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Don't risk Auschwitz trials ending in fiasco

Truth commissions would serve the cause of Holocaust education and the historical record far better than court cases where aging death camp guards brought in on stretchers stand a too-high chance of acquittal.

By Thomas Weber | Apr. 18, 2013 | 1:17 PM

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Accused Nazi death camp guard John Demjanjuk being brought in a courtroom during his trial in Munich December 22, 2009. Photo by Reuters

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In spite of Hans L.'s tenure as a guard at Auschwitz, the former SS man still enjoys a life of freedom. Despite prosecutors' decades-long efforts to bring the perpetrators of the Holocaust to justice, they have been unable to link concentration camp guards like Hans L. to specific acts of criminal behavior, due to the obvious fact that many of the witnesses to Nazi crimes were exterminated.


As the world [learned last week](#), this may finally change. Amid much excitement, the initiation of legal proceedings in Germany against up to 50 former Auschwitz guards has been announced. But few people seem to realize that the actions taken by German prosecutors constitute a massive gamble. New Auschwitz trials may well end in a tragic fiasco.


German prosecutors appear to believe that the 2011 ruling of a Munich court against Sobibor death camp guard [John Demjanjuk](#) set a new legal precedent, opening the door for a new wave of Holocaust trials. They


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maintain that, as a result of the Demjanjuk case, prosecutors no longer have to link guards to individual acts of criminal behavior. Supposedly, proving that guards served in a death camp and were thus part of the extermination machinery would be enough to convict them of accessory to first degree murder.

But because Demjanjuk [died before the appeal](#) against his conviction was heard, no such binding legal precedent does in fact exist. All prosecutors can do is hope that judges in new court cases will follow the same reasoning of Demjanjuk's judges. Even if their gamble initially paid off, there are good reasons to believe that German and European appeal courts may disagree with the way Demjanjuk's judges broke with the legal principle that defendants can only be convicted for specific first-degree murders, and would thus throw out future court cases based on the reasoning of Demjanjuk's judges. It is not hard to imagine what a fiasco it would be if the world's last major Holocaust trials would end up in a German federal court overturning the verdicts, thus setting Auschwitz guards free as "not guilty."

Furthermore, any media coverage of future Holocaust trials would likely focus on the health of the aging defendants, rather than on their crimes, since the best defense strategy would be to present the accused as unfit to stand trial. Moreover, rather than boost Holocaust education and remembrance, new Auschwitz trials would be more likely to undermine the integrity of commemoration by at best showing defendants being carried into courtrooms on stretchers and at worst - seeing the cases thrown out.

Even more importantly, if the lowering of the legal threshold required to convict people – as proposed by Demjanjuk's judges – stood, any surviving people complicit in, or with knowledge of, Holocaust-era crimes would clearly choose to remain silent and take what they know to their graves. This is the gravest of the possible unintended consequences of new Holocaust trials, since, as many Shoah survivors stress, many Holocaust crimes remain unresolved and we still have an insufficient understanding of what drove low-level perpetrators.

Yet, if we forego conventional legal tools, there is even today a way to bring about justice, to encourage at least some of the low-level perpetrators to talk and to boost Holocaust education and remembrance. It is to institute truth commissions for Nazi-era war crimes inspired by those used in Africa and Latin America.

If granted immunity from prosecution for appearing in front of such commissions, people around the world could access the combined knowledge of the still-considerable number of men and women between the ages of 85 and 100 who were engaged in criminal and immoral acts during the Holocaust about which we still know little. Those involved in Nazi war crimes would get an opportunity to speak honestly and openly about the murkiest chapters of their lives. There would be no motivation for the many convenient and tactical forms of 'memory loss' in court by people involved in Nazi crimes. Truth commissions would be a relative success even if only some of the people involved in Nazi-era war crimes fully cooperated.

The institution of truth commissions would mean that the public would not focus on the question of whether courts should try old and frail men who were at the bottom of the Nazi chain of command. Rather, public discourse would refocus on Holocaust remembrance, Nazi crimes and the question of how ordinary people – not all of whom were genocidal anti-Semites – could turn into killers.

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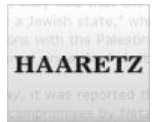
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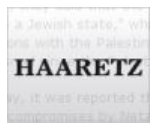
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Holocaust-era truth commissions come with many risks, to be sure. But the risks are arguably much lower than those of holding conventional court cases. Furthermore, there is nothing to stop the commissions from passing judgments on the guilt of perpetrators and thus bringing about a form of justice. And they are likely to be able to bring this justice faster than traditional court cases.

The need to establish truth commissions for the crimes of Nazi Germany is more pressing than for any other set of crimes because of the very advanced age of the remaining perpetrators. But unfortunately Europe and its neighboring regions have many other dark chapters in their recent past. It is thus high time that Europe and the states of the Mediterranean Basin consider how they can learn from the example of truth commissions in the rest of the world for past, present and future crimes against humanity

In the case of Holocaust-era crimes, the South African example, with its post-apartheid focus on avoiding civil war, may only provide limited lessons from which to draw. Holocaust-era truth commissions would have much more to learn from some of the Latin American commissions, set up in the aftermath of the continent's 'dirty wars', which provided for many families of victims the only chance to learn about the fate of their loved ones. Moreover, the Gacaca courts of Rwanda provide inspiration both for how 'sticks' and 'carrots' can be combined in commissions and for how truth commissions can function in post-genocide situations.

All past truth commissions provide lessons of how to create a climate in which it becomes possible for perpetrators to open up and talk. The testimony and confession of individuals involved in the crimes of the Holocaust are a basic condition for filling in the historical record and for refocusing on the individual motivations and acts that together constitute genocide, before the generation of both victims and perpetrators are lost to history – and public consciousness – forever.

Thomas Weber is Reader in Modern History at the University of Aberdeen and a Fritz Thyssen Fellow at Harvard University. He is the author most recently of 'Hitler's First War: Adolf Hitler, the Men of the List Regiment, and the First World War' (OUP, 2010).

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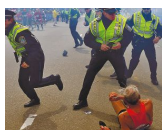
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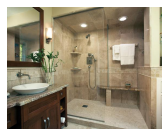
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