUREMBERG GERMANY 1945–1946 at 109 (2006).

Germany and its occupied territories during World War II.[9] His choice of words in this prosecutorial presentation of the facts was important not only to the finding of guilty verdicts for twenty-one top officials of the Third Reich,[10] but also in the justification of the international tribunal itself.

139. The significance of undergoing an analysis of the narrative created by Jackson through this artifact is instrumental to understanding why the trial came to be revered as a milestone in the development of international law.[11] Throughout his opening of the trial, Jackson's rhetoric creates two different stories that can be traced back to the London Agreement of August 8, 1945. The clearest, and most expected, story driven throughout the entire opening statement is the imposition of criminal penalties upon the defendants. Just as important though is Jackson's other message, which is to justify the implementation of international criminal laws and the tribunal at Nuremberg. This rhetorical critique therefore aims to pull back the veil on the opening statement at Nuremberg to show the underlying narrative, which calls not only to the court, but also to the world, for the retribution of warmongering leaders and international laws to bring forth that very justice.

140. I will start my analysis by explaining what the definitions of rhetoric and rhetorical critique are, why they matter, and how they become applicable here. Afterwards, I will introduce the rhetorical situation and an analysis of the situation in which Jackson's opening statement was presented. Then I will explain the methodology of the narrative perspective for this rhetorical critique, how it is applied, and how it is applied to the artifact at hand. Lastly, the article concentrates on the criticism of the artifact itself, using the methodology of the narrative perspective outlined in the previous section.

II. Rhetoric and Rhetorical Criticism

141. Rhetoric has developed many different meanings since its inception in ancient Greece, both broad and narrow. Merriam-Webster Dictionary, for example, defines rhetoric in two ways. The first definition is "language that is intended to influence people and that may not be honest or reasonable."[12] This is the most commonly

9 Michael R. Marrus, *The Nuremberg Trial: Fifty Years Later*, 66 The American Scholar 563, 563–570 (1997).

10 Nazi War Criminal Records Interagency Working Group, The Trial of the Major War Criminals Before the International Military Tribunal, (IMT) Nuremberg: 11/14/1945–11/1/1946.

11 Christian Tomuschat, *The Legacy of Nuremberg*, 4 J. Int'l Crim. Just. 830, 830–844 (2006).

12 "Rhetoric," Merriam-Webster Online Dictionary (2015).

used understanding of rhetoric — as convoluted, flashy, and/or embellished language that people may use to deceive their audiences. The second way in which rhetoric is defined is "the art or skill of speaking or writing formally and effectively especially as a way to persuade or influence people." This is more in line with the working definition by Jim A. Kuypers and Andrew King that is applied in this rhetorical critique — "[t]he strategic use of communication, oral or written, to achieve specifiable goals."[13]

142. Kuypers and King's narrow conception of rhetoric has two main ideas. The first involves the very idea behind the language used — its strategic purpose — in communication. Now, looking at rhetoric in a broader sense, we use all kinds of symbols to communicate. "Speeches, essays, conversations, poetry, novels, stories, television programs, films, art, architecture, plays, music, dance, advertisements, furniture, public demonstrations, and dress are all forms of rhetoric."[14] However, symbols whose meanings are more easily understood and agreed upon in communication are words both spoken and written. The meanings of other forms of rhetoric like art, plays, and dance are not as well understood and agreed upon in interpretation. The importance of using spoken or written words in the strategic nature of rhetoric then, is to avoid inferences of the audience overtaking the intentions of the communicator. This helps to further the second idea behind Kuypers and King's conception of rhetoric, which is to persuade. Rhetoric is a means to persuade because it is intentional. Those communicators who plan their choice of words and ideas ahead of time are not merely strategizing, but deliberately deciding what messages to send to their audiences. This act is inherently persuasion; the speaker is purposely choosing the way in which they are sending information to their listener to produce a certain outcome. Whether it is in choosing a decision or changing a belief system, a person who engages in rhetoric seeks to influence the behavior of their audience.[15] In summary, "[i]t is not communication for communication's sake; rhetorical communication, at least implicitly and often explicitly, attempts to coordinate social action."[16]

143. To develop an understanding of how rhetoric persuades and influences us, we engage in criticism. Most definitions of criticism include attributes such as appraisal, judgment, and analytical examination.[17] For the purposes of criticizing rhetoric,

13 American Rhetoric, Scholary Definitions of Rhetoric (2015).

14 Sonja K. Foss, The Nature of Rhetorical Criticism in Rhetorical Criticism: Exploration and Practice 6 (1996).

15 Jim A. Kuypers & Andrew King, *What is Rhetoric?, in* Rhetorical Criticism: Perspectives In Action 1–5 (2009).

16 Donald C. Bryant & Gerard A. Hauser, *Rhetoric: Its Function and Its Scope*, 39 Q. J. Speech 401 (1953).

17 Donald C. Bryant, Rhetorical Dimensions in Criticism 25 (1973).

however, we specifically analyze and evaluate to see how the communicator attempts to persuade and influence social change. A rhetorical critique is more than just an emotional response; it is focused, planned, and conscious.[18] In this manner, the critic can identify new viewpoints towards an example of rhetoric, which can aid in its understanding and in the expansion of knowledge about human communication overall. The critique is generally comprised of three stages: conception, communication, and counter-communication. Now, specific cases of rhetoric that undergo a rhetorical critique are called artifacts. The first stage of rhetorical criticism, conception, involves generating insight into the artifact. This can occur through spontaneously reacting to, or systematically examining, a rhetorical artifact. At the end of this stage, the critic's insight and knowledge generated from the particular artifact either stays with the person or is shared with others during the next stage of this critiquing methodology.

144. The communication stage involves sharing propositions of the critique with those who will have the finished work shared with them. When presenting these assertions, it is necessary to provide evidence to validate the critic's new perspective, because critics are inviting their audience to agree with them. The critic can rely on real evidence (notes, texts), testimonial evidence (interviews, diaries, newspaper accounts), and other forms of support to use as sources for his or her argument. The overall argument will then be assessed on the basis of the credibility of those sources. As Craig R. Smith has suggested, "when we write criticism ... we ought to confine ourselves to solid argumentation inclusive of valid arguments built on sufficient and high quality evidence produced from close textual readings and masterings of context."[19]

145. The importance of source material is relevant because the critic is arguing his or her own viewpoint of the rhetorical artifact in the critique. Rhetorical criticism must function as argument to be effective. To be effective, the critic should clearly state their methodology, evidence and conclusion in the critique.[20] The rhetorical critique is a "reason-giving activity; it not only posits a judgment, the judgment is explained, reasons are given for the judgment, and known information is marshaled to support the reasons for the judgment."[21] After the critique has come into being, it reaches its final stage once it is actively shared with its intended audience.

146. The last stage of this rhetorical criticism methodology, the counter-communication stage, involves looking to others for feedback on the rhetorical critique. The

18 SONJA K. FOSS, THE NATURE OF RHETORICAL CRITICISM IN RHETORICAL CRITICISM: EXPLORATION AND PRACTICE 25 (1973).

19 Craig R. Smith, *Criticism of Political Rhetoric and Disciplinary Integrity*, 4 Am. Comm. J. (2000).

20 BERNARD L. BROCK, ROBERT L. SCOTT, & JAMES W. CHESEBRO, METHODS OF RHETORICAL CRITICISM: A TWENTIETH CENTURY PERSPECTIVE 13 (1989).

21 Wayne Brockriede, *Rhetorical Criticism As Argument*, 60 Q. J. of Speech 165, 167 (1974).

feedback may stem from many different areas depending on how the work is issued. It is important that the critique be discussed so that the critic's ideas are shared with those who have unlikely seen the artifact in such a light before.[22] Through this process, the critic becomes an advocate for knowledge.

147. Overall, rhetoric by itself is not a body of knowledge, but rather a means of applying knowledge.[23] Rhetorical criticism generates new knowledge through reasoning and judgment. This is why rhetorical criticism has so much to offer.[24] The understanding built by it shows us how rhetoric attempts to bring, or has brought about, societal change. In spreading rhetorical criticism, the critic addresses a particular audience.[25] Through the medium by which this task is accomplished, a critic's advocacy of their artifact insight is conformed to what is known as the rhetorical situation.[26]

III. The Rhetorical Situation

148. Rhetorical artifacts acquire meaning from the situation in which they are created.[27] Their very purpose is to produce some form of action or change. It is true that any audience is subject to being influenced by rhetoric. However, there is a specific audience for which the rhetoric is intended. It is in the context of this audience being a mediator of change that the situation from which the rhetoric is brought becomes controlling. In "The Rhetorical Situation," Llloyd F. Bitzer defines the rhetorical situation as:

> [A] complex of persons, events, objects and relations presenting an actual or potential exigence which can be completely or partially removed if discourse introduced into the situation can so constrain human decision or action as to bring about the significant modification of the exigence.[28]

22 Edwin Black, *On Objectivity and Politics in Criticism*, 4 Am. Comm. J. (2000).

23 Donald C. Bryant & Gerard A. Hauser, *Rhetoric: Its Function and Its Scope*, 39 Q. J. Speech 401, 401–424 (1953).

24 Craig R. Smith, *Criticism of Political Rhetoric and Disciplinary Integrity*, 4 Am. Comm. J. (2000).

25 Jim A. Kuypers, *Rhetorical Criticism As Art, in* RHETORICAL CRITCISM: PERSPECTIVES IN ACTION 13, 14, 15–16, 19 (2009).

26 Robert L. Ivie, *The Social Relevance of Rhetorical Scholarship*, 81 Q. J. of Speech 2 (1994).

27 KATHLEEN FARRELL, MARILYN J. YOUNG, & JIM A. KUYPERS, RHETORICAL SITUATION IN RHETORICAL CRITICISM: PERSPECTIVES IN ACTION 33–34 (2009).

28 Lloyd F. Bitzer, *The Rhetorical Situation*, 1 Philosophy and Rhetoric 1, 3–4, 6 (1968).

149. Delving into this definition, exigence is the first part of the rhetorical situation. It is a problem, concern, defect or obstacle. There may be more than one exigence in a situation, but not all exigencies are rhetorical. Exigence that is rhetorical must be modifiable, because the rhetoric must be able to affect it. Exigence also functions to specify the audience to be addressed and the change to be affected. This is important because the outcome of the situation depends on what is being said to the audience.[29] The second part of the definition is audience. Rhetoric always requires an audience because it seeks to produce change, which is made possible by the persons to whom the work is addressed. This audience must also be capable of producing the change that is sought through the rhetoric.[30] In other words, the rhetorical audience is the group that can modify the exigence. Lastly, the rhetorical situation consists of constraints, which can be persons, events, objects, or relations that have the ability to restrict the decision and action necessary to modify the exigence. Sources of constraint include "beliefs, attitudes, documents, facts, traditions, images, interests, motives and the like." The rhetor may even be the one to bring constraints through the usage of a particular method of rhetoric. They can influence what the rhetor should, or should not, say.[31]

150. Exigence, audience and constraints are the broad concepts that altogether comprise the rhetorical situation. Once the rhetor enters the situation and presents their discourse through any given medium, they then too become part of the situation.[32] Bitzer views all of the elements that influenced the situation in which rhetoric is called for — "the events, the individuals involved, the circumstances, and the relationships" — to be a part of the totality of the situation as well. All of these pieces must be considered together when analyzing the situation of a rhetorical piece.[33]

151. The rhetorical situation of the artifact being criticized in this paper article derives from the period immediately following World War II. This War was the most destructive and deadliest that the world had ever seen. More than 50 nations took place in the fight, and more than 38 million lives were taken in the process.[34] The War affected the entire globe. During this time of waging war, the Nazi Party of Germany committed some of the most heinous atrocities known to man, murdering

29 JIM A. KUYPERS & ANDREW KING, *What is Rhetoric?, in* RHETORICAL CRITICISM: PERSPECTIVES IN ACTION 7 (2009).

30 Lloyd F. Bitzer, *The Rhetorical Situation*, 1 Philosophy and Rhetoric 1, 6–7 (1968).

31 Kathleen Farrell & Marilyn J. Young, *The Rhetorical Situation, in Rhetorical Criticism: Perspectives in Action* 33–34 (2009).

32 Jim A. Kuypers & Andrew King, *What is Rhetoric?, in* RHETORICAL CRITICISM: PERSPECTIVES IN ACTION 8 (2009).

33 Kathleen Farrell & Marilyn J. Young, *The Rhetorical Situation, in Rhetorical Criticism: Perspectives in Action* 33–34 (2009).

34 Scholastic Inc., *World War II: An Overview*.

millions.[35] Unfortunately, there were no crimes in existence with which to charge the most responsible Nazis, along with no international tribunal to hear a case against them.[36] This all changed when the Nuremberg trials were established.[37] The opening statement of Robert H. Jackson at the first Nuremberg trial, which is the artifact at hand, takes place in the wake of these circumstances.[38]

152. The analysis of the rhetorical situation of this piece begins with the first part of Bitzer's definition — exigence.[39] The most identifiable exigence present is the purpose for Jackson's participation in the trial, which was to prosecute the Nazi members most responsible for the millions of deaths incurred due to the actions of their regime.[40] Even though this specifies an audience to be addressed, being the international tribunal, and the change to be addressed, finding the elite Nazi members guilty, this exaction of retribution is not the only exigence found within this rhetorical situation.

153. The underlying exigence present is the need for international criminal law. Again, at the time the Nuremberg Trials were approved and took place, there were no international criminal laws or tribunals in existence to punish those who committed such atrocities as the Nazis did against mankind. Even though the trials at Nuremberg established an unprecedented act of international law, approved by four of the largest nations in the world, it still needed to be validated if there was to be any hope for future international criminal law establishment.[41]

154. Thus, in this rhetorical situation, the audience that is being addressed to modify these exigencies is not just the judicial panel of the tribunal at Nuremberg, but also the world.[42] While this trial occurred, it was simultaneously broadcast worldwide.[43] The record was even made available in four different languages.[44] Jackson,

35 Susan Mary Twist, *Retrospectivity at Nuremberg: The Nature and Limits of a Schmittian Analysis* (Doctoral Thesis, University of Central Lancashire 2012).

36 Michael R. Marrus, *The Nuremberg Trial: Fifty Years Later*, 66 The American Scholar 563 (1997).

37 London Agreement of August 8, 1945.

38 *Opening Statement Before the International Tribunal*, THE ROBERT H. JACKSON CENTER, November 22, 1945.

39 Kathleen Farrell & Marilyn J. Young, *The Rhetorical Situation, in Rhetorical Criticism: Perspectives in Action* 33–34 (2009).

40 Susan Mary Twist, *Retrospectivity at Nuremberg: The Nature and Limits of a Schmittian Analysis* (Doctoral Thesis, University of Central Lancashire 2012).

41 London Agreement of August 8th, 1945.

42 Lloyd F. Bitzer, *The Rhetorical Situation*, 1 Philosophy and Rhetoric 1, 6 (1968).

43 Walter Cronkite, *Listening in on the Nuremberg Trials,* NPR (Feb. 20, 2006).

44 Benjamin B. Ferencz, *International Criminal Courts: The Legacy of Nuremberg,* 10 Pace Int'l L. Rev. 203, 212 (1997).

as his voice became heard around the world, had to address to the human populace why the Nuremberg trials should be the way to deal with the Nazis. The validity of the four great nations of the time's decision to hold a tribunal to try global perpetrators like the Nazis depended on it. With Jackson's opening statement being the beginning words of the trial,[45] his rhetoric had the opportunity to persuade the world through the attention of its people to continue to enact international criminal law.

155. This rhetorical situation was not without constraint however. The belief that interstate war was so prevalent that it was futile to institute criminal proceedings against those responsible for engaging in them was detrimental to establishing new laws. Also, prior to the Tribunal, there had never been any outright laws made to make aggressive war an illegal act internationally. At the time of Jackson's opening, there were only treaties, conventions and declarations that spoke out against aggressive war.[46] This made all of the Nuremberg tribunal's charges ex post facto, meaning the list of crimes that the defendants were charged with was instituted after they had committed the offenses.[47] In this same vein, the court in which Jackson was trying the case had the responsibility to exact retribution on behalf of all nations who were affected by the devastating actions of the Nazis. This was an additional burden Jackson had to take on as he began the prosecution's proceedings with his opening statement.

156. Jackson brought his own constraints into the rhetorical situation as well. He represented the United States, who may have assisted in ending World War II, but nevertheless lost the least amount of citizens between the four nations who established Nuremberg.[48] This may have reduced the credibility of Jackson in the setting before he began. Jackson also helped to establish the Nuremberg trials. Acting as representative for the United States at the London Agreement summit, he argued for the imposition of criminal charges against the Nazi defendants, whether ex post facto or not.[49] This may leave some in the situation already under the belief that Jackson did not have to justify the proceeding itself. At the time, most of Germany already believed the trial was being unrightfully imposed upon the country, and the fact that the victorious countries were the judges and prosecutors also discredited the proceedings in their eyes.[50]

45 Michael R. Marrus, *The Nuremberg Trial: Fifty Years Later*, 66 The American Scholar 563 (1997).

46 Benjamin B. Ferencz, *International Criminal Courts: The Legacy of Nuremberg,* 10 Pace Int'l L. Rev. 203, 212 (1997).

47 Christian Tomuschat, *The Legacy of Nuremberg*, 4 J. Int'l Crim. Just. 830, 834 (2006).

48 *By the Numbers: World-Wide Deaths*, The National WWII Museum.

49 *London Agreement & Charter, August 8, 1945*, The Robert H. Jackson Center.

50 Christian Tomuschat, *The Legacy of Nuremberg*, 4 J. Int'l Crim. Just. 830 (2006).

157. It must also be explained that Jackson's discourse in this rhetorical situation was not necessarily constrained due to the fact that it was an opening statement. Generally, the understanding of opening statements in the United States is that although they should be as persuasive as possible in presenting the facts of the case, these statements are to be limited in the extent they make conclusions.[51] Also, the facts presented during opening statements are bound to certain evidentiary rules of admission, such as hearsay or logical relevance.[52] None of this was the same for the Nuremberg Trials. The Constitution of the International Military Tribunal, which established its rules of procedure, makes no reference as to how Jackson must limit the scope of his argumentation in opening statement. Furthermore, under Article 19 of the Constitution, the tribunal was not bound by any rules in the admissibility of evidence. Instead, the court would admit any evidence it deemed to have probative value.[53] These opening statement differences did not serve to constrain Jackson's discourse; rather, they opened the realm of persuasion for him in this rhetorical situation.

158. Although the rhetorical situation is rarely used as the sole method for examining a rhetorical critique, it does provide a beginning point for analysis. Through the rhetorical situation, a critic can view all of the elements that played a factor in creating the context for the discourse. Therefore, the evaluation of situation greatly improves the comprehension of other methods of rhetorical criticism, such as the narrative perspective.[54]

IV. The Narrative Perspective

159. Before explaining the narrative perspective, it is important to briefly outline what perspectives mean to rhetorical criticism. Generally, a rhetorical critique is advanced through the use of one of many perspectives on criticism. This is because rhetorical artifacts are "multi-dimensional, complex and nuanced," and a perspective assists in the critic's understanding. Although some perspectives can be better for certain artifacts, there is no one best way of examining rhetoric. In the end, it is the subjectivity of the critic, not the perspective, which produces the analyzation that becomes the critique.[55]

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51 CHARLES H. ROSE III, FUNDAMENTAL TRIAL ADVOCACY 66–81 (2010).

52 CHARLES H. ROSE III, FUNDAMENTAL TRIAL ADVOCACY 106 (2010).

53 London Agreement of August 8, 1945.

54 Kathleen Farrell & Marilyn J. Young, *The Rhetorical Situation, in Rhetorical Criticism: Perspectives in Action* 35 (2009).

55 Jim A. Kuypers, *Rhetorical Criticism As Art, in* RHETORICAL CRITCISM: PERSPECTIVES IN ACTION 13–15, 17 (2009).

160. To begin the explanation of the narrative perspective, a description of narrative is necessary. The most basic definition of narrative is that it is a story. It is different from other forms of rhetoric because it is neither purely descriptive nor argumentative. Narrative can be found throughout all forms of human communication today — in music, movies, television, books, academia, and more. It has universal function — not one socioeconomic class or culture dominates narrative.[56] This is because all humans live out narratives in their own lives, making them capable of understanding another's life in terms of narrative.[57] For these reasons, narrative is useful as a perspective for examining rhetoric. Although there are many different approaches to analyzing rhetoric from a narrative perspective, this rhetorical critique will apply the three-step methodology developed by Robert Rowland. The first part of the analysis deals with each component of the narrative form being identified within the artifact. Next, the artifact is examined for how its story functions with its audience. Lastly, the artifact's story and functioning is evaluated for its effectiveness in persuading its audience.[58]

161. The first step in narrative analysis involves identifying the components of the story. Each story contains characters, a setting, plot, and a theme. The actions of the characters within a narrative are what the story is about. These characters consist of one or more protagonists, who are sometimes referred to as heroes, and antagonists, who drive conflict within each story. The conflicting interactions between the antagonists and protagonists become the central focus of the narrative. The second component of narrative is setting, which is where the story takes place in space and time. Rhetoric can be used to transport audiences to any point in time through the use of narrative. The next component of narrative form is plot, which is the action of the story. Finally, the last component, theme, is the message of the story. This message of the narrative can be either explicit or implicit. When implicit, there may be different translations of the message by the audience, which needs to be taken into account by the rhetorical critic using narrative analysis. Altogether, these components make up the narrative form.

162. The next stage of Rowland's methodology is narrative function. This step involves the critic examining four different ways in which the narrative attempts to be rhetorical, which is to persuade its audience. Traditionally, people have often utilized narrative to aid in the comprehension of the world.[59] However, stories can

56 Dell Hymes, *A Narrative View of the World*, *in* LANGUAGE IN EDUCATION: ETHNOLINGUISTIC ESSAYS 132 (1980).

57 ALASDAIR MACINTYRE, AFTER VIRTUE: A STUDY IN MORAL THEORY 197 (1981).

58 Robert Rowland, *The Narrative Perspective, in* RHETORICAL CRITICISM: PERSPECTIVES IN ACTION 117–118, 126–128 (2009).

59 Lewis O. Mink, *Narrative Form As Cognitive Instrument*, *in* THE WRITING OF HISTORY: LITERARY FORM AND HISTORICAL UNDERSTANDING 131 (1978).

also serve to influence others to accept a certain viewpoint or take certain actions. The first rhetorical function of narrative is to capture and keep the audience's attention. A strong means of accomplishing this end is through the usage of narratives that appear to be credible. The second rhetorical function is to create a sense of identification between the characters or narrator of the story and the audience to whom the rhetoric addresses. Thirdly, a function of narrative is to break down the figurative barrier between the audience and the narrative itself. The idea is to transport people to another time, place or culture, which will aid in their understanding. Finally, the last rhetorical function of narrative is to create a strong emotional reaction within the audience by tapping into their values and needs.

163. The third overall step necessary to complete the analysis is combining the narrative form and function and arguing whether or not they are effective. In completing this step, the critic should first consider whether or not the formal elements are compelling to the audience. Next, the critic should analyze the effectiveness of the story in regards to the four rhetorical narrative functions. Lastly, the critic should consider the credibility of the narrative in relation to the audience.[60]

V. The Rhetorical Criticism

164. When analyzing Jackson's opening statement, I applied Rowland's method of narrative analysis step-by-step. First, I broke down each line of the artifact to most accurately identify all four components of the narrative form. Afterwards, I analyzed the artifact using the four rhetorical functions of the methodology. Finally, I linked the narrative form components and four rhetorical functions together to consider the story's credibility with its audience.

Form Identification

165. The first part of this analysis, identifying the components of the narrative, begins with the characters involved. The most explicit characters of the artifact are the parties to the case: the prosecution — which is made up of attorneys from Russia, Great Britain, the United States, and France — and the twenty-one Nazi defendants.[61] Following this characterization of the parties comes an identification of

60 Robert Rowland, *The Narrative Perspective, in* RHETORICAL CRITICISM: PERSPECTIVES IN ACTION 117, 119–123, 128 (2009).

61 Doug Linder, *The Nuremberg Trials*, UNIVERSITY OF MISSOURI-KANSAS CITY SCHOOL OF LAW (2000).

protagonists and antagonists.[62] Since the states here are bringing their case against the defendants for criminal actions, they fit the heroic description of protagonists, while the defendants naturally fill the role of the antagonists, as they are creating the conflict that brings forth this situation. Some of the defendants are called out during the opening statement in describing certain acts, but throughout the majority of this article they are addressed as the defendants together. These are the characters that drive the explicit story of criminal justice.

166. The characters that drive the implicit narrative conflict are Robert Jackson, the court, and the naysayers of the Nuremberg process around the world. Jackson and the court represent the protagonists, attempting to create international criminal law that will safeguard the world against another devastating war. On the other hand, the people globally who disapprove of Nuremberg, while they may have very valid arguments such as ex post facto law,[63] are the antagonists that drive the narrative conflict between the two groups forward. In the opening minutes of Jackson's statement, he addresses the concerns over the court by stating:

> This tribunal, while it is novel and experimental, is not the product of abstract speculations nor is it created to vindicate legalistic theories. This inquest represents the practical effort of four of the most mighty of nations, with the support of 17 more, to utilize international law to meet the greatest menace of our times — aggressive war.[64]

167. Although this opening statement is being delivered to the court, Jackson's words continually address the concerns of those listening around the world[65] who doubt its validity just as much as the judicial panel in front of him.[66]

168. The next step in form identification is to identify the place in which the narrative is set and what it means to the story.[67] As stated earlier, World War II was the most destructive war ever to occur at this point, and thus there were fewer buildings able to host an international criminal trial.[68] Although the majority of the

62 Robert Rowland, *The Narrative Perspective, in* RHETORICAL CRITICISM: PERSPECTIVES IN ACTION 117, 118 (2009).

63 Christian Tomuschat, *The Legacy of Nuremberg*, 4 J. Int'l Crim. Just. 830, 830–844 (2006).

64 *Nuremberg Trial Proceedings, Volume 2: Second Day, Wednesday, 21 November 1945*, YALE LAW SCHOOL p. 98.

65 Walter Cronkite, *Listening in on the Nuremberg Trials,* NPR (Feb. 20, 2006).

66 *Nuremberg Trial Proceedings, Volume 2: Second Day, Wednesday, 21 November 1945*, YALE LAW SCHOOL pp. 98–154.

67 Robert Rowland, *The Narrative Perspective, in* RHETORICAL CRITICISM: PERSPECTIVES IN ACTION 117, 129 (2009).

68 Scholastic Inc., *World War II: An Overview*.

world powers contended that Berlin would be the ideal location for this trial, Jackson stuck to Nuremberg and prevailed. He knew that the city had a large, preserved courthouse that would be ideal for this tribunal. Furthermore, he was very aware that Nazi rallies had been occurring there since the political party's very beginning. This trial, then, would become a symbol for the beginning and the end of the Nazi regime.

169. Throughout the opening statement, Jackson transports his audience, from the setting in which he is delivering his words, to different points in time and places during the war. He does not waste any time at the beginning by pointing out that less than eight years prior to the trial, the courtroom in which the tribunal was being held was used as a Nazi base to hold their soldiers. He also indicates that all witnesses and documents to be presented at the trial were previously in enemy hands.

170. This theme of referring to different Nazi actions at different points in time recurs in the entirety of its organization, from the beginning of the statement all the way to its end. First, with "The Lawless Road to Power," Jackson shows how the Nazi party came into being and seized power in Germany, from recalling the time it proclaimed its program at Munich in February of 1920, all the way to the point of Adolf Hitler becoming Chancellor of the German Republic in January of 1933. Next, in "The Consolidation of Nazi Power," he describes the Nazi regime starting to control the lives of Germany's people by destroying its working class and persecuting its Christian churches. Then, he carefully works through depicting the Nazis' plans to disenfranchise and exterminate the Jewish people. Finally, before turning the audience's attention back to the realm of the courtroom, Jackson tells the audience how the Nazis aggressed through all of Europe, with complete disregard for anyone standing in their way.[69]

171. These places and points in time that Jackson wades the audience through set the stage for the third component of narrative form, the plot. The action of the story is quite keen. During "The Lawless Road to Power," Jackson outlines the war of aggression that the Nazi Party was planning: "The Party program foreshadowed its campaign of terrorism. It announced, 'we demand ruthless war upon those whose activities are injurious to the common interests,' and it demanded that such offenses be punished with death." He also depicts the legislative system in which the Nazis would strip away the German people's basic human rights, such as the freedom of speech, press, and to own property. Jackson holds back the least in his description of the "plan and design, to which all Nazis were fanatically committed, to annihilate all Jewish people." He first describes the German Jews who were first escorted to

69 *Nuremberg Trial Proceedings, Volume 2: Second Day, Wednesday, 21 November 1945*, Yale Law School pp. 104–141.

ghettos "with . . . [only what] is necessary for a bare existence." Then, with "the campaign against the Jews expanded,"[70] Jackson discusses the horrors of the Holocaust, which could easily be described as the climax to the plot of this story.[71] To demonstrate the very power of Jackson's discourse, here is an excerpt of a report made to one of the defendants that he chose to recite:

> In presence of SS man, a Jewish dentist has to break all gold teeth and fillings out of mouth of German and Russian Jews *before* they are executed. Men, women and children are locked into barns and burned alive. Peasants, women and children are shot on the pretext that they are suspected of belonging to bands.[72]

172. Following the description of many more menacing atrocities of which the Nazis committed against the Jewish people of Europe, Jackson outlined how Nazi Germany's war plan was always designed to "surprise the enemy." They violated treaties and promises while continuing to invade, and planning to conquer, more and more states, such as Austria, Czechoslovakia, Poland, Denmark, Norway, Belgium, The Netherlands, and many others.[73] As with all narratives, every single description of appalling action here was not only aimed to keep the attention of the audience, but also to reinforce the theme of the story.[74]

173. There are two themes here that derive from the first three components of narrative form. First, is the explicit message of exacting retribution against those most responsible for the crimes committed by the Nazi Party. From beginning to end, Jackson reiterates the evidence to be presented, identifying the defendants' recordings of all of the terrible deeds they had committed. That they had knowledge, which meant they had planned, strategized, and moved all of the pieces to the terrible war and its unforgiving outcome. The explicit message that Jackson's opening statement suggests is that all of the defendants should be found guilty.

174. The second theme, which is implicit, is that the world should recognize and implement international criminal law to make defendants like the Nazis responsible

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70 *Nuremberg Trial Proceedings, Volume 2: Second Day, Wednesday, 21 November 1945*, YALE LAW SCHOOL pp. 105, 109–111, 117, 120, 122.

71 Robert Rowland, *The Narrative Perspective, in* RHETORICAL CRITICISM: PERSPECTIVES IN ACTION 117, 120, 124 (2009).

72 *Nuremberg Trial Proceedings, Volume 2: Second Day, Wednesday, 21 November 1945*, YALE LAW SCHOOL p. 124.

73 *Nuremberg Trial Proceedings, Volume 2: Second Day, Wednesday, 21 November 1945*, YALE LAW SCHOOL pp. 132–135.

74 Robert Rowland, *The Narrative Perspective, in* RHETORICAL CRITICISM: PERSPECTIVES IN ACTION 117, 120, 124 (2009).

for their irreversible actions against humanity. The explicit audience here is the tribunal, who are the ones being directly addressed. However, with the majority of the world listening during a time in which two world wars had broken out within 30 years of each other, Jackson addressed them as such: "[T]he ultimate step in avoiding periodic wars, which are inevitable in a system of international lawlessness, is to make statesmen responsible to law." He knows and tells the court that the crimes he outlines are going to be undoubted. What is left then, he contends, is to validate "[the] judicial action [coming] after the event."[75]

Functional Analysis

175. The next step of the rhetorical analysis from a narrative perspective is to identify the components of narrative function, which describe what narrative does to an audience. The first component of narrative function is to keep the attention of the audience being addressed.[76] Being that there is no way to effectively pinpoint the mood, attentiveness, and contemplation of the audience as the opening statement was delivered, I turned to the outcome of the trial to best identify how well the audience was heeding Jackson's words. In all, eighteen of the twenty-one defendants were found guilty by the tribunal. The three who walked out of the courtroom acquitted were immediately arrested by German police officers to be later tried by their own court system.[77] Overall, it is the first Nuremberg Trial where Jackson delivered his opening statement that is particularly regarded for laying the foundation for international criminal law. After the trial rendered its verdict, the first General Assembly of the United Nations unanimously affirmed the verdict and legal principles created by the Charter and Judgment of the Nuremberg Trials. Since then, there have been multiple international criminal tribunals held for the same crimes that were established ex post facto at Nuremberg, such as crimes against humanity and war crimes.[78] This not only goes to prove that the judges inside the courtroom were attentive to Jackson's discourse, but also the world.

176. The next step of this narrative functional analysis involves the audience perceiving the narrative to be relatable. Jackson most explicitly identifies with the tribunal. First and foremost, he is speaking to them. They are in the same room, face

75 *Nuremberg Trial Proceedings, Volume 2: Second Day, Wednesday, 21 November 1945*, YALE LAW SCHOOL pp. 148–153.

76 Robert Rowland, *The Narrative Perspective, in* RHETORICAL CRITICISM: PERSPECTIVES IN ACTION 117, 121–122 (2009).

77 Doug Linder, *The Nuremberg Trials*, UNIVERSITY OF MISSOURI-KANSAS CITY SCHOOL OF LAW (2000).

78 Benjamin B. Ferencz, *International Criminal Courts: The Legacy of Nuremberg,* 10 Pace Int'l L. Rev. 203, 215, 218, 221–225 (1997).

to face, with the same daunting legal task — to conduct an international criminal tribunal that has never been done before — and Jackson repeatedly notes this throughout his opening statement. He addresses it specifically by stating:

> We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well. We must summon such detachment and intellectual integrity to our task that this Trial will commend itself to posterity as fulfilling humanity's aspirations to do justice.[79]

177. The more implicit sense of identification is done with the worldwide audience. Using phrases like "[c]ivilization can afford no compromise," Jackson connects with the global audience by identifying the consequences of inaction by law in relation to all of humanity. He also connects with the people of the world by drawing impassioned comparison that could reach any culture:

> The common sense of mankind demands that law shall not stop with the punishment of petty crimes by little people. It must also reach men who possess themselves of great power and make deliberate and concerted use of it to set in motion evils which leave no home in the world untouched.[80]

178. Following this identification, the third portion of the narrative functional analysis is to see how the rhetor transports the audience to a different setting. Again, because we are unable to thoroughly examine the audience's particular reactions at the time the opening statement was given, we must look to the resulting action due to the narrative, as well as how the narrative holds up today. After deliberation, both the judgment of the trial and the examination of the artifact today point toward the audience being transported to the dark times to which Jackson's discourse journeyed.

179. This brings the functional analysis to its final component: emotional reaction.[81] The abhorrent actions, and lack thereof, by the Nazi defendants, causing irreparable harm to all of the world, brings enough emotion with it that Jackson's descriptive discourse can still reach the heartstrings of any reader today. From the plans to systematically murder all of the Jewish people, to the relentless conquering of sovereign nations, it would be almost unfathomable for a member of any

79 *Nuremberg Trial Proceedings, Volume 2: Second Day, Wednesday, 21 November 1945*, YALE LAW SCHOOL p. 100.

80 *Nuremberg Trial Proceedings, Volume 2: Second Day, Wednesday, 21 November 1945*, YALE LAW SCHOOL p. 98.

81 Robert Rowland, *The Narrative Perspective, in* RHETORICAL CRITICISM: PERSPECTIVES IN ACTION 123, 129 (2009).

culture to deny its strong emotional calling to put an end to the defendants, their equivalents, and all Nazi-like regimes of the world.

Linking Form and Functional Analysis

180. The last step of the rhetorical critique using the narrative perspective is to link the formal and functional examinations of the artifact to produce an argument about the overall functionality of the story in relation to its audience members. Looking at the functionality in relation to the narrative form components, the characters, plot, theme and narrative, are all very compelling. The characters of Jackson and the court, being the embodiment of justice dispensed by the World War II-winning nations, bring together the common purpose of exacting retribution upon the antagonistic defendants who caused the war and its most horrendous casualties. Combine this sense of righteousness with settings from different times all over the world and the compelling plot of crimes against humanity, and the resulting theme of moral responsibility naturally effectuates to all who participate as an audience member of the discourse.

181. Next, the rhetorical functions of the narrative need to be examined for fulfillment.[82] As each function was examined, it quickly became clear that the narrative is complete. The form components connected with all who participated as an audience at the time and kept the attentiveness of the audience, to change international criminal law forever. The settings broke, and notably continue to break, down the barriers for even those who still read the discourse today. Finally, the narrative's connectivity is an absolute active function, as the memory and legacy of the tragedy that the Nazis inflicted upon humanity will forever evoke emotion for anyone exposed to this opening statement.

182. The last piece of this final step in the linked narrative analysis is to perceive the credibility of the story for the audience. It is undisputed that this is the most devastating war the world has ever known. That it changed international law forever.[83] With its emotional charge, legal rationale, and human viewpoint, it cannot be denied that this narrative not only held a strong rhetorical effectiveness for the judicial panel hearing the case, but also the world at the time it was given.

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82 Robert Rowland, *The Narrative Perspective, in* RHETORICAL CRITICISM: PERSPECTIVES IN ACTION 117, 129 (2009).

83 Benjamin B. Ferencz, *International Criminal Courts: The Legacy of Nuremberg,* 10 Pace Int'l L. Rev. 203, 215 (1997).