

WE WILL NOT FORGET YOU:

The Morality of Continued Nazi Hunting in Canada

Masters Candidate Cognate Paper

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1 August 2015

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INTRODUCTION

In August 1978 two ‘Nazi hunters’ met in Los Angeles.¹ The first was Simon Wiesenthal- a Holocaust survivor, the most renowned Nazi hunter in the world and the inspiration behind the Simon Wiesenthal Centre in Los Angeles. The other was Efraim Zuroff- the most prominent Nazi hunter alive and active today and the director of the Holocaust centre bearing Wiesenthal’s name.² During their meeting Wiesenthal confessed to Zuroff why he had chosen not to return to his pre-war profession, architecture, considering the work he could have acquired rebuilding Europe from the ruins of war, and why he instead took up the task of Nazi hunting. Wiesenthal stated:

“I am not a religious man, but I believe in a world after this one. I am convinced that after our death we will all go to heaven, and there we will meet the victims of the Holocaust. The first question they will ask us is: ‘You were lucky, you survived... You kept your lives like so many gifts. But what did you do with them? What have you done with your [lives]?’ Some of us will reply, ‘I became a businessman’; others, ‘I became a lawyer’; still others, ‘I became a teacher.’ Me, I want to be able to give them just one answer: ‘*I did not forget you.*’”³

It has been almost seventy years since the end of the Second World War and in that time, hundreds, potentially even thousands of Nazi war criminals have found refuge in Canada.⁴ However, only since the 1980s has the Canadian government categorized this as a public security

¹ The term Nazi hunters refers to those who actively search for suspected and confirmed Nazi war criminals, and/or those guilty of crimes against peace and crimes against humanity and who strive to bring them to justice.

² The two had met briefly in Jerusalem at Yad Vashem earlier that year but their meeting in Los Angeles was longer and as Zuroff describes, “was [their] first opportunity to get to know [each other] and learn more about [each other’s] life work.” Efraim Zuroff, *Operation Last Chance* (New York: Palgrave Macmillan, 2009), 28-32.

³ Wiesenthal made a similar comment during an interview in 1964 for the *New York Times Magazine*. This specific version is recalled by Zuroff from his 1978 meeting with Wiesenthal and quoted in Zuroff, *Operation Last Chance*, 32.

⁴ Although this paper will have to rely on the definition of “war criminals” adopted by Justice Jules Deschênes in the Deschênes report, this paper will advocate for a less restrictive definition. The Deschênes Report defines war criminals as : “All persons, whatever their past and present nationality, currently resident in Canada and allegedly responsible for crimes against peace, war crimes or crimes against humanity related to the activities of Nazi Germany and committed between 1 September 1939 and 9 May 1945, both dates inclusive.” Jules Deschênes, *Report of the Commission of Inquiry on War Criminals, Part One: Public*. Ottawa: Minister of Supply and Service Canada, 1986.

issue. Prior to 1985 when the Mulroney government announced that a Commission of Inquiry would be organized to investigate allegations of war criminals in Canada, human rights organizations, Jewish groups, Nazi hunters and even Congress lobbied the government to take action on this issue.⁵ And still, it was not until a media frenzy spurred rumours of one infamous Nazi war criminal gaining admission to Canada that action was finally initiated. Therefore, the purpose of this paper is to determine what has been, and what should now be done about this gross Canadian injustice.

By analyzing the history of Nazi war criminals finding refuge in Canada, the legal framework established to guide the procedure for confronting suspected war criminals, and the state of the debate regarding continued prosecution, this paper will argue that the practice of identifying, locating and bringing Nazi war criminals to justice should continue. Drawing upon the lessons of various 'Nazi hunters,' human rights activists and Holocaust survivors, this paper will demonstrate how Nazi hunting continues to be a fair and appropriate response to the perpetrators of war crimes, has a distinct role to play in the protection and promotion of Holocaust memory and education and demonstrates an important Canadian commitment to the victims of Nazi atrocity. Although this paper will offer a more pointed analysis of the state of Nazi hunting in Canada, it will also attempt to make broader claims about the morality of the practice in the world. This paper comes at a time of vital importance as the last surviving Nazi war criminals are dying of old age. Soon, the world will no longer have the ability to support the victims of the Nazi terror or seek justice for their crimes through the legal system. Therefore, what is done with the minimal time remaining will have huge impacts on the didactic legacy of the Second World War, and especially the Holocaust. But more importantly, what is done with

⁵ David Matas, *Justice Delayed: Nazi War Criminals in Canada* (Toronto: Summerhill Press Ltd., 1987), 225-229.

the remaining time will demonstrate how Canadian society has elected to remember the victims of Nazi atrocity.

HISTORICAL BACKGROUND INTO THE PROSECUTION OF NAZI WAR CRIMINALS

The Nuremberg Trial

Before beginning it is important to provide some critical background information about the history of Nazis entering Canada (and in many cases gaining citizenship), and the legal framework established to bring suspected war criminals to justice. But first, it is necessary to speak briefly about the immediate post-war period. During the Second World War there was an active debate between the leaders of the Allied Powers regarding the postwar treatment of Nazi war criminals. In October 1943 Franklin D. Roosevelt, Winston Churchill and Joseph Stalin gathered at the Moscow Conference to discuss this issue. Here they came to agree that major war criminals were to be tried either by the countries in which they inflicted their crimes or by a joint Allied tribunal.⁶ The agreement on prosecution was plainly laid out in a Joint Four-Nation Declaration.⁷ Although alternative possibilities were entertained after the Moscow Conference, such as executing the German General Staff in mass, the Allies upheld the agreement made at Moscow.⁸

⁶ Although other important topics were discussed at the Conference, including the necessity of establishing a United Nations, the first agreement written into the Joint Declaration was that “their united action, pledged for the prosecution of the war against their respective enemies, will be continued for the organization and maintenance of peace and security.” See “Joint Four-Nation Declaration,” signed at the Moscow Conference; October 1943, republished by The Avalon Project: Documents in Law, History and Diplomacy. <http://avalon.law.yale.edu/wwii/moscow.asp> (Accessed April 1, 2015).

⁷ Ibid.

⁸ More retributive plans were proposed by prominent Allied figures such as Henry Morgenthau, the Secretary of the U.S. Treasury, whose 1944 Suggested Post-Surrender Program for Germany (commonly referred to as the Morgenthau Plan) called for the permanent elimination of German’s ability to wage war through the execution of Nazi leaders and the transformation of Germany into a pure agricultural state. Even the three leaders of the Allied

Two and a half months after the end of the Second World War the four Allied Powers congregated at the Potsdam Conference held between July 17th and August 2nd, 1945. Here they affirmed the decision to develop an International Military Tribunal (IMT) to try the most serious war criminals and Nazi leaders.⁹ The terms of this agreement were laid out in the London Agreement signed by representatives of the governments of the United States, Great Britain, the Soviet Union and France after the Conference on August 8th, 1945.¹⁰ The Allies also sought to establish a legal, uniform basis under which to prosecute war criminals. The result was the enactment of the Charter of the International Military Tribunal, commonly known as the Nuremburg Charter. The Charter formally established the IMT, which was to be composed of members from the four principal Allied states. In addition, the Charter established the legal framework to guide the prosecution of major war criminals during the First Nuremburg Trial beginning on November 20th, 1945.¹¹ Finding jurisdiction for prosecution in the Kellogg-Briand Pact of 1928 signed by the prosecuting countries and Germany,¹² the Charter outlined four

Powers, Roosevelt, Churchill and Stalin, considered the possibility of simple executions at some point over the course of the war. Such alternative possibilities were discussed at, but not limited to the following Conferences: Henry Morgenthau, "Suggested Post-Surrender Program for Germany," in Germany: Jan.-Sept. 1944, Box 31, German Diplomatic Files, Franklin D. Roosevelt Library and Museum; Second Quebec Conference in "Conference at Quebec, 1944," United States Department of State, Foreign Relations of the United States, U.S. Government Printing Office, 1944; "Declaration of the Three Powers," issued at the Tehran Conference, December 1, 1943, republished by The Avalon Project: Documents in Law, History and Diplomacy. <http://www.yale.edu/lawweb/avalon/wwii/tehran.htm> (Accessed April 1, 2015).

⁹ "The Berlin (Potsdam) Conference, July 17-August 2, 1945: Protocol of the Proceedings," republished by The Avalon Project: Documents in Law, History and Diplomacy. http://avalon.law.yale.edu/20th_century/decade17.asp (Accessed April 1, 2015).

¹⁰ "London Agreement," August 8, 1945, republished by The Avalon Project: Documents in Law, History and Diplomacy. <http://avalon.law.yale.edu/imt/imtchart.asp> (Accessed April 1, 2015).

¹¹ "Charter of the International Military Tribunal," August 8, 1945, republished by The Avalon Project: Documents in Law, History and Diplomacy. <http://avalon.law.yale.edu/imt/imtconst.asp> (Accessed April 1, 2015).

¹² The Kellogg-Briand Pact was ratified following the First World War by the governments of the nations which would become the major Allied and Axis Powers of the Second World War. Although arguably having no legal force or obligation, the international treaty called for the countries which ratified it to "condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another. As a result, the Allied Powers found international precedent for prosecuting Germans in the Kellogg-Briand Pact. See "Kellogg-Briand Pact," August 27, 1928, article I, republished by The Avalon Project: Documents in Law, History and Diplomacy. http://avalon.law.yale.edu/20th_century/kbpact.asp (Accessed April 1, 2015).

charges on which to indict the defendants; thereby giving definition to the term ‘war criminal’: crimes against peace, war crimes, crimes against humanity and conspiracy to commit any of the foregoing crimes.¹³ During the Nuremburg Trial the 24 defendants brought before the court were charged with committing one, all or a combination of these crimes. Although there was, and continues to be much controversy concerning the retroactive application of law, stemming from the argument that the charges levelled against the defendants were instituted *ex post facto*, the Tribunal contended that “the [Nuremburg] Charter [was] not an arbitrary exercise of power on the part of the victorious nations, but...the expression of international law existing at the time of its creation.”¹⁴ In successfully convicting 19 of 24 defendants the first Nuremburg trial provided a legal basis for future prosecutions of Nazi war criminals. According to David Matas, the senior legal counsel of the Jewish human rights organization B’nai Brith Canada,

“If the Canadian authorities ever doubted the legal basis on which to seek redress against the Nazi fugitives from justice, they would have found ample guidance in turning to the judgement at Nuremburg...The judgement serves as an invaluable guide to Canadian judges in deciding what the law requires and, in some ways, a model on which to base action.”¹⁵

¹³ The Charter of the International Military Tribunal defines the aforementioned crimes as follows:

(a) Crimes Against Peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

(b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(c) Crimes Against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

(d) Conspiracy: Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

¹⁴ Judgement of the Nuremburg International Military Tribunal; *Nuremburg*, September 30, 1946.

¹⁵ Matas, 89, 93.

National War Crimes Trials and Denazification Measures in Europe and the Western Zones of Occupation

The Allies also went another step further to provide prosecution authority to individual states. On December 20, 1945 Allied Control Council Law no. 10 was enacted. The law provided a legal basis on which to indict war criminals other than those already tried by the International Military Tribunal at Nuremberg.¹⁶ As Germany was divided into four zones of occupation at the end of the war, each governed by one of the four Allied Powers, Allied Control Council Law no. 10 authorized the occupying forces to arrest and try war criminals within their respective zones.¹⁷ Like the Charter of the IMT, Allied Control Council Law no. 10 also set out four categories of criminality which the Allied Powers were to prosecute war criminals under. The first three laws: crimes against peace, war crimes and crimes against humanity remained static; save for the wording of their definitions which was not exact.¹⁸ However, the law replaced the fourth charge of conspiracy with the charge of membership in a criminal organization or group.¹⁹

The enactment of Allied Control Council Law no. 10 provided the national governments of the four Allied Powers with the authority they needed to try war criminals independently. As a result, the Allies began to initiate proceedings against suspected war criminals under their jurisdiction. However, Allied Control Council Law no. 10 not only extended prosecution authority to the Four Allied Powers to try war criminals in their zones of occupation. The law also extended authority to other governments to try suspects for crimes committed within their territory and/or against their national subject(s).²⁰ Article IV of the law provided guidelines for

¹⁶ See, *Allied Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Crimes Against Humanity*, December 20, 1945, republished by The Avalon Project: Documents in Law, History and Diplomacy. <http://avalon.law.yale.edu/imt/imt10.asp> (Accessed April 1, 2015).

¹⁷ See, *Allied Control Council Law No. 10, art III*.

¹⁸ To read the reworked definitions of crimes against peace, war crimes and crimes against humanity as defined by the Allied Control Council Law no. 10, see articles I.1.a-c.

¹⁹ Allied Control Council Law no. 10, see articles I.1.d.

²⁰ Allied Control Council Law no. 10, art. IV.1.

moving suspects across national borders for trial as well as determining which countries should have priority over suspects.²¹ With such guidelines in place national war crimes trials occurred in all four zones of occupation and in different countries across Europe where atrocities had been committed.

Early Canadian Initiatives

The precedents set by these laws, charters and early trials as well as established international conventions such as the Hague and Geneva Conventions allowed the Canadians to begin initiating proceedings. A total of seven Nazi war criminals were prosecuted by Canadian military forces in the immediate postwar period for crimes specifically committed against Canadian soldiers.²² Of these, four received death sentences while three were given long prison sentences.²³ It was the trial of SS-Brigadeführer Kurt Meyer, however, which garnered the most international attention. A commander in the Waffen-SS (the military division of the notorious Schutzstaffel or SS), Meyer was the first Nazi war criminal to be tried by the Canadians in the postwar period. Meyer commanded the 25th SS Panzer Grenadier Regiment and the 12th SS Panzer Division Hitlerjugend (a division composed largely of members of the Hitler Youth).²⁴ After fighting in Normandy and the Falaise Pocket (where a number of war crimes were

²¹ Allied Control Council Law, no. 10, art. IV.

²² This number is confirmed in *Cabinet Document D304, Secret, Memorandum to Cabinet War Committee, 11 September 1951*, reprinted in *Kurt Meyer on Trial [A Documentary Record]* (Kingston: Canadian Defence Academy Press, 2007), 584.

²³ Six of the seven war criminals prosecuted by the Canadian military were charged with committing war crimes against members of the Royal Canadian Air Force. They are as follows: Johan Neitz, Wilhelm Jung, Johann Georg Schumacher, Robert Holzer, Walter Weigel and Wilhelm Ossenbach. Jung, Schumacher, Weigel and Holzer were sentenced to death while Neitz and Ossenbach received sentences of life imprisonment and 15 years imprisonment, respectively.

²⁴ Meyer's credentials are given in "First Charge Sheet," reprinted in Whitney P. Lackenbauer and Chris M.V. Madsen, ed., *Kurt Meyer on Trial [A Documentary Record]* (Kingston: Canadian Defence Academy Press, 2007), 94-95.

allegedly committed), Meyer and his forces retreated east towards the Seine River where he was eventually captured by Belgian partisans. He was turned over to the American forces on September 7th, 1944.²⁵

Meyer was held as a prisoner of war until he was turned over to the Canadians to be tried for war crimes. He was charged with five counts of war crimes related to the murder of at least 41 Canadian prisoners of war in Normandy following the Allied invasion on D-Day.²⁶ His trial commenced on December 10, 1945 and Meyer entered a plea of not guilty to all five charges.²⁷ After hearing from thirty-eight witnesses and examining numerous pieces of evidence the court found Meyer guilty of three of the five charges on December 28, 1945. He was sentenced to “suffer death by being shot.”²⁸ However, after launching a petition contesting his sentence²⁹ a series of memos were exchanged between members of the Canadian government and military regarding Meyer’s sentence.³⁰ It was finally decided on January 16, 1946 on the recommendation of Major General Christopher Vokes that Meyer’s sentence be commuted to life imprisonment.³¹ A press release was issued by the Department of National Defence relaying the decision to the

²⁵ For a detailed account of Meyer’s movements and crimes during the Second World War, see Howard Margolian, *Conduct Unbecoming: The Story of the Murder of Canadian Prisoners of War in Normandy* (Toronto: University of Toronto Press, 1998).

²⁶ The charges stemmed from the murder of 41 Canadian Prisoners of War occurring over the course of 2 days: June 7-8, 1944. In some cases Meyer was charged with ordering the murder of Prisoners and in others he is charged for participating directly in the murders. For a detailed list of the five charges see the “First Charge Sheet,” reprinted in *Kurt Meyer on Trial [A Documentary Record]*, 94-95.

²⁷ Meyer’s plea of not guilty is given in the “Proceedings of the Court,” in Whitney P. Lackenbauer and Chris M.V. Madsen, ed., *Kurt Meyer on Trial [A Documentary Record]* (Kingston: Canadian Defence Academy Press, 2007), 97.

²⁸ See *Sentence*, in Whitney P. Lackenbauer and Chris M.V. Madsen, ed., *Kurt Meyer on Trial [A Documentary Record]* (Kingston: Canadian Defence Academy Press, 2007), 520.

²⁹ *Petition of Major-General Kurt Meyer against the Sentence of a Military Court to Major-General C. Vokes, C.B., C.B.E., D.S.O., General Officer Commanding, 3 Canadian Infantry Division, Aurich, 31 December, 1945*, reprinted in Whitney P. Lackenbauer and Chris M.V. Madsen, ed., *Kurt Meyer on Trial [A Documentary Record]* (Kingston: Canadian Defence Academy Press, 2007), 529-530.

³⁰ See a series of letters and memos regarding Meyer’s sentence reprinted in *Kurt Meyer on Trial [A Documentary Record]*, 531-533.

³¹ The decision was given in “War Crimes; sentence of Major-General Kurt Meyer,” *Top Secret, Cabinet Conclusions, Ottawa, 16 January 1946*, reprinted in Whitney P. Lackenbauer and Chris M.V. Madsen, ed., *Kurt Meyer on Trial [A Documentary Record]* (Kingston: Canadian Defence Academy Press, 2007), 533.

public.³² On April 16th it was announced that Meyer would be transferred to New Brunswick, Canada to serve his sentence within the Dorchester Penitentiary.³³ According to historian Howard Margolian, “Kurt Meyer was the first man tried under Canada’s war crimes regulations. A clearly guilty man had been convicted, and his punishment, after review, had been a just one. Thus, the Meyer trial augured well for the future prosecution of war criminals. Or so it seemed...”³⁴

A Change of Course: The Decline of War Crimes Trials

Unfortunately, neither the Canadians nor the other Allied powers would demonstrate their willingness to prosecute Nazi war criminals far into the postwar period. Although the necessary precedent had been established, motivation to continue prosecutions began to wane after the first few years of occupation and the number of trials conducted declined simultaneously.³⁵ By 1948 the American and British war crimes trials virtually had ended.³⁶ Countries which more strongly experienced Nazi barbarity, such as France and the Soviet Union retained the political will to prosecute longer than other Allied Powers.³⁷ But by the early 1950s trials in all zones of

³² “National Defence Public Relations, *Press Release (PN 47-46)*, issued at 1815 hrs 16 January 1946, reprinted in Whitney P. Lackenbauer and Chris M.V. Madsen, ed., *Kurt Meyer on Trial [A Documentary Record]* (Kingston: Canadian Defence Academy Press, 2007), 534.

³³ The order to transfer Meyers to Canada is found in *Order, Lieutenant-General J.C. Murchie, Chief of Staff, Canadian Military Headquarters, 16 April 1946*, reprinted in Whitney P. Lackenbauer and Chris M.V. Madsen, ed., *Kurt Meyer on Trial [A Documentary Record]* (Kingston: Canadian Defence Academy Press, 2007), 543-544.

³⁴ Margolian, *Conduct Unbecoming*, 170.

³⁵ In his article David Cohen discusses the trajectory of postwar justice delivered by the four Allied Powers in their respective zones of occupation. He discusses a predictable pattern that, though not on the same timelines, were followed by each occupying force. See David Cohen, “Transitional Justice in Divided Germany after 1945,” in *Retribution and Reparation in the Transition to Democracy*, ed. Jon Elster (New York: Cambridge University Press, 2006).

³⁶ In Britain this was the result of a combination of public and political pressure to abandon trials and a recognition that it was impractical to continue the process of bringing suspects to justice as it would go on indefinitely. “An indefinite prolongation of the trials,” it was decided, “no longer performs a useful or desirable purpose.” David Cesarani, *Justice Delayed* (London: William Heinemann, Ltd., 1992), 174-175.

³⁷ Cohen, 66.

occupation had ceased and many war criminals who were previously convicted had their sentences commuted or were simply released. Between 1951 and 1955 the prisons were virtually emptied and “by the end of the decade almost all of the thousands of convicted German war criminals had been released.”³⁸ Even worse was that many of these previously purged and convicted criminals were reinstated into prominent positions within the government, judiciary and civil service.

A study of the Landsberg Prison in U.S. occupied-Bavaria illustrates this well. Landsberg was taken over by U.S. forces after the war and was utilized as the primary detention facility for convicted Nazi war criminals. Although thousands of war criminals were housed in Landsberg after the war, only 663 war criminals were still imprisoned in Landsberg by 1950. In 1951, many of those remaining had their sentences significantly reduced. This was the case for 78 of the 89 prisoners in Landsberg who had been convicted during the 12 subsequent Nuremberg Trials presided over by U.S. forces.³⁹ The reduction of sentences also resulted in the immediate release of 31 of those 78 prisoners. By 1955, a meagre total of only 50 Nazi war criminals remained in Landsberg and by 1958 U.S. forces relinquished control of the prison when the last four prisoners- previous SS officers and members of the Einsatzgruppen- were released.⁴⁰

The reason for this, although not at all simple, is quite obvious. Pragmatic issues began to take precedent and the rehabilitation of Germany became the primary priority for occupation forces. In addition to focusing attention on physical relief (food, shelter and supplies) and the

³⁸ Ibid., 87.

³⁹ The twelve subsequent Nuremberg Trials were a series of trials launched and presided over by the United States' occupying forces. Following the historic Nuremberg Trial, U.S. military tribunals were organized to try the leading representatives of various government and public service branches, companies and organizations who committed or were complicit in war crimes as defined by Allied Control Council Law no. 10. Such trials included those against prominent German doctors, jurists, members of the RSHA, Einsatzgruppen and the directors of IG Farben (the company responsible for producing and supplying Zyklon B). As a result, all of those imprisoned in Landsberg who were tried during the subsequent Nuremberg Trials were classified as major offenders.

⁴⁰ These statistics are based on a case study of the Landsberg Prison given in Cohen, 86-88.

millions of refugees and displaced persons across Europe, the Allies had to restore law, government and structure to German society in their respective zones.⁴¹ As a result, military trials and denazification measures not only took a back seat to the rehabilitation of Germany, but in many ways were seen as an obstacle to reconstruction. According to Karl Loewenstein, a German-Jew working for the American occupation forces, “it [was] soon found that the men with a clear anti-Nazi record [were] by no means those most qualified for the administrative-technical job [of governing Germany].”⁴² Therefore, it became necessary to retain many individuals who acquired incriminating records for their activities during the Third Reich, because, despite their records, they were thought most capable of restoring order to Germany.

However, there was another factor at play. Although the exact date is a matter of contention, the start of the Cold War had the West preoccupied with a new enemy. And it was not Nazi war criminals.⁴³ In 1947 the Soviet Union began to reinforce its power through the creation of Soviet satellite states in Eastern Europe. In response, the Western powers attempted to restore Germany as an ally against the emerging communist threat and utilize the country as a Central European buffer zone. In an effort alter the alliance system and align Germany with the West, the British proposed an end to war crimes trials in their zone of occupation and encouraged the same of other Allied governments. As a result, attention was shifted from war

⁴¹ See Francis Graham-Dixon’s characterization of the conflict over priorities in the postwar period in his chapter “The Realities of Occupation.” Francis Graham-Dixon, “The Realities of Occupation,” in *The Allied Occupation of Germany: The Refugee Crisis, Denazification, and the Path to Reconstruction*, 77-125. London, England: I.B. Tauris, 2013.

⁴² Karl Loewenstein, OMGUS-Legal Division, Office Diary, August 22, 1945, Box 46, Folder 1, Series 1: Subseries C. Karl Loewenstein Papers, 1822-1977, Amherst College Archives and Special Collections.

⁴³ According to Frederick Bialystok, “the new enemy was not a defeated Germany but an aggressive and expansionist Soviet Union. If suspected war criminals who were avowedly anti-Communist went free, and were even allowed admission to Canada, that was considered insignificant in the larger fight against Soviet hegemony.” Franklin Bialystok, *Delayed Impact: The Holocaust and the Canadian Jewish Community* (Montreal & Kingston: McGill-Queen’s University Press, 2000), 223.

crimes trials and denazification measures towards rebuilding a strong German state.⁴⁴ The choice to abandon these war crimes investigations is evidenced by a telegram sent by the British Commonwealth Relations Office to the seven governments of the Commonwealth (including Canada) on July 13, 1948. The telegram advised: “punishment of war crimes is more a matter of discouraging future generations than of meting out retribution to every guilty individual. Moreover, in view of future developments in Germany envisaged by recent tripartite talks, we are convinced it is now necessary to dispose of the past as soon as possible.”⁴⁵ No longer was it imperative to bring every Nazi war criminal to justice. What was imperative was to prevent the rise of a new enemy.

Not surprisingly, Canada followed suit. Although Canadian military authorities were responsible for the early prosecutions of seven war criminals, Canada quickly abandoned its efforts to investigate and prosecute other war criminals under its jurisdiction. In fact, Canadian forces coldly abandoned approximately 40 investigations of war crimes they had already initiated when they withdrew from Europe in 1947.⁴⁶ The choice to abandon its war crimes investigations was undoubtedly supported by the British and reaffirmed by the 1948 telegram. However, it was not only with war crimes trials that the Canadians followed in the footsteps of the Western Allied Powers. It was also in regards to those Nazi war criminals who had already been convicted.

The case of Kurt Meyer is one which did not end with his transfer to a Canadian penitentiary. In the early 1950s pro-Nazi supporters in Canada and the government in Bonn, Germany lobbied for Meyer’s early release. According to Howard Margolian, “using the

⁴⁴ In his article, Cohen argues that “political developments such as the Cold War were the driving force behind the emptying of the prisons in 1951-1955. As American interest in strengthening and rearming Germany as a Cold War ally increased, the release of war criminals became a condition of German cooperation.” Cohen, 87.

⁴⁵ Telegram of British Commonwealth Relations Office to seven dominions, 13 July 1948. Reprinted in Jules, Deschênes, *Commission of Inquiry on War Criminals, Part I, Public*, 26-27.

⁴⁶ James E. McKenzie, *War Criminals in Canada* (Calgary, Detselig Enterprises Ltd., 1995), 30.

leverage afforded by Germany's strategic geographic location, the government in Bonn made clemency for war criminals one of the preconditions for its participation in the defence of central Europe against the Soviet threat."⁴⁷ Such an ultimatum was persuasive considering the threats emanating from the emerging Cold War. As a result, the government began to reconsider Meyer's sentence.⁴⁸ After various debates in Congress it was decided that Meyer would not be released early, but that he would be transferred to the Werl Prison in British-occupied Germany on October 18, 1951.⁴⁹ It was here that Meyer was expected to serve the remainder of his life sentence. But that would not be the case. Quickly after Meyer's transfer to Germany the British Chairman Remission Board elected to reduce his sentence to fourteen years. With rewards for 'good conduct,' this resulted in Meyer's release on September 7, 1954; exactly ten years from the date of his capture.⁵⁰ Following his release he was welcomed home in heroic fashion and lived out the remainder of his life in peace and prosperity.⁵¹

CANADIAN POLITICAL CLIMATE 1945-1950s

Canadian Public Opinion: Nazi War Criminals and their Victims (the Jews)

Unfortunately, failure to continue prosecuting Nazi war criminals or uphold the few

⁴⁷ Margolian, *Conduct Unbecoming*, 182.

⁴⁸ See memos and notes from the government debates regarding the sentence of Kurt Meyer in *Kurt Meyer on Trial [A Documentary Record]*, 582-587.

⁴⁹ The government's decisions to transfer Meyer to Germany and specifically to the Werl Prison were given in two separate memos noted in the following citations, respectively. *German War Criminals: Kurt Meyer, Top Secret Cabinet Conclusions, 21 September 1951*, reprinted in *Kurt Meyer on Trial [A Documentary Record]*, 586-587; and *Transfer of Brigadefuhrer Kurt Meyer to British Zone, Message from Canadian High Commissioner, London to Secretary of State of External Affairs, 5 October 1951*, reprinted in *Kurt Meyer on Trial [A Documentary Record]*, 586-587.

⁵⁰ The decision to reduce Meyer's sentence and release him based on the new sentence was published in *Chairman Remission Board, Remission Board Order, 13 August 1954*, reprinted in *Kurt Meyer on Trial [A Documentary Record]*, 643.

⁵¹ Immediately upon his release a series of festivities commenced. Cheering, speeches and a torchlight procession followed Meyer's reunion with his family in Niederkruchten, a town just North of Cologne. Details of this welcome are given in Margolian, *Conduct Unbecoming*, 183 and McKenzie, 25.

sentences that were secured were not the only miscarriages of justice that Canadian authorities made in the postwar period. It is already known that after the war the West was preoccupied with moving on from past events and focusing attention on the emerging Cold War and communist threat. As a result, public sentiment in Canada was not significantly realigned by the events of the Second World War or the Holocaust. This can be seen nowhere better than in an analysis of Canadian public opinion towards Germans in contrast with that of the victims of Nazi atrocity, namely the Jews. Although a sense of shock and disbelief befell the nation most Canadians did not hold strong resentment towards Germans for the atrocities of the Nazi regime. However, existing racial prejudices were still largely engrained in public opinion despite the events of the war and the brutality that was visited onto the Jews.⁵²

One would assume that as enemies on opposing sides in two world wars, the Canadian public would express hatred or anger towards the German people. But evidence proves otherwise. When the Cold War began soon after the end of the Second World War, the Soviets, communists and communist sympathizers represented a new and more dangerous enemy. Circumstances after the Second World War made Western nations suspicious of certain ethnic and religious groups residing in Eastern Europe and whether their allegiance would fall to communism. However, the Germans were not counted amongst them. Due to their historical conservatism and fascist political alignment during the war, the Germans, and even former Nazis were considered the antithesis of the new enemy.⁵³ This made them a favourable group in Canadian popular opinion. Public opinion polls taken after the war reflected this. Although

⁵² Bialystok, 21-22.

⁵³ In a study conducted regarding the state of war criminals in Canada, Alti Rodal found that Germans were a more favourable group than those who suffered as a result of Nazi policy. More information on the report will be offered later. See, Alti Rodal, *Nazi War Criminals in Canada: The Historical and Policy Setting from the 1940s to the Present*. Unpublished manuscript prepared for the Commission of Inquiry on War Criminals, September 1986, Library and Archives Canada, RG 25, volume 21930, file MF 6495, volume 1, 262-263. See also Bialystok, 223.

immigration from Europe was not highly regarded by the majority of Canadians, immigration from certain countries fared better than others.⁵⁴ In October 1946 a Gallup Poll was conducted. The Poll asked, “If Canada does allow more immigrants are there any of these nationalities [on a supplied list] you would like to keep out?”⁵⁵ The group with the highest percentage of votes was the Japanese. Sixty percent of those polled classified them as undesirables.⁵⁶ However, “the Japanese were followed not by the other major wartime enemy- the Germans- but the Jews.”⁵⁷

Although sympathy was extended to the victims of Nazi atrocity, the majority of Canadians preferred to extend it from afar. Most did not oppose- and even encouraged the offering of relief and assistance to the Jews of Europe.⁵⁸ But that did not translate into accepting an increased quota of Jewish immigrants into Canada.⁵⁹ Rather, Canada was committed to keeping its doors closed to a flood of Jewish immigrants. In fact, when Canadians were asked which countries they would prefer immigrants to originate from, those in which it was thought Jews would come from- Poland, the Balkans, Russian and Ukraine- trailed the list.⁶⁰ Much of this was the result of engrained anti-Semitism. Although it rarely, if ever, presented a physical

⁵⁴ In an April 1946 Gallup Poll, 61% of surveyed Canadians responded that they were opposed to immigration from Europe. However, the 31% who were in favour did not desire universal immigration. See Canadian Institute of Public Opinion, *April 1946 Gallup Poll*, Library and Archives Canada, R3829-0-5-E, Canadian Institute of Public Opinion Fonds.

⁵⁵ Canadian Institute of Public Opinion, *October 1946 Gallup Poll*, Library and Archives Canada, R3829-0-5-E, Canadian Institute of Public Opinion Fonds.

⁵⁶ *Ibid.*

⁵⁷ See *October 1946 Gallup Poll* and Rodal, v.1, 121.

⁵⁸ Most Canadians believed that relief should be devoted to sending “money, food and supplies to the displaced Jews in refugee camps,” and fostering Jewish immigration to Palestine. Based on information given in Bialystok 16 and Cesarani, 165.

⁵⁹ Bialystok, 16.

⁶⁰ See *April 1946 Gallup Poll* for results.

However, in the poll taken conducted in October 1946 where Jews read as the 2nd least desirable immigrant group, this meant that the Jews fared worse than many Eastern European nationalities such as Poles and Ukrainians. The logical conclusion is that “the earlier poll based on country of origin registered a high negative response to eastern European countries not because of a desire to keep out Poles or Ukrainians but because these same regions were known to be the source of Jewish immigration.” See *October 1946 Gallup Poll* and Irving Abella and Harold Troper, *None is Too Many: Canada and the Jews of Europe: 1933-1948* (Toronto: University of Toronto Press, 2012 [c. 1983]), 231-32.

threat to Jewish Canadians, anti-Semitism was prevalent in Canadian society and was reflective of an entrenched nativist attitude.⁶¹ Canadians simply did not see the fate of the European Jews as their problem, and especially did not believe that Canada had any national obligation to assist in the relief of Jewish refugees and DPs by opening its doors.⁶²

Impact on Border Control, Screening and Immigration

These realities were reflected in Canadian immigration policies during the 1940s and 1950s. Although there were no outright bans on German immigration following the war, there were restrictions on members of the various Nazi organizations and those who had committed war crimes.⁶³ Had it been “properly enforced, the ban on enemy aliens should have gone a long way towards preventing the admission to Canada of suspected Nazi war criminals and collaborators.⁶⁴ However, the screening process for filtering out restricted immigrants was thoroughly insufficient.⁶⁵ The Canadian Immigration Branch employed the British and Americans to establish checks and screening procedures for prospective immigrants.⁶⁶ However, the British and Americans had ulterior goals which greatly impacted the success of screening. Concerned more with “beating the communists than in keeping ex-Nazis out of Canada,” the British and Americans tailored screening procedures to serve their primary goals.⁶⁷ As a result,

⁶¹ Frederich Bialystok discusses the pervasive anti-Semitism engrained in Canadian society in his book *Delayed Impact*. See Bialystok, 16, 22.

⁶² Abella and Troper, 194, 204.

⁶³ Margolian, *Unauthorized Entry*, 36-37.

⁶⁴ *Ibid.*, 37.

⁶⁵ *Ibid.*, 36-37.

According to renowned Nazi hunter Efraim Zuroff, “those who committed crimes brazenly lied about their pasts and were able with relative ease to fool the immigration officials. The latter were either unable or unwilling to properly carry out the necessary investigations which would have exposed the false information submitted by these criminals.” Efraim Zuroff, *Occupation Nazi Hunter: The Continuing Search for the Perpetrators of the Holocaust* (New Jersey: KTAV Publishing House, INC., 1994), 35.

⁶⁶ Rodal, v. 2, pgs. 331, 334.

⁶⁷ McKenzie, 131-132.

the screening process focused largely on whether the applicant presented “a security risk.”⁶⁸ And for all intents and purposes this meant ties to the Soviet Union or communism.⁶⁹ Therefore, security screeners did not overly concern themselves with former Nazis or war criminals.

However, it soon became even easier for Nazi war criminals to enter Canada than was already possible. Towards the end of the decade further relaxation of already relaxed immigration policies occurred with respect to Nazis, Nazi collaborators and war criminals.⁷⁰ Between 1948 and 1952 a series of memos, circulars and communications were issued by the Immigration Branch and the RCMP regarding the relaxation of guidelines on certain groups of former Nazis. Changes began when the Immigration Branch and RCMP removed certain screening requirements which would assist security officers with the identification of inadmissible individuals.⁷¹ For example, in an April 1948 memo from the Director of the Immigration Branch to the Commissioner of the RCMP, screeners were instructed not to give SS tattoo marks any consideration when reviewing an immigration application. It was written that “SS tattoo marks were related to blood grouping, and had no other significance.”⁷² The memo also declared that proof of forced conscription into Nazi organizations would not be required.⁷³ By intentionally removing these applicant checks, such a memo simply hindered the ability of security officers to filter out applicants with potential criminal backgrounds. Immigration policies became even more lenient towards former Nazis beginning in the 1950s. Between 1950

⁶⁸ Rodal, v. 1, 257.

⁶⁹ As noted in Altı Rodal’s report, the infiltration of Soviet spies or communists presented the most serious security risk during the Cold War. See Rodal, v. 1, 257, 267.

⁷⁰ There were restrictions on former Nazis and Nazi collaborators in the immediate postwar period due to the desire to prevent Nazi infiltration. However, according to Howard Margolian, “beginning in 1948 perceptions of the threat began to change. There is little question that the intensification of the Cold War was a major factor in altering perceptions. Margolian, *Unauthorized Entry*, 161.

⁷¹ Rodal, v. 1, 235.

⁷² *Ibid.*

⁷³ *Ibid.*

and 1952 it was ordered that membership in the Nazi Party, SS, Waffen-SS, Gestapo and Wehrmacht or collaboration with members of the aforementioned groups was no longer, in itself, cause for rejection.⁷⁴ Only classification as a major offender or security risk made one's immigration application subject to rejection.⁷⁵ As a result, not only were 145,198 Germans admitted into Canada between 1946 and 1955, but that group is "likely to have included- and indeed has been shown to include in its midst persons who were Nazis, collaborators and alleged war criminals."⁷⁶

Sadly, the Jews of Europe never fared as well. During the period when the Jews of Europe needed assistance the most, Canadian authorities were disinclined to offer it. Despite being flooded with applications from European Jews looking to immigrate to Canada, Canadian immigration authorities were not willing to increase quotas.⁷⁷ The government was operating under a 'policy of exclusion.'⁷⁸ Discrimination towards Jews was deeply engrained in established immigration practices and simultaneously sustained by anti-Semitic government officials.⁷⁹ Although help was attempted by the Jewish population in Canada, which stood in solidarity with their Jewish brethren in Europe, their initiatives were met with little success.⁸⁰ The Canadian Jewish Congress (CJC) and other Jewish organizations lobbied the government for a more liberal

⁷⁴ Between 1950 and 1952, a consistent relaxation of rules transpired. Policies against certain groups, such as the Waffen-SS relaxed in stages. By the end, however, membership and/or service in each of these groups was not cause for rejection. For a detailed account of the relaxation of guidelines on each of these groups, see Rodal, v. 1, 235-267.
⁷⁵ Rodal, 267.

⁷⁶ The statistics are offered in Rodal, v. 2, annex 2 while the quote is given in Rodal, v. 1, 117.

⁷⁷ In the immediate postwar years, immigration authorities did not find difficulty in "discriminating between desirable and undesirable immigrants." However, in the aftermath of war and amidst the chaos in Europe, the Immigration Branch was "confronted with a stream of applications on behalf of an undesirable group: the Jews." Abella and Troper, 199.

⁷⁸ The 'policy of exclusion' is referenced in Rodal, v. 1, 112.

⁷⁹ Officials such as Frederick C. Blair, a former Director of the Canadian Immigration Branch, implemented and upheld the policy of exclusion towards Jews. Discrimination towards Jews continued as a result of the anti-Semitic attitudes of such authorities. Rodal, v. 1, 113, 117.

⁸⁰ Evidence of concern for the Jews of Europe on the part of Canadian Jews is given in Abella and Troper, 208. In contrast, accounts of their unsuccessful lobbying are given in Abella and Troper, 65-66 and Bialystok, 16.

immigration policy and attempts were made by individual Canadians to bring Jewish relatives to Canada. Each of these efforts “became part of the collective battle by the Canadian Jewry to open Canada to refugees.”⁸¹ Unfortunately, the Jewish community had little impact on government authorities.⁸² Even Prime Minister McKenzie King, when the issue of Jewish immigration was brought to his attention, preferred to deflect the issue to other government bodies.⁸³ As a result, “almost no Jewish refugees entered Canada” during the first few years after the war.⁸⁴ After comparing the two cases one conclusion that one can draw is that after the war it was easier for Nazi war criminals to enter Canada than their victims. Revealing this reality in their renowned book *None is Too Many*, Irving Abella and Harold Troper confirmed that “the same Canada that refused to give sanctuary to the victims of Nazi terror did little to prevent itself from becoming a postwar sanctuary to some of those who were the agents of that terror.”⁸⁵

Operation Matchbox

Unfortunately, the contrast between the immigration experiences of Germans and Jews following the war was only one aspect of a shameful immigration history. Not only were many Germans and Nazi war criminals admitted to Canada following the war, a number of Germans, many with criminal backgrounds, were also specifically sought out and brought to Canada for the services they could and did provide. This was the outcome of a highly secretive project spearheaded by the British and the Americans. Even before the end of the war “the British and

⁸¹ Abella and Troper, 208.

⁸² Bialystok, 16.

⁸³ According to Abella and Troper, appeals to accept more Jewish refugees made King feel guilty. As a result, King often ignored letters and memos sent to him on the issue or simply referred the matter to other authorities. Even when he publicly announced that the Canadians would answer the calls of European Jews, no action was actually initiated. Abella and Troper, 209, 236.

⁸⁴ Abella and Troper, 237.

⁸⁵ *Ibid.*, 287.

American governments embarked on an ambitious and highly organized project to recruit thousands of Germany's top scientists and technicians to acquire their expertise, and more importantly, to deprive the Russians."⁸⁶ In what could be considered a race for specialists, German scientists, technicians and engineers as well as those with skills in espionage, nuclear energy and rocketry were sought out and taken in by Britain and the U.S.⁸⁷ The program was termed *Operation Paperclip*.⁸⁸ Although the program specifically prohibited the procurement of specialists suspected of war crimes or those active in the Nazi regime, many of the 765 Germans employed through the program were war criminals.⁸⁹ "In their primary interest to deny the Soviet Union access to German scientists," both the British and the Americans, "were prepared to cover-up incriminating information about possible war criminal backgrounds."⁹⁰

Although the Canadians were not directly involved in *Operation Paperclip*, they were involved in the larger project of "relocating German scientists and technicians out of Soviet reach."⁹¹ The project was termed *Operation Matchbox* and Canadian participation in the project began in September 1946 when the Cabinet approved a proposal to admit a group of German scientists, technicians and engineers into Canada.⁹² Although the Canadian government suggested that it was only to admit a modest 12-15 German experts into Canada, in reality, 71

⁸⁶ Rodal, v. 2, 327.

⁸⁷ According to the Rodal report, "German scientists and technicians were picked out by the advancing troops (during the war) and evacuated to the rear where they were promptly dispatched to the U.S. after a very perfunctory security screening. No attempt had been made to clarify the status of these German scientists until March 1946." Rodal, v. 2, 334.

⁸⁸ *Operation Paperclip*, which was originally code-named *Operation Overcast*, was the name given to the project aimed at recruiting German scientists, technicians, engineers, and other experts in espionage, rocketry and nuclear physics. To aim was to acquire their expertise while at the same time denying the Soviets that expertise, who were also in the business of recruiting German experts. See Rodal, v. 2, 327.

⁸⁹ *Ibid.*, v. 2, 335.

⁹⁰ *Ibid.*, v. 2, 331.

⁹¹ *Ibid.*, v. 2, 327.

⁹² Canadian participation in the project was originally proposed by C.J. MacKenzie of the National Research Board on September 26, 1946 prior to Cabinet's approval. See Rodal, v. 2, 327.

Germans in specialized fields were admitted.⁹³ In addition to bringing in significantly more German experts than was initially estimated, the government also conducted very little security screening on these individuals prior to admitting them. As was the case with ordinary immigration procedures, the Canadian government largely relied on British and American authorities to complete this function. But in the process of selecting experts from crowds of German soldiers, Nazis and civilians, moving them to the rear and transferring them out of conflict zones, screening was rushed at best. According to the Canadian Ambassador to the United States, “screening [consisted] merely in ascertaining that a given scientist [was] not listed as a historically offensive Nazi.”⁹⁴ Considering this and the ulterior goal of the British and Americans to deny the Soviet Union access to German specialists, screening procedures were wholly unreliable. According to James E. McKenzie, the British and Americans “were [simply] more interested in beating the communists than in keeping ex-Nazis out of Canada.”⁹⁵ However, the Canadian government proceeded despite this, knowing that Nazi war criminals were likely amongst those admitted. As a result it was decided by the Privy Council Committee to keep secret the admittance of German specialists. Anticipating the negative media attention and public criticism that would arise from the knowledge that the Canadian government was protecting potential war criminals, it was ordered that any communications regarding the German scientists should be sent by top secret memorandum.⁹⁶

⁹³ Rodal, v. 2, 339.

⁹⁴ Information on the screening of German experts admitted to Canada in *Operation Matchbox* is based on a memo sent by the Canadian Ambassador to the United States in December 1946 who reported that screening was perfunctory and sketchy. See Rodal, v. 2, 334.

⁹⁵ McKenzie, 131-132.

⁹⁶ Rodal, v. 2, 339.

EARLY REACTIONS TO THE PRESENCE OF NAZI WAR CRIMINALS IN CANADA

Lobbying Efforts

Despite efforts to keep *Operation Matchbox* confidential, news of Nazi war criminals gaining admission to Canada soon reached the public. This elicited an emotional response from Canadians, especially the Jewish population. The same Jewish organizations which lobbied the government regarding restrictions on Jewish immigration in the immediate postwar period; albeit without much success, took to lobbying the government again- but this time in regards to those that were actually admitted to Canada. The CJC was responsible for a large portion of these lobbying efforts. The leaders of the CJC pressured Congress to appeal to the government to investigate allegations of war criminals in Canada.⁹⁷ Between the late 1940s and 1960s Congress maintained consistent pressure on cabinet ministers, including the Minister of Justice, Secretary of State and Solicitor General to enact legislation which would permit Canadian authorities to try suspected war criminals who had been admitted to Canada.⁹⁸ Or at the very least, examine what legal options were available.⁹⁹ However, the Jewish community was dissatisfied with the lack of response on the part of the government towards the lobbying efforts of both Congress and the CJC.¹⁰⁰ Although many ministers were respectful of the seriousness of the issue, little action ever resulted from their meetings with members of Congress or the Canadian Jewry. By the early 1970s the Executive Director of the CJC, Saul Hayes, believed that “if Nazi war criminals were ever to be dealt with, the best way was to confront the government with an actual and documented war criminal living in Canada and identified by witnesses. It would then be up to

⁹⁷ Congress lobbied the government to investigate war criminals from lists supplied by Nazi hunters, Holocaust survivors and Holocaust organizations such as the (Friends of) Simon Wiesenthal Center(s). Bialystok, 223, 226.

⁹⁸ Bialystok, 223-22

⁹⁹ Ibid., 226.

¹⁰⁰ Ibid., 224.

government to find the appropriate legal remedy.”¹⁰¹

However, it was thought that progress had been made when Congress finally influenced the future Solicitor General, Robert Kaplan, to take action. After hearing pleas from numerous sources Kaplan introduced Bill C-215 in October 1978, a private member’s bill proposing an amendment to the Citizenship Act which would allow the government to revoke the citizenships of anyone previously convicted of a “grave breach of the 1949 Geneva Convention.”¹⁰² Kaplan, who was himself Jewish, also represented a riding with one of the largest Jewish populations in Canada and likely felt an obligation to appease his constituents. However, Kaplan did not receive support from the Liberal caucus and the Bill failed to pass.¹⁰³ The lobbyists were disappointed once again. Not two years later those pressing for action against Nazi war criminals faced another obstacle. In 1980 Kaplan received a brief from the Justice Department which stated that “no Canadian initiative under the *War Crimes Act, Citizenship Act or Immigration Act* was possible.”¹⁰⁴ In essence this decision meant that the government was not willing to interpret old legislation or enact new legislation which would allow authorities to bring war criminals in Canada to justice, solidifying its indifference towards the war criminals issue. After this decision was handed down the only recourse still available was to extradite Nazi war criminals to countries with which Canada had negotiated extradition treaties. Unfortunately, this method left no room for proactive action as extradition depended upon other countries to initiate requests.¹⁰⁵

¹⁰¹ Harold Troper and Morton Weinfeld, *Old Wounds: Jews, Ukrainians and the Hunt for Nazi War Criminals in Canada* (Markham: Penguin Books Canada Ltd., 1988), 112.

¹⁰² See more information on Bill C-215, *An Act Respecting War Criminals in Canada*, in Troper and Weinfeld, 114.

¹⁰³ *Ibid.*, 114-115.

¹⁰⁴ *Ibid.*, 121.

¹⁰⁵ To examine the rules of extradition, see *Extradition Act*, SC 1999, c 18.

Extradition Requests to the Canadian Government

With such a decision in place lobbyists refocused their attention on encouraging foreign governments to initiate requests for extradition and in turn, encouraging the Canadian government to accept those requests.¹⁰⁶ The latter proved difficult. In the 1970s the Soviet Union launched a series of extradition requests for suspected war criminals in Canada, but were met with resistance.¹⁰⁷ The liberal government feared the investigations that would inevitably result from confirmation that Nazi war criminals were hiding in Canada. It was feared that such investigations would bring shame and criticism to the Canadian government and initiate a race war between the German, Jewish and Eastern-European populations in Canada.¹⁰⁸ As a result, the “Liberal Government headed by Pierre Trudeau blocked any inquiry into whether these cases were symptomatic of a larger problem.”¹⁰⁹ To make matters worse the Canadian government, still involved in the Cold War against the Soviet Union, was opposed to accepting extradition requests from any Soviet-bloc or communist government. As a result, all requests from the governments of the Soviet Union or Eastern Europe were refused.¹¹⁰ This strongly angered the Jewish community which felt abandoned by a country failing to take action against those suspected of committing war crimes against their people. By this time Simon Wiesenthal himself was even refusing to visit Canada due to the government’s inaction towards war criminals.¹¹¹

The Case of Helmut “Rauca” Rauka

However, hope manifested itself in the early 1980s. After years of refusing requests for

¹⁰⁶ Ibid., 125.

¹⁰⁷ Cesarani, 192.

¹⁰⁸ Ibid., 193.

¹⁰⁹ Ibid., 192-193.

¹¹⁰ Based on information given in Sol Littman, *War Criminal on Trial: The Rauca Case* (Toronto: Lester & Orpen Dennys, 1983), 154-156 and McKenzie 102-103.

¹¹¹ Bialystok, 226.

the extradition of war criminals the Canadian government finally proceeded with one case. Between 1951 and 1973 the governments of the Soviet Union, East Germany and West Germany all initiated requests for the extradition of one Helmut Rauka. An SS master sergeant and Gestapo officer for Jewish affairs during the war, Rauka was responsible for the deaths of 11,500 people in the Kowno (or Kaunas) ghetto in Lithuania (which he oversaw).¹¹² In addition to selecting Jews to be transported to camps in Lithuania, Rauka was also responsible for the direct murder of many others in the ghetto.¹¹³ After the war Rauka deflected arrest for five years and eventually managed to escape Germany alongside thousands of Nazi war criminals. Like many others, he sought refuge in Canada. By simply altering the spelling of his last name from Rauka to Rauca and lying about his membership in the SS and Gestapo, Rauka was able to gain admission into Canada on December 30, 1950.¹¹⁴ In 1956 he acquired Canadian citizenship.¹¹⁵ For 32 years Rauka lived in peace and prosperity within Canada, moving between cities in Ontario over the course of three decades.¹¹⁶ All the while at least three governments were out for his arrest. However, the Canadian government was not inclined to grant their requests. Not wishing to draw attention to the fact that war criminals were able to slip into Canada due to

¹¹² The details of Rauka's crimes are given in *Re Federal Republic of Germany and Rauca*, 1982 CanLII 1961 (ON SC).

¹¹³ In addition to being "the officer in charge of selecting Jews for subsequent execution in camps located in Lithuania," Rauka was charged with committing the murder of 11,584 persons in the areas surrounding Kowno known as Fort IV and Fort IX. Here the victims were "shot in rows at the edge of prepared mass graves." In a separate instance Rauka is charged with personally beating with a cudgel and then shooting an individual for concealing a silver fork when all valuables were ordered to be turned over to the authorities. These charges are based on a warrant issue by the Federal Republic of Germany, passed along to the Government of Canada and given in the opinion of the court in the trial against Rauka. See *Re Federal Republic of Germany and Rauca*, 1982 CanLII 1961 (ON SC).

¹¹⁴ Landing in Saint John, New Brunswick, Rauka entered Canada alongside numerous refugees and displaced persons. It is unknown exactly what Rauka declared about himself on his immigration forms as his record was destroyed a few years prior to his arrest. Whether this was a mistake or a "deliberate attempt to get tide of incriminating evidence against Rauka and other suspected war criminals who were let into Canada" is unclear. McKenzie, 101-102.

¹¹⁵ *Re Federal Republic of Germany and Rauca*, 1982 CanLII 1961 (ON SC).

¹¹⁶ While moving from city to city Rauka also moved from job to job. Over the years Rauka worked as a tobacco farmer, bricklayer, dishwasher, brewer assistant and warehouse worker. Later in his life he ran a banquet hall, dry cleaning business and motel. McKenzie, 102-103.

ineffective border screening policies or appease requests from communist governments, Canadian authorities remained silent to extradition requests for Rauka.¹¹⁷ Although the Canadians made one superficial attempt to track down Rauka when they received an extradition request from the West German government in 1973, their searches came up empty.¹¹⁸ Rauka would be safe for another decade.

However, searches for Rauka resumed due to a series of fortunate events. When Robert Kaplan was appointed as Solicitor General in 1980 he gained oversight of the RCMP. Although he was unable to initiate a Canadian case against Rauka, he was able to pressure the RCMP to find Rauka and begin the extradition process.¹¹⁹ After decades in Canada the RCMP located Rauka on June 17, 1982 and arrested him in his Toronto home.¹²⁰ In November the proceedings against Rauka began. Charged with the deaths of approximately 11,500 individuals, the West German government “requested that [Rauka] be extradited to stand trial.”¹²¹ With an extradition treaty in place with the Federal Republic of Germany and the crime of murder being an offence as listed in both the Canadian Criminal Code and German Penal Code, the request for extradition was granted.¹²² In 1983 Rauka appealed the Ontario Supreme Court’s decision but his application was denied.¹²³ In May 1983 Rauka was extradited. Unfortunately, he died while

¹¹⁷ Littman, 102-103.

¹¹⁸ Rauka’s slight name change from Rauka to Rauca prevented his detection when a routine check was run on government records. As a result Canadian authorities informed the West German government that Rauka could not be located. McKenzie, 103.

¹¹⁹ Ibid., 104-105.

¹²⁰ Littman, 1.

¹²¹ Rauka’s crimes were laid out in 5 separate charges given in *Re Federal Republic of Germany and Rauca*, 1982 CanLII 1961 (ON SC).

¹²² Being that the crimes Rauka committed in Lithuania occurred when Lithuania was under the control of Germany and that the West German government was the most recent government to request Rauka’s extradition, Rauka’s extradition was granted to Federal Republic of Germany. *Re Federal Republic of Germany and Rauca*, 1982 CanLII 1961 (ON SC).

¹²³ *Re Federal Republic of Germany and Rauca*, 1983 CanLII 1774 (ON CA); aff’g 1982 CanLII 1961 (ON SC).

awaiting trial in Germany on October 29, 1983.¹²⁴ Despite this, Rauka became the first war criminal to come before a Canadian court since the trials of the seven war criminals in the immediate postwar period. This was a major achievement in the fight against war criminals in Canada. However, the legacy of the Rauka case does not reside with the ultimate success of a long awaited extradition or even that the government only proceeded when it was virtually too late. Its legacy is that the extradition of an infamous Nazi war criminal did not lead the Canadian government to take a more proactive approach against war criminals under its jurisdiction. Even with the precedent set by the Rauka case, the Canadian government remained indifferent to the issue of Nazi war criminals in Canada for the next few years.

BOILING POINT: THE MENGELE RUMOUR AND THE GOVERNMENT'S RESPONSE

Dr. Joseph Mengele in Canada?

With the Canadian government's continued silence on the war criminals issue, a number of individuals were finding their calling researching war criminals in Canada. By the end of the Rauka trial books such as *None is Too Many* were published and individuals such as Sol Littman, the director of the Friends of Simon Wiesenthal Center in Toronto, solidified their careers as Nazi hunters. As a result, more investigative work was transpiring on the issue of war criminals in Canada. It was because of these studies and the information that was uncovered as a result that the government was finally forced out of its silence. Surprisingly, however, the case that actually sparked government action was nothing more than a rumour.

In November 1985 Sol Littman at the Friends of Simon Wiesenthal Center in Toronto unearthed a series of documents suggesting that Josef Mengele, the notorious doctor of

¹²⁴ Littman, 153.

Auschwitz who was responsible for gas chamber selections and performing sadistic medical experiments on prisoners, may have gained admission to Canada in 1962.¹²⁵ Littman attempted to verify the information himself and investigate whether Mengele had entered Canada.¹²⁶ Gaining little from his investigative work Littman elected to write to Prime Minister Brian Mulroney to request that he launch a thorough investigation into the matter.¹²⁷ When he failed to receive a response from the Prime Minister, Littman went public with the story.¹²⁸ Despite the fact that neither Simon Wiesenthal nor the Centre in America supported his argument, Littman's reputation as "Canada's leading expert on the subject of war criminals" lent much credibility to his allegation.¹²⁹ This spurred a media frenzy in 1985. Although the issue of war criminals gaining admission to Canada was well known to the public by this time, news of such a notorious and sadistic Nazi potentially residing in Canada immediately became a hot topic. Although in the end no evidence was ever presented confirming Mengele's admittance to Canada, this media frenzy forced the government to act after forty years of inaction.¹³⁰

Organization of the Deschênes Commission of Inquiry on War Criminals in Canada

The negative publicity flooding in brought the spotlight back onto the issue of Nazi war criminals finding refuge in Canada and amplified the reality that there were many war criminals

¹²⁵ The documents in question were from the U.S. national archives. Included within them were a series of memos between various U.S. authorities discussing a "1962 request from Canadian via control officials seeking background information on Mengele. The request was of the usual type checking on someone seeking a visa to enter Canada." Charles Ashman and Robert J. Wagman, *The Nazi Hunters* (New York: Pharos Books, 1988), 240.

See also Grant Purves, "War Criminals: The Deschênes Commission," *Parliamentary Research Branch* 87-3E (1998), section D. "Establishment of the Deschênes Commission."

¹²⁶ Littman contacted both the individual who had made the request for background information on Mengele as well as the RCMP. No information was provided. Ashman and Wagman, 240.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ McKenzie, 114-115.

¹³⁰ Ibid., 115.

in Canada who had not yet been detected.¹³¹ Recognizing the possibility of this issue to challenge the legitimacy of his government, Mulroney made the issue of war crimes a government priority and public security issue. In an effort to separate himself from the previous Liberal governments and stem the influx of negative publicity, Mulroney instructed the Minister of Justice and Solicitor General to launch a thorough investigation into the allegations made by Littman and other cases of suspected war criminals living in Canada.¹³² The result was the establishment of a Commission of Inquiry led by the Honourable Jules Deschênes of the Quebec Court of Appeal.¹³³ And its findings were shocking to many. Hired to conduct background research for the Commission, Dr. Alti Rodal produced a comprehensive 600 page study of the issue.¹³⁴ Rodal discovered that hundreds, potentially thousands of war criminals had been admitted to Canada since the end of the Second World War and uncovered the details of *Operation Matchbox*.¹³⁵ But most importantly, Rodal also learnt that many war criminals continued to receive protection from successive governments which had full knowledge of their criminal pasts.¹³⁶ Rodal termed this scandal ‘Ottawa’s dirty little secret.’¹³⁷

Although Rodal’s report was never published, its findings did inform Deschênes’ *Report of the Commission of Inquiry on War Criminals*; more commonly known as the *Deschênes Report*.¹³⁸ However, Deschênes’ final report, presented on December 30, 1987, was heavily edited at the request of the Minister of Justice to spare as much embarrassment and criticism of

¹³¹ Ashman and Wagman, 240.

¹³² Purves, "War Criminals: The Deschênes Commission," section D. Establishment of the Deschênes Commission.

¹³³ Ibid.

¹³⁴ See Rodal, *Nazi War Criminals in Canada: The Historical and Policy Setting from the 1940s to the Present*. v. 1 & 2.

¹³⁵ See information given earlier in the *Political Climate in Canada 1940s-1950s* section.

¹³⁶ Rodal, v. 1

¹³⁷ Ibid.

¹³⁸ See Deschênes, *Report of the Commission of Inquiry on War Criminals*.

the government as possible.¹³⁹ Yet, the report did confirm Rodal's findings that many Nazi war criminals had found safe haven in Canada and that the government had engaged in the "destruction of crucial immigration files in 1982" which "seriously impaired" the ability of authorities to bring war criminals to justice.¹⁴⁰ With the help of his staff Deschênes compiled a "Master List" of war criminals who may have entered Canada. This list was based on information provided by Holocaust centers such as the Simon Wiesenthal Center and Yad Vashem, foreign governments, Holocaust survivors and Nazi hunters.¹⁴¹ The list put the number of war criminals potentially residing in Canada at 883.¹⁴² After filtering the list further based on his own criteria, 218 names remained; among those, 29 priority cases.¹⁴³ In his report Deschênes also outlined the legal remedies available to the government to proceed against suspected Nazi war criminals in Canada. According to Deschênes, "extradition offer[ed] the best solution for suspected war criminals to be brought to justice, both from a legal and from a practical point of

¹³⁹ Purves, "War Criminals: The Deschênes Commission," sec. E. "The Report of the Deschênes' Commission."

¹⁴⁰ It is not known whether the destruction of immigration records was a deliberate attempt to remove evidence of the admittance of Nazi war criminals into Canada or simply a "monumental error in judgement." However, it was discovered that the mishap coincided with the Rauka case, causing skepticism of the government's position on the war criminals issue and their political will to bring those in Canada to justice. Irwin Cotler, "Bringing Nazi War Criminals In Canada to Justice: A Case Study," *Proceedings of the Annual Meeting (American Society of International Law), Implementation, Compliance and Effectiveness* 91 (1997): 267.

¹⁴¹ In the lists provided by each of these groups and added to those that various Canadian government branches had compiled, many names were repeated. As a result the "Master List" involved the screening of each list. The process for compiling the "Master List" is given a full breakdown in Deschênes, *Report of the Commission of Inquiry on War Criminals*, 47-48.

¹⁴² This number is based on 774 original suspects, an addendum of 38 names and an additional 71 German scientists, technicians and espionage experts. The "Master List" is discussed throughout the Deschênes Report but is explained in full detail in Deschênes, *Report of the Commission of Inquiry on War Criminals*, 47-52, 261-826.

¹⁴³ During the filtering process Deschênes removed names in which there was evidence to believe the suspect had already died, was no longer residing in Canada or had not come to Canada at all. However, he also filtered out individuals where, in his opinion, not enough evidence existed to prove them guilty of war crimes. This angered many. Deschênes "set himself up as judge and jury and decided that the person should not be investigated further." In essence, Deschênes made proof of guilt or at the very least a "test of almost certainly guilty" a prerequisite to warrant further investigation. However, many of those filtered off the list were suspected of war crimes while "members of Ukrainian, Lithuanian or Latvian police or auxiliary units. The Berlin Documents Center and other German-maintained Nazi military archives are almost devoid of information about these units. The fact that German-based record centers do not have information about these suspects is meaningless, not exculpatory." However, evidence existed on many of these individuals in East European countries, but attempts to collect such evidence did not transpire. Ashman and Wagman, 243-245.

view,” while deportation and denaturalization “should only be used as a last resort.”¹⁴⁴ In Deschênes’ view, prosecution under Canadian criminal law fell somewhere in the middle.¹⁴⁵ However, Deschênes believed that all three remedies were constitutional provided that existing laws be amended and/or new legislation be enacted to make each of these remedies fully legal.

Governmental Response

On March 12, 1987, three months after Deschênes turned in his final report, the government formally responded to Deschênes’ findings and recommendations by announcing a plan to tackle the issue of Nazi war criminals in Canada. A three-pronged approach was taken. First, the Crimes Against Humanity and War Crimes Section of the Justice Department was created and was to work in collaboration with the already established War Crimes and Special Investigations Unit of the RCMP to “receive allegations, investigate, assess and pursue cases against people suspected of involvement in war crimes and crimes against humanity.”¹⁴⁶ In short, these special war crimes units created a larger resource and personnel base for investigating war criminals in Canada, expanding the potential for action. This development was followed by the introduction of Bill C-71, an *Act to amend the Criminal Code, the Immigration Act, 1976 and the Citizenship Act* in June 1987.¹⁴⁷ In a direct contrast to the Justice Department’s earlier declaration that “no Canadian initiative was possible,” the amendments made to these pieces of legislation enabled the government to initiate legal proceedings against suspected war criminals in Canada.¹⁴⁸ First, the amendments to the Criminal Code extended jurisdiction to Canadian

¹⁴⁴ Deschênes, *Report of the Commission of Inquiry on War Criminals* 86-87.

¹⁴⁵ Ibid.

¹⁴⁶ Canadian Department of Justice & Department of Immigration and Citizenship. *Annual Report of the War Crimes Program 1998-1999*.

¹⁴⁷ Bill C-71, *An Act to amend the Criminal Code, the Immigration Act, 1976 and the Citizenship Act*. 2nd sess., 33rd Parl., Ottawa, 1987 (assented to 16 September 1987).

¹⁴⁸ Troper and Weinfeld, 121 and Cesarani, 194.

authorities to prosecute those suspected of committing war crimes outside of Canada under Canadian law. These amendments came to be known as the *Made in Canada Nuremburg Legislation*.¹⁴⁹ Secondly, the amendments to the *Immigration Act* and *Citizenship Act* allowed Canadian authorities to revoke the citizenship of and remove from Canada, persons “under investigation for war crimes or crimes against humanity, or having been charged with, on trial for, or convicted of such crimes.”¹⁵⁰ In a proactive attempt to deny future war criminals admission to Canada, the amendments also strengthened immigration and citizenship regulations so as to detect and filter out suspected war criminals seeking admission to Canada or seeking Canadian citizenship.¹⁵¹ On September 16, 1987 the Bill received Royal Assent.¹⁵² Finally, the government adopted Deschênes’ proposal of three legal remedies to deal with suspected war criminals. In order of priority, these remedies were extradition, prosecution under Canadian criminal law and denaturalization/deportation. Although the order of preference changed during the 1990s, the government initially adopted Deschênes’ proposal.¹⁵³

CAUSE FOR REEVALUATION

Obstacles to Extradition

Following the government’s progressive response to the Deschênes’ Report, a dormant period ensued. Although the legal changes made by the government implied that action was to be taken against the plethora of Nazi war criminals in Canada, no charges were laid and no proceedings initiated in the first ten months after Deschênes’ report had been issued.¹⁵⁴ This

¹⁴⁹ Purves, “War Criminals: The Deschênes Commission.” *Parliamentary Action*.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² Bill C-71, *An Act to amend the Criminal Code, the Immigration Act, 1976 and the Citizenship Act*.

¹⁵³ Purves, “War Criminals: The Deschênes Commission.”

¹⁵⁴ *Ibid.*

evoked criticism from not only the Canadian public but the international community.¹⁵⁵ In response, the government initiated proceedings against four suspected war criminals.¹⁵⁶ It would not be long, however, before new obstacles were presented to the government's renewed approach to war criminals in Canada.

First, there was a realization of the limitations of extradition as a viable remedy. As discussed earlier, this was the result of the problematic mutual agreement on which extradition depends: the willingness of the country where the crimes took place to initiate a request for extradition, and Canada's willingness to accept that request.¹⁵⁷ Although the Canadian government established extradition treaties with many West European countries, they avoided sending war criminals to most East European countries "on the grounds that the accused persons sent there might not receive fair trials."¹⁵⁸ Yet, many of the war criminals residing in Canada originated from and/or committed their crimes in Poland, Ukraine, Lithuania, Latvia and the former the USSR. Without extradition treaties negotiated with such countries, extradition became a rare solution.¹⁵⁹ According to Irwin Cotler, a former President of the CJC, "extradition may have been an appropriate remedy in the Rauka case but is of limited value against most Nazi war criminals of Eastern European origin suspected of being in Canada."¹⁶⁰

¹⁵⁵ In his analysis of the Deschênes' Report and its aftermath, Grant Purves noted that "in early November 1987 some participants at an international conference marking the 40th anniversary of the Nuremberg trials expressed concern that, ten months after Mr. Justice Deschênes had submitted his report, no charges had been laid." See Purves, "War Criminals: The Deschênes Commission."

¹⁵⁶ Ibid.

¹⁵⁷ See Matas, 96 and Troper and Weinfeld, 121. See also *Extradition Act*, SC 1999, c 18.

¹⁵⁸ Matas, 96. Based also on information given in a variety of sources including Ashman and Wagman, 247; Littman, 154-156 and McKenzie 102-103.

¹⁵⁹ Ibid.

¹⁶⁰ Irwin Cotler quoted in Troper and Weinfeld, 131.

The Finta Case and its Implications on Prosecution

The second reason for the shift in remedies was the result of a series of four unsuccessful prosecutions beginning and ending with the trial of Imre Finta. A captain in the Royal Hungarian Gendarmerie during the Second World War, Finta commanded a unit responsible for detaining 8,671 Jews in the Szeged district in Hungary, looting their valuables and deporting them to concentration camps in the East.¹⁶¹ In 1944 Finta fled to Germany when the advancing Russians pushed the Nazis out of Hungary. After the war he moved around Europe working in hotels and restaurants before moving to Canada in 1951.¹⁶² It would be thirty years before Finta's criminal past caught up with him. In the early 1980s Finta was publicly revealed as a war criminal by a Sabrina Citron, a Holocaust survivor of the Auschwitz concentration camp and the founder of the Canadian Holocaust Remembrance Association.¹⁶³ This caused Finta to come under scrutiny. Between 1985 and 1986 he was investigated as part of the *Deschênes' Commission of Inquiry on War Criminals*, and on December 9, 1987 he was arrested by the RCMP.¹⁶⁴ Finta was to be the first war criminal charged under the Criminal Code's 1987 amendments. For his crimes in Hungary Finta was charged with eight counts of unlawful confinement, robbery, kidnapping and manslaughter- all considered to be either war crimes or crimes against humanity as defined by the amendment to the Criminal Code.¹⁶⁵ When his case went before the Ontario Supreme Court

¹⁶¹ The order to complete these crimes came from the Hungarian Minister of the Interior, placing the responsibility for executing them solely on Finta. The crimes were committed between April 7th and July 10th, 1944. See the full details of Finta's crimes in *R. v. Finta*, [1994] 1 SCR 701; aff'g [1992] 2783 (ONCA); aff'g [1989], 4378 (Ont HCJ).

¹⁶² For an account of Finta's movements after the war, see McKenzie, 140.

¹⁶³ In the early 1980s, Sabina Citron accused Finta of war crimes. As the leader of the CHRA, Citron vowed to bring war criminals to justice and end Nazism forever. In response, Finta returned the accusation by calling Citron a liar. A legal suit erupted when Citron sued Finta for libel. After five years in court Finta was ordered to pay Citron \$30,000 in damages plus legal fees. This case brought Finta's alleged war crimes to light. Stephen Landsman, *Crimes of the Holocaust: the law confronts hard cases* (Philadelphia: University of Pennsylvania Press, 2005), 176.

¹⁶⁴ McKenzie, 141.

¹⁶⁵ The amendments to the Criminal Code defined war crimes and crimes against humanity as follows:

of Justice in November 1989, Finta did not contest these allegations.¹⁶⁶ However, he was acquitted on May 25, 1990 on all counts.¹⁶⁷ The Crown appealed this judgement and both the Ontario Court of Appeal and later the Supreme Court of Canada upheld the acquittal in April 1992, and March 1994, respectively.¹⁶⁸ During the Finta case, three other trials proceeded against suspected war criminals: Michael Pawlowski, Stephen Reistetter and Radislav Grujicic. All three were charged for their roles in carrying out war crimes and/or crimes against humanity; none were convicted.¹⁶⁹ But it was the result of Finta's case which was responsible for changing the direction of action against Nazi war criminals in Canada.

During Finta's trial the Supreme Court did uphold the constitutionality of the amendments to the Criminal Code and the right to try suspects so long after the crimes had been committed.¹⁷⁰ However, in a break with precedent set in the first Nuremburg trial, the Supreme Court allowed the 'superior orders' defence to be used which had never before been accepted in any war crimes trial.¹⁷¹ Suggesting that "a realistic assessment of police or military organizations requires an element of simple obedience," the Supreme Court ruled that the superior orders defence was acceptable when considering an "individual's responsibilities as a part of a military

"Crime against humanity" means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

"War crime" means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission. *Criminal Code*, s 6(1.96)

¹⁶⁶ R. v. Finta, [1989], 4378 (Ont H CJ)

¹⁶⁷ Ibid.

¹⁶⁸ R. v. Finta, [1994] 1 SCR 701; aff'g [1992] 2783 (ONCA); aff'g [1989], 4378 (Ont H CJ).

¹⁶⁹ For details on the trials of each of these men, two of whom were acquitted due to a lack of evidence, see Grant Purves, "War Criminals: The Deschênes Commission," sec. F. "War Crimes Prosecutions."

¹⁷⁰ R. v. Finta, [1994] 1 SCR 701; aff'g [1992] 2783 (ONCA); aff'g [1989], 4378 (Ont H CJ).

¹⁷¹ The superior orders defense is one in which a defendant claims that they should not be held responsible, or at the least not found guilty for actions they were ordered to complete by a superior or person of authority. Based both on the idea of command obedience as well as the responsibilities of those in a military of peace officer unit. Ibid.

or peace officer unit.”¹⁷² After electing to validate the legality of the ‘superior orders’ defence, Supreme Court Justice Peter Cory ruled that:

“The evidence of the state of the war, that the country was occupied by German forces, the existence of state-sanctioned conduct by police officers in a state of emergency, and the imminent invasion by the Soviet army which was but 100 km from Szeged was sufficient in my view to give an air of reality to the defence of obedience to superior orders.”¹⁷³

This caused dismay among the public “given that the legal argument of ‘superior orders’ had hitherto never been accepted in any Nazi war crimes trial and that the anti-Semitic decrees in Hungary were clearly against the Hungarian constitution.”¹⁷⁴ Quincy Wright, an expert in international law and an advisor to Justice Robert Jackson (the lead U.S. prosecutor at the Nuremberg trial), summarized why the defence should be inapplicable in such cases. Suggesting that it is not the authorization of an order by a superior which merits the legality of the defence, but what the order entails.¹⁷⁵ According to Wright, the defence of superior orders can only be accepted when the order which the accused individual followed was within a state or state authority’s capability to authorize. Therefore, Wright has argued that individuals should not be

¹⁷² Ibid.

¹⁷³ In the opinion he deliver, Justice Peter Cory noted that “the respondent has correctly noted that evidence of the following circumstances was entered at trial which gave the defences of mistake of fact and obedience to superior orders an air of reality:

- (1) Finta’s position in a para-military police organization;
- (2) the existence of a war;
- (3) an imminent invasion by Soviet forces;
- (4) the Jewish sentiment in favour of the Allied forces;
- (5) the general, publicly stated belief in newspapers in Hungary that the Jews were subversive and disloyal to the war efforts of Hungary.
- (6) the universal public expression in the newspapers cited by one of the witnesses of approval of the deportation of Hungarian Jews;
- (7) the organizational activity involving the whole Hungarian state together with their ally, Germany, in the internment and deportation;
- (8) the open and public manner of the confiscations under an official, hierarchical sanction;
- (9) the deposit of seized property with the National Treasury or in the Szeged synagogue.

Ibid.

¹⁷⁴ Zuroff, *Operation Last Chance*, 85.

¹⁷⁵ Quincy Wright, “War criminals,” *The American Journal of International Law* 39, no. 2 (1945): 265-266. Web. 20 November 2014.

<http://www.jstor.org.proxy1.lib.uwo.ca/stable/pdfplus/2192345.pdf?acceptTC=true&jpdConfirm=true>

able to escape justice under the superior orders defence if the order was not legal to begin with, and instead demanded the defendant to commit war crimes and/or crimes against humanity.¹⁷⁶

However, this principle was not followed by the Supreme Court of Canada. Instead, the Court accepted the superior orders defence, setting a precedent for any future Canadian prosecutions. This, coupled with the failure to secure any convictions against Nazi war criminals made further prosecutions of suspected war criminals impractical. As stated by Efraim Zuroff, “the Canadian government was forced to abandon its attempts to prosecute Holocaust perpetrators living in Canada on criminal charges since all would have been automatically acquitted based on the Finta precedent.”¹⁷⁷ By 1995, the Canadian government had to turn their attention from extradition and prosecution and rely on the only other available remedies: denaturalization and deportation.

THE WAR CRIMES PROGRAM

Purpose, Priorities, and Method

In the process of shifting focus to denaturalization and deportation, the government announced the creation of the 1998 War Crimes Program to focus on these objectives.¹⁷⁸ The avowed purpose of the Program was to “deny safe haven to suspected perpetrators of war crimes, contribute to the domestic and international fight against impunity and reflect the government’s commitment to international justice, respect for human rights, and strengthened border security.”¹⁷⁹ The Program outlined a three-pronged approach to achieve these objectives. The

¹⁷⁶ Ibid., 266.

¹⁷⁷ Zuroff, *Operation Last Chance*, 85.

¹⁷⁸ The Program was established not only to deal with Second World War cases, but all modern war crimes, thereby expanding its scope. Canadian Department of Justice & Department of Immigration and Citizenship. *Public Report: Canada’s War Crimes Program 1998*.

¹⁷⁹ Ibid.

first goal of the Program was to prevent suspected war criminals from reaching and/or entering Canada in the first place. Therefore, establishing and employing stricter immigration and border screening procedures were initiatives prioritized by the Program.¹⁸⁰ The second goal was to identify and locate those who had already reached Canada. Once detected authorities were to pursue the most appropriate course of action: prevent the suspect's achievement of refugee status or citizenship, revoke their status or citizenship if it had already been acquired and/or deport them from Canada. As a consequence, many resources were concentrated on developing strong investigative practices to detect and locate suspected war criminals in Canada.¹⁸¹ Finally, where appropriate, the government was to consider the possibility of prosecution or extradition. When such possibilities were entertained the War Crimes Program was responsible for conducting further investigations and acquiring evidence to try the alleged war criminals.¹⁸² Achieving these three goals, and by extension, the avowed purpose of the Program, was to be a collaborative effort between the Department of Justice, the RCMP and Citizenship and Immigration Canada. When the Canadian Border Services Agency was established in 2003, it became the fourth government agency involved in the War Crimes Program.¹⁸³ As an integrated war crimes program it was thought that different agencies and governmental departments working collaboratively, sharing information and pooling resources would more effectively identify, investigate and pursue cases against suspected Nazi war criminals.

Although the issue of Nazi war criminals finding refuge in Canada was the inspiration and driving force behind the Program, and Second World War cases continue to represent a special category of war crimes in the Program's annual reports, it is important to note that they

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² See the Approach Section in Canadian Department of Justice, War Crimes Program.

¹⁸³ See the History Section in Canadian Department of Justice, War Crimes Program.

do not encompass the entirety of the Program's efforts.¹⁸⁴ The purpose of the War Crimes Program was not only to address the crimes of the Nazi regime and the criminals who perpetrated them now residing (or attempting to reside) in Canada. It was also to address perpetrators of war crimes, crimes against humanity and genocides from conflicts that have occurred all over the world prior to and following the Second World War.¹⁸⁵ This commitment is commendable. However, it is also reflective of some unfortunate truths. The first of these is that the need to prevent episodes of mass violence and crimes against humanity has not ceased. Conflicts in Chile, Darfur, Rwanda, Cambodia and the former Yugoslavia, to name a few, all involved the perpetration of war crimes, crimes against humanity and/or genocide. These conflicts demonstrate that the precedents and penalties for war crimes set by the international community after the Second World War have not been significant deterrents. To this day war crimes and crimes against humanity are committed in mass across the world. Unfortunately, this may be the result of the second truth revealed by the Program- that many countries around the world have ignored their international obligations by allowing their nations to become refuge for war criminals.¹⁸⁶ Historically, this has resulted in very few war criminals being brought to justice or facing punishment for their crimes. Canada has not been immune to this. Canadian immigration procedures have not overwhelmingly improved, allowing many war criminals from various conflicts to find new homes in Canada.¹⁸⁷ This pattern proves that a dedicated effort on the part of the Canadian government to respond to the issue of war criminals in Canada,

¹⁸⁴ Within the War Crimes Program's annual reports, all cases that have gone through the Program are separated between those from the Second World War and modern conflicts. As such they are considered a special category of crimes within the War Crimes Program. See the annual reports from 1998-2011 in Canadian Department of Justice, War Crimes Program.

¹⁸⁵ Canadian Department of Justice & Department of Immigration and Citizenship. *Public Report: Canada's War Crimes Program 1998*.

¹⁸⁶ Cotler, 266.

¹⁸⁷ Calling the admittance of war criminals from various conflicts into Canada a 'trend,' the War Crimes Program was forced to investigate modern war crimes. *Ibid*.

especially those from the Second World War which inspired the Program in the first place, is crucial to altering what has been the status quo with respect to war criminals: passivity and enablement.

The creation of the Canadian War Crimes Program was a step in the right direction. Since its inception, the War Crimes Program has investigated over 1,840 suspected war criminals from the Second World War, including all 883 from Deschênes' "Master List."¹⁸⁸ Of these investigations, a number of denaturalization and deportation actions have also been initiated. Some have been successful, others have not. However, in resorting to the remedies of denaturalization and deportation, the government has tended not to prove the perpetration of war crimes beyond a reasonable doubt, but that the accused entered Canada and potentially gained citizenship through "misrepresentation, fraud or by concealing material circumstances."¹⁸⁹

The Case of Helmut Oberlander

One such case is that of Helmut Oberlander, a Ukrainian who moved to Canada in 1954 and acquired citizenship in 1960.¹⁹⁰ Oberlander came under scrutiny in 1995 when it was found that he may have committed war crimes and/or crimes against humanity during the Second World War. Having been fluent in Russian and German, Oberlander, who was considered by the Germans to be part of the Volksdeutsch, was directed to work for the Germans as an interpreter

¹⁸⁸ In the latest report published in 2011, the total number of cases that have been investigated was listed at 1,843. Of those, only 19 cases remain open as of the 2011 Annual Report. The number has undoubtedly decreased in the three years since the 2011 report's publication. Canadian Department of Justice & Department of Immigration and Citizenship. *Report of the War Crimes Program 2008-2011*.

¹⁸⁹ Canadian Department of Justice & Department of Immigration and Citizenship. *Annual Report of the War Crimes Program 1998-1999*.

¹⁹⁰ *Oberlander v Canada (Attorney General)*, [2009] FCA 330; rev*g [2009] 3 FCR 358, [2008] FC 1200; rev*g [2005] 1 FCR 3, [2004] FCA 213; aff*g [2004] 15504 (ON SC); rev*g [2003] FCA 134; aff*g [2002] FCT 771.

when his village was occupied in 1941.¹⁹¹ From there Oberlander was assigned to Einsatzkommando 10a (Ek 10a), a unit within one of four Einsatzgruppen.¹⁹² The Einsatzgruppen were mobile killing units that operated behind German military lines. These units executed mass shooting operations and organized the deportation of civilians to labour, concentration and death camps across Europe.¹⁹³ Oberlander was later moved from Ek 10a to serve in the German infantry between 1943 and 1944.¹⁹⁴

Since 1995 the government has been in a legal battle against Oberlander. The proceedings began when the Minister of Citizenship and Immigration sent Oberlander notice that his citizenship had been recommended for revocation. Oberlander referred this matter to the courts.¹⁹⁵ Five years later on February 28, 2000, Oberlander was found guilty of obtaining citizenship under false pretenses, a violation of Canadian law as listed in s. 18(1)(b) of the Citizenship Act.¹⁹⁶ The matter was then referred to the Governor-in-Council (GIC) who revoked Oberlander's citizenship on July 11, 2002 based on the court's findings.¹⁹⁷ Dissatisfied with this result, Oberlander applied for judicial review of the decision to revoke his citizenship and consecutively motioned to stay the proceedings until his application for judicial review had been assessed.¹⁹⁸ The motion was denied.¹⁹⁹ When Oberlander's application for judicial review was assessed on August 1, 2003, it was also denied.²⁰⁰ Oberlander appealed this decision in 2004,

¹⁹¹ Volkdeutsch, or "German in terms of people or folk," are those that Germans during the Second World War considered ethnic Germans. As opposed to naturalized Germans, members of the Volkdeutsch were part of the German race and were of German heritage, but who were living outside of the country due to German land losses or migration. *Ibid.*

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*

¹⁹⁵ *Canada (Minister of Citizenship and Immigration) v Oberlander*, [1997] 5898 FC.

¹⁹⁶ *Canada (Minister of Citizenship and Immigration) v Oberlander*, [2000] 14968 FC; [1997] 5898 FC. Also, see *Citizenship Act*, SC 1976, c 108, s. 18(1)(b).

¹⁹⁷ The result of the GIC's decision is given in *Oberlander v Canada (Attorney General)*, [2002] FCT 771.

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ *Oberlander v Canada (Attorney General)*, [2003] FC 944; aff*g [2003] FCA 134; aff*g [2002] FCT 771.

arguing that his Charter rights had been violated. The appeal was allowed and Oberlander's application for judicial review was granted.²⁰¹ Through the process of judicial review the revocation of Oberlander's citizenship was reversed and the matter was readmitted to the GIC for new determination.²⁰² After reviewing the matter again, the GIC decided to revoke Oberlander's citizenship for a second time on May 17, 2007.²⁰³ Once again, Oberlander applied for judicial review of the GIC's decision.²⁰⁴ This application was dismissed by the Federal Court in 2008 which claimed that the new rationale for revoking Oberlander's citizenship was reasonable.²⁰⁵ Oberlander appealed the judge's decision to deny his application for judicial review and subsequently won his appeal case. For a second time the Federal Court of Appeal set aside the government's order to revoke Oberlander's citizenship and instructed the GIC to reconsider Oberlander's status with respect to the matter of duress.²⁰⁶ After reviewing the matter for a third time, the GIC revoked Oberlander's citizenship again in 2012. Oberlander's latest appeal was heard and denied in January but he has since announced that he will launch another appeal and take the matter to the Supreme Court if necessary.²⁰⁷ After over twenty years the matter is still not settled.

²⁰¹ Oberlander v Canada (Attorney General), [2005] 1 FCR 3, [2004] FCA 213; aff*g [2004] 15504 (ON SC); rev*g [2003] FC 944; aff*g [2003] FCA 134; aff*g [2002] FCT 771.

²⁰² Ibid.

²⁰³ The result of the GIC's decision to revoke Oberlander's citizenship a second time is given in Canada (Minister of Citizenship and Immigration) v Oberlander, [2008] FC 497.

²⁰⁴ Ibid.

²⁰⁵ Oberlander v Canada (Attorney General), [2009] 3 FCR 358, [2008] FC 1200; rev*g [2005] 1 FCR 3, [2004] FCA 213; aff*g [2004] 15504 (ON SC); rev*g [2003] FC 944; aff*g [2003] FCA 134; aff*g [2002] FCT 771.

²⁰⁶ Oberlander v Canada (Attorney General), [2009] FCA 330; rev*g [2009] 3 FCR 358, [2008] FC 1200; rev*g [2005] 1 FCR 3, [2004] FCA 213; aff*g [2004] 15504 (ON SC); rev*g [2003] FC 944; aff*g [2003] FCA 134; aff*g [2002] FCT 771.

²⁰⁷ Oberlander v Canada (Attorney General), [2015] FC 46; aff*g [2009] FCA 330; rev*g [2009] 3 FCR 358, [2008] FC 1200; rev*g [2005] 1 FCR 3, [2004] FCA 213; aff*g [2004] 15504 (ON SC); rev*g [2003] FC 944; aff*g [2003] FCA 134; aff*g [2002] FCT 771.

WHERE TO GO NOW?

Continued Nazi Hunting: A Question of Utility

Oberlander's case is one of the few left for the government to act on.²⁰⁸ However, it has been called into question whether continued Nazi hunting is still a worthwhile pursuit. On one side of the debate are those who believe that the practice should be abandoned, arguing that it is no longer practical, useful or capable of achieving any meaningful justice. On the other hand, proponents of the practice argue that it is imperative that Nazi hunting continue until the last surviving suspect is brought to justice or perishes. Whether it is better to simply move on and potentially forgive the perpetrators or continue to seek justice for their crimes is a dilemma that has been wrestled with by countless historians, human rights activists, Nazi hunters, writers, jurists, Holocaust survivors and victims of other exploits of mass violence. In essence this has become a debate about the utility of Nazi hunting and whether it is still a worthwhile pursuit. While this is the crux of the debate, another question still remains: if the process is still worthwhile, how should society continue to proceed against those suspected of war crimes and/or crimes against humanity?

Potential for Alternative Forms of Justice

Fortunately, recent events have expanded alternative possibilities for justice. Since the late 1980s and early 1990s when extradition and prosecution were limited as viable remedies, a

²⁰⁸ Two other prominent cases are those of Vladimir Katriuk, the commander of a platoon responsible for the massacre of a Belarusian village in 1943 and Wasyl Odynsky, a member of an SS battalion and guard of two forced labour camps. In 2007, the government ruled against revoking both men's citizenships. Since then, B'nai Brith Canada and other human rights/Jewish groups/Nazi hunters have urged the government to reconsider and resume proceedings against the men. Pressure to act against Katriuk is especially strong as new evidence of his involvement in war crimes has surfaced. Katriuk is currently living a relatively undisturbed life as a beekeeper in Ormstown, Quebec. Based on information given in Hough and in Andy Blatchford, "Accused Nazi living as Quebec beekeeper." *Toronto Star*, April 26, 2012, News/Canada sec.

series of events has Canadians reconsidering the employability of old remedies and the potential for new ones. The first of these events was the enactment of the *Crimes Against Humanity and War Crimes Act*. By criminalizing acts of genocide, war crimes and crimes against humanity regardless of where or when they were committed, and supporting the creation of a permanent International Criminal Court, the Act made Canada the first country to incorporate the principles and obligations of the *Rome Statute* into its domestic law.²⁰⁹ But most importantly, when the Act received Royal Assent on June 29, 2000 “it paved the road to renewed criminal investigations and prosecutions in Canada.”²¹⁰ In a break with precedent set in the Finta case the Act prohibited the use of the superior orders defence or the justification that the crime was legal at the time it was committed.²¹¹ The Act declared that as a prerequisite for such defences to be applicable in court, the law or order which the accused followed when committing their crime(s) could not be manifestly unlawful.²¹² And it was declared that “orders to commit genocide or crimes against humanity are manifestly unlawful.”²¹³ As a result, the aforementioned defences have become unavailable to those accused of committing acts of genocide or crimes against humanity. By removing avenues which led to the acquittal of war criminals in earlier cases, the Act has restored the potential for prosecution.

In addition to renewing the possibility for older remedies such as prosecution under

²⁰⁹ The Rome Statute, adopted in 1998 and brought into force in 2002, established the International Criminal Court to prosecute crimes of genocide, war crimes, crimes against humanity and crimes of aggression. Founded upon the principle of complementarity, the Rome statute only authorized the Court to have jurisdiction over crimes in cases where the governments of the states where the crimes occurred were either unable or unwilling to prosecute. As a result, the Court was to work in collaboration with state governments, and to buttress domestic enforcement- not replace it. See paragraph 10 of the preamble and sections 1 and 16 of the United Nations General Assembly, “Rome Statute of the International Criminal Court,” July 17, 1998.

The Canadian government adopted the principles of the Rome Statute into its domestic law through the *Crimes Against Humanity and War Crimes Act*. See the definitions for genocide, war crimes and crimes against humanity in *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24, sec. 6. (3).

²¹⁰ See the Modern War Crimes section in Canadian Department of Justice, War Crimes Program.

²¹¹ Based on *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24, sec. 13, 14.

²¹² *Ibid.*, sec. 14 (1) (c).

²¹³ *Ibid.*, sec. 14 (2).

Canadian criminal law, recent events have also made alternative methods for justice a possibility. In June 2013 the Platform of European Memory and Consciousness, an organization commissioned by the European Union, held a Conference at Lake Como in Italy to discuss this very issue.²¹⁴ Historians, legal scholars, Holocaust survivors and political officials were invited to “discuss the potential of truth commissions for dealing with the unresolved justice issues in Europe,” including those related to the Second World War and the Holocaust.²¹⁵ At the Conference it was suggested that those suspected of war crimes could come before tribunals and publicly admit what they had done. Disclosing the truth and admitting guilt would be the prerequisite for amnesty. However, if suspects refused to tell the truth, prosecutions would follow.²¹⁶ Although a European initiative, historians, legal scholars and Holocaust survivors from Canada and the United States were invited to participate in this Conference. One such individual was Elly Gotz, a survivor of the Kaunas ghetto in Lithuania and the Dachau Concentration camp in Germany who moved to Canada in 1964. Throughout his life in Canada, Gotz has remained an active member of the survivor community, following developments on the war criminals issue, consulting on many Holocaust memory and education projects and speaking to thousands of students each year about his experiences during the war.²¹⁷ After participating in the Conference,

²¹⁴ The Platform, which is an organization bringing together representatives from 48 countries, including Canada, who are “active in research, documentation, awareness raising and education about the totalitarian regimes which befell Europe in the 20th century.” With eight goals related to education, awareness, integration and the prevention of intolerance and mass violence in the world, the Platform has expended many resources on issues related to the crimes of the Nazi regime. See the *About Us* Section in European Union, Platform of European Memory and Consciousness, 2015 <http://www.memoryandconscience.eu/> (accessed May 1, 2015).

²¹⁵ The purpose of the Conference was detailed in European Union, Platform of European Memory and Consciousness, *2013 Annual Report of the Platform of European Memory and Consciousness*. http://www.memoryandconscience.eu/wp-content/uploads/2014/11/annual_report_20131.pdf

²¹⁶ Details of the discussion from the Conference concerning the potential for truth commissions related to Second World War crimes are based on an interview with Conference participant, Elly Gotz. Interview by author, Station Park Hotel and Suites, London, On, March 12, 2015.

²¹⁷ Gotz was an especially relevant participant as he learnt years after the war that the man responsible for the detainment and murder of much of his village in the Kaunas ghetto, Helmut Rauka, had been admitted to Canada and become his neighbour in Toronto. After the war Gotz and his family struggled to find a country that would

Gotz was not sure whether truth commissions would be successful in Canada, but the discussions did reinforce his opinion that Canada must continue to bring suspected war criminals to justice.²¹⁸ Whether through truth commissions, prosecutions or any other method of justice, Gotz believes that the benefits of bringing the facts into public consciousness are invaluable. In addition to making society aware of what happened and what humanity is capable of, it forces perpetrators to admit their crimes, offers a lesson about what will happen to those who commit such crimes and gives a voice to the victims. For Gotz, “this process is more important than the final punishment.”²¹⁹

Now that seventy years have passed since the end of the Second World War, it may be worthwhile for such alternative methods of justice to be given consideration. Simply because the possibility of securing and carrying out lengthy prison sentences has been severely diminished by the lapse of time does not mean that all possibilities of obtaining justice have disappeared. Rather, Canadians need only reevaluate what truly constitutes *justice*.²²⁰ According to many transitional justice scholars, “the truth commission approach need not be construed as a moral compromise, sacrificing justice for the sake of truth and reconciliation.”²²¹ Condemning the perpetration of war crimes, educating society on the lessons of the Holocaust and facilitating support for victims can all be considered achievements of justice that truth commissions are

accept them. Before moving to Canada in 1964 Elly moved from Germany (where he resided after his liberation from Dachau) to Norway. When Africa opened its doors to Jewish immigrants, Gotz moved with his family to Rhodesia (what is now Zimbabwe) and later to South Africa. It was not until 1964 that Gotz managed to immigrate to Canada. In contrast, Rauka was admitted to Canada in 1950 and lived for over thirty years in peace. As such, Gotz’s views towards the issue of continued Nazi hunting and alternative possibilities for justice was highly coveted. Ibid.

²¹⁸ Gotz’s opinions on possible methods for achieving justice are based on the interview conducted with Gotz. Ibid.

²¹⁹ Ibid.

²²⁰ What constitutes justice has been an issue of continuous contemplation between transitional justice scholars. This debate is detailed in Robert I. Rotberg and Dennies Thompson, eds., *Truth v. Justice: The Morality of Truth Commissions* (Princeton: Princeton University Press, 2000).

²²¹ Ibid., 123.

capable of facilitating. Therefore, when one acquires a more holistic understanding of *justice*, it becomes clear that it may not only be worthwhile to proceed with traditional legal mechanisms despite the lack of time remaining, but truth commissions as well.

This is especially applicable in cases today where some war criminals have been more inclined to acknowledge the crimes they committed during the Second World War. One such case is that of Oskar Groening, an SS guard who worked at the Auschwitz prison complex between May and June of 1944- a period in which more than 300,000 people were murdered. Referred to as the “bookkeeper of Auschwitz,” Groening was brought before a German court this year and found guilty for his role in perpetrating crimes during the Holocaust.²²² Unlike many defendants, however, Groening did not deny his crimes. Although he maintains that he was not involved in the murder of prisoners, he has admitted that his actions “supported the machinery of death.”²²³ During his trial Groening admitted to being an enthusiastic and ambitious Nazi who was attempting to climb the political ladder by working as an SS guard at Auschwitz.²²⁴ Groening also spoke about the many crimes he witnessed there. He detailed the train arrivals, the selections, the gassings and the indiscriminate torture and murder of countless victims.²²⁵ Asking

²²² Groening was charged with 300,000 accounts of accessory to murder- charges based on the approximate 300,000 Hungarian Jews who were transported to and murdered in Auschwitz during the period from May to June 1944. Groening was sentenced to four years in prison. The amount of jail time he will actually be expected to serve of his four year sentence, however, is still under review. Based on information given in Thomson Reuters, “Oskar Groening, former Auschwitz guard, found guilty in Germany,” *CBC News*, July 15, 2015 <http://www.cbc.ca/news/world/oskar-groening-former-auschwitz-guard-found-guilty-in-germany-1.3152379> (accessed July 20, 2015).

²²³ Based on information given in Rory Mulholland, “Oskar Groening, bookkeeper of Auschwitz, admits ‘moral guilt’ in German court,” *The Telegraph UK*, April 21, 2015. <http://www.telegraph.co.uk/news/worldnews/europe/germany/11551396/Bookkeeper-of-Auschwitz-goes-on-trial-for-murder-of-300000-Jews.html> (accessed May 4, 2015). However, the details of Groening’s trial has been covered by numerous news sources including the *National Post*, *Daily Mail*, *CBC* and *International Business Times*.

²²⁴ *Ibid*.

²²⁵ The crimes Groening witnessed at Auschwitz are detailed in “Auschwitz guard trial: Oskar Groening admits ‘moral guilt,’” *BBC News*, April 21, 2015 <http://www.bbc.com/news/world-europe-32392594> (accessed May 4, 2015) and Mulholland, “Oskar Groening, bookkeeper of Auschwitz, admits ‘moral guilt’ in German court,” *The Telegraph UK*, April 21, 2015.

for forgiveness during his testimony, Groening admitted that he shares moral guilt for the crimes committed at Auschwitz.²²⁶ And legally, there was no doubt about his guilt. However, a more challenging question still remains: is the fact that he has taken responsibility for his crimes exculpatory? Should he- who witnessed, aided, abetted and stood by as hundreds of thousands were sent to their deaths- have been given clemency simply because he has acknowledged and expressed remorse for his crimes decades after the fact?

The immediate response to those questions must certainly be *no*. It is important that we do not ignore the perpetrators still living in our midst on the basis of contrition or simply exonerate those who now express remorse for their actions decades earlier. To do so would be to cheapen the lives of millions of victims and set a dangerous precedent for future war criminals.²²⁷ However, it does open up the possibility that there may be more effective ways to seek justice than simply striving for the punishment of perpetrators. Rather than automatically proceeding with remedies such as prosecution, where punishments even if secured cannot be sufficiently carried out, it may be more serving to capitalize on those willing to take responsibility for their crimes. Employing a truth commission may be an effective way of holding the perpetrators of war crimes to accountability- forcing them to shed any doubt about the atrocities committed on behalf of the Nazi regime and its collaborators by fully disclosing their role in those crimes. A truth commission would also give space to the victims of Nazi atrocity to discuss their experiences; to let society know what they suffered. In the words of Elly

²²⁶ Based on information given in Mulholland, "Oskar Groening, bookkeeper of Auschwitz, admits 'moral guilt' in German court," "Auschwitz guard trial: Oskar Groening admits 'moral guilt,'" and Reuters, "Oskar Groening, former Auschwitz guard, found guilty in Germany."

²²⁷ See the contrition argument detailed and rejected in Alan S. Rosenbaum, *Prosecuting Nazi War Criminals* (Boulder: Westview Press, 1993), 125-132.

Gotz, these achievements are truly worthwhile. The impact of allowing “society to hear from the doers that they did it and giving the victims a chance to be heard,” cannot be underestimated.²²⁸

Although newcomers to the remedy, Canadians of today have begun to see the potential of truth commissions to achieve justice after historical conflicts. After years of work on the legacy of residential schools and Canadian-Aboriginal relations, Canada’s first Truth and Reconciliation Commission was completed earlier this year.²²⁹ A long awaited initiative, the Commission was established as an official acknowledgement of the government’s role in establishing the Indian Residential School System- a system designed to forcibly assimilate Aboriginal children and ultimately destroy their culture. This system inevitably resulted in the abuse and death of many Aboriginal children and the immeasurable suffering of Aboriginal families and tribes.²³⁰ As part of a holistic process of acknowledging the injustices that were suffered, fostering reconciliation and developing new relationships based on mutual understanding and respect, the Truth and Reconciliation Commission was employed to begin the process of truth telling and engage participants in constructive dialogue.²³¹ Although little time was dedicated to hearing from the perpetrators of abuse- and what has contestably been referred to as ‘cultural genocide’,²³² the truth commission did hear from the victims of the Residential

²²⁸ Elly Gotz, Interview by author, Station Park Hotel and Suites, London, On, March 12, 2015.

²²⁹ The Truth and Reconciliation Commission of Canada began in 2008 after Prime Minister Stephen Harper issued a formal apology on behalf of the Canadian Government to those directly or indirectly affected by the Indian Residential School System. The Commission formally ended in June of this year and has since published executive reports and calls to action based on the work that was completed over the approximate eight year period. See the “About Us” section of the Truth and Reconciliation Commission of Canada, 2012 <http://www.trc.ca/websites/trcinstitution/index.php?p=3> (accessed July 15, 2015).

²³⁰ The Indian Residential School System dates back to the 1870s when over 130 schools were constructed to raise Aboriginal children away from the intellectual, spiritual and cultural influence of their families and tribes. The system did not come to a formal conclusion until 1996 when the last school was closed. Ibid.

²³¹ Based on the Mandate of the Truth and Reconciliation Commission of Canada. Ibid.

²³² The Executive Summary published by the Commission concluded that the Residential School System “can best be described as ‘cultural genocide.’” The term ‘cultural genocide’ has commonly been used to describe the destruction of a group or peoples’ cultural heritage. This term has been a matter of contention since it was first coined by Raphael Lemkin, the man who also coined the term *genocide* in 1944. Since its first introduction policy drafters at both the national and international level have wrestled with whether to formally recognized the concept

School system and carved out recommendations for the reconciliation of the Canadian government and Indigenous populations.²³³ Although no one would suggest that the Commission has or even was capable of reconciling all the issues created as a result of a shameful history between native and settler populations, it cannot be denied that the Commission has done some good; achieved some justice. At the very least it has reopened the dialogue between the Canadian government and Aboriginal peoples on what issues require further attention and how to address those issues moving forward.²³⁴ This alone has been a success in the direction of justice; a success that the Canadian government may be able to recreate with respect to Nazi war criminals under its jurisdiction. Although the crimes of the Nazi regime and those committed as a result of the Residential School System are not one in the same, the conclusion of Canada's first Truth and Reconciliation Commission does demonstrate that there may be potential for a Commission to address the issue of Nazi war criminals in Canada.

When considering these various arguments, and the initiatives and legal changes that have been instituted in the last fifteen years, it becomes clear that many methods of justice are still available to Canadian authorities to take action against the remaining Nazi war criminals in

and include the term in laws, treaties and conventions such as the UN Convention on the Prevention and Punishment of the Crime of Genocide. However, drafters have more commonly elected not to include the term in favour of only referencing the broader concept of *genocide*. This debate has caused controversy in Canada as well. Most recently, the failure on the part of the Canadian government to formally recognize 'cultural genocide' has resulted in the exclusion of the Residential School System in the genocide gallery of the heralded yet controversial Canadian Museum for Human Rights. In fact, the museum's gallery dedicated to worldwide genocides only includes the five genocides recognized by the Canadian government. This has fueled the debate on what truly constitutes *genocide* and whether 'cultural genocide' should be counted as a distinct form of *genocide*. See the "Executive Summary (pdf)," Truth and Reconciliation Commission of Canada, 2012, pg. 1, http://www.trc.ca/websites/trcinstitution/File/2015/Exec_Summary_2015_06_25_web_o.pdf

²³³ For a detailed account of the recommendations made by the Commission, see "Calls to Action" (pdf,)," Truth and Reconciliation Commission of Canada, 2012

http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf

²³⁴ Part of the mandate of the Commission is to simply acknowledge the "the need for continued healing... recognizing that it is an ongoing and collective process." Based on the Mandate of the Truth and Reconciliation Commission of Canada, 2012 <http://www.trc.ca/websites/trcinstitution/index.php?p=3> (accessed July 15, 2015).

Canada. But whatever the best way to proceed against suspect war criminals may be, what is most important is that we do proceed. Continuing to act is still worthwhile regardless of whether the remedy be prosecution, extradition, deportation, denaturalization, truth commissions or a combination of these. Although each remedy has its strengths and weaknesses and may be more or less appropriate in certain circumstances, they are all based on one similar prospect- a concerted effort to face the past and address the crimes that were committed in an attempt to build a better tomorrow. Unfortunately, this position has not been adopted by all and the discussion concerning what to do about the remaining war criminals has not yet reached a consensus. A debate still persists on whether it is worthwhile or appropriate to continue with the practice of Nazi hunting. Without a consensus reached the only possible method of determining whether to proceed against the remaining Nazi war criminals in Canada is to balance the arguments on both sides of the debate with respect to the impact, negative and positive, that the practice of Nazi hunting has on the perpetrators of war crimes, the didactic legacy of those crimes, and especially the victims of Nazi atrocity. By analyzing the arguments on both sides of the debate this paper will demonstrate why it is crucial that the Canadian government continue to proceed against the remaining Nazi war criminals in Canada.

WHY SHOULD WE CONTINUE? ANALYZING THE DEBATE

Before outlining these arguments, however, a clarification must be noted. Believing that those suspected of war crimes or crimes against humanity should be brought to justice is not synonymous with believing they are all guilty and ought to be punished.²³⁵ Rather, Nazi hunting is simply the practice of investigating, locating and bringing suspected war criminals to justice

²³⁵ Rosenbaum, 123.

within the framework of the law- with all of its potential outcomes. Whether the remedy be the use of truth commissions, denaturalization, deportation, extradition or prosecution, by operating under the principles of fair justice the Canadian legal system affords defendants that which they denied their victims: the benefits of the law.²³⁶

Perpetrators

The first set of arguments that should be examined are related to the perpetrators and whether the practice of tracking and bringing them to justice is still an appropriate response to their crimes. Those who argue that the practice should not continue have suggested that it is not, or at least no longer an appropriate response. A variety of reasons have been cited as rationale for this argument. The first and most common of these is the ‘passage of time’ claim, which maintains that seeking justice so long after the Second World War is not only burdensome and pointless, it is also unfair.²³⁷ Critics of the practice of Nazi hunting suggest that those who committed war crimes or crimes against humanity on behalf of the Nazi regime should have been brought to justice decades ago, but because they were not, justice should not be sought now.²³⁸ Instead, critics argue "the time has come to bury the past; that we should allow this group of ‘insignificant old men’ who have been living as ‘quiet neighbors’ these past fifty years to live out their remaining years in quiet anonymity.”²³⁹ Some suggest that to do otherwise- to bring elderly perpetrators to justice for crimes they committed when they were young adults is both cruel and futile, but also prompts unintended consequences. In addition to producing unnecessary costs to Canadian taxpayers to try perpetrators who are likely to die soon anyways, they argue that

²³⁶ Matas, 261.

²³⁷ Rosenbaum, 119-120.

²³⁸ Ibid.

²³⁹ Cotler, 269.

continuing with the practice of Nazi hunting so long after the Second World War only disrupts the lives of victims and their families. Similarly, critics argue that the practice runs the risk of disrupting and bringing shame upon innocent members of the perpetrators' families.²⁴⁰

Another reason why critics suggest that continuing to bring Nazi war criminals to justice is no longer an appropriate response to their crimes is that these individuals do not pose a danger to society. Aside from their age which critics often cite as evidence of their inability to endanger Canadian society, they argue that most of the Nazi war criminals who have reached Canada have assimilated well into Canadian society and have often led productive lives.²⁴¹ This has been the case for numerous war criminals whose cases have gone through the Canadian legal system and those still under investigation. Many held down jobs, ran successful businesses and lived undetected for decades.²⁴² Critics of Nazi hunting suggest this demonstrates that many of the former war criminals now living in Canada are at heart, civilized men, and believe it reason to exempt them from being brought to justice. At the very least they believe it is reason enough not to disrupt the communities of which these individuals were a part.²⁴³ But more importantly, many critics believe the reason that many of the Nazi war criminals who came to Canada assimilated well into Canadian society is that, in most cases, they were simply young accomplices or collaborators within the Nazi regime as opposed to major offenders.²⁴⁴ Some

²⁴⁰ Rosenbaum, 119-121.

²⁴¹ Ibid.

²⁴² Many of the war criminals discussed in this paper who sought refuge in Canada led successful; albeit quiet lives. During Imre Finta's 30 years in Canada he came to run a catering business and restaurant. After performing a number of jobs Helmut Rauka followed the same business path, running a banquet hall, dry cleaning business and motel. Similarly, Helmut Oberlander owned and operated a successful construction business. Each of these men lived largely undisturbed for many years before they were uncovered.

²⁴³ Rosenbaum, 119-120.

²⁴⁴ This argument is best exhibited by statements given by Oskar Groening's lawyers Susanne Frangenberg and Hans Holtermann. Both suggested that "Groening's role in the Holocaust was minor," and that his actions in Auschwitz preserving order on the train platforms, collecting and cataloguing prisoners' valuables should not make him guilty in a legal sense. Reuters, "Oskar Groening, former Auschwitz guard, found guilty in Germany."

even justify the actions of many war criminals who came to Canada following the Second World War by suggesting they acted out of necessity and not out of sadistic desires to perpetuate crimes against humanity or genocide. In other words, they only committed their crimes because of the circumstances surrounding the Second World War and tumultuous environment they faced.²⁴⁵ Therefore, critics suggest that most of the Nazi war criminals remaining do not pose a risk of reoffending or causing harm to Canadian society- a factor they argue is exculpatory in nature. For these reasons they suggest it is neither fair nor crucial to the health and wellbeing of Canadian society to continue with the practice of Nazi hunting.

Finally, critics suggest that continuing to bring Nazi war criminals to justice is not an appropriate response to their crimes for one last reason. Many have questioned: even if war criminals were brought to justice, what *justice* would it truly serve? Critics have argued that it cannot be practical to drag senile old men, many of whom are unfit for trial or prison, through lengthy legal proceedings when they are unlikely to face any sentence or punishment.²⁴⁶ Seeing the practice of Nazi hunting as incapable of achieving any sense of justice for these reasons, many critics argue that attempts to bring suspected war criminals to justice should be abandoned. On the other hand, some critics have also concluded that the practice should be abandoned based on its impact, or lack of impact, on perpetrators. Some argue that even if convictions and sentences could be secured, any punishment would be insufficient for perpetrators who have “already lived a full life.”²⁴⁷ Elisabeth Mann, a survivor of Auschwitz-Birkenau is one such individual who believes that any person who commits such horrific crimes cannot possibly have

²⁴⁵ Based loosely on the “diminishment of responsibility” argument found in Rosebaum, 124-125.

²⁴⁶ *Ibid.*, 119.

²⁴⁷ Elisabeth Mann, quoted in Jessica Ravitz and Sara Weisfeldt, “Nazi victim: Can people without a soul be punished?” *CNN*, April 21, 2009.

a conscience or a soul.²⁴⁸ During an interview with CNN Mann detailed the torture she suffered, and still suffers, both as a result of the harm and humiliation she faced during her imprisonment in Auschwitz, and from the guilt that she bears over her brother's death.²⁴⁹ When asked about her views towards bringing those responsible for her suffering to justice, Mann commented that she was "uncomfortable" with ongoing attempts. Questioning "what kind of punishment you could give to a person like that," Mann argued that no matter what punishment a civilized society metes out, such individuals "simply wouldn't feel it."²⁵⁰ For each of these reasons critics of Nazi hunting suggest that attempts to bring the remaining Nazi war criminals in Canada to justice are futile, and therefore, should be suspended.

However, there are inherent flaws within each of the arguments detailed above- leading one to reevaluate whether Nazi hunting is still an appropriate response to the perpetrators of Nazi war crimes. After doing so, it becomes clear that the practice of Nazi hunting is neither an act of vengeance, retribution nor 'victors' justice, and is still an appropriate response. There are a variety of reasons for this. In contrast to the argument made by critics of continued Nazi hunting, proponents of the practice advocate that the passage of time does not somehow diminish responsibility or guilt. As Efraim Zuroff wrote, "people do not deserve a prize for reaching old age,"²⁵¹ and perpetrators' abilities to successfully evade justice has never and will never be an acceptable defence.²⁵² In fact, it has been argued by academics that an evasion of justice should be considered "borrowed or privileged freedom," and should be counted against a defendant

²⁴⁸ Ibid.

²⁴⁹ When Mann and her family went through the selection process upon their arrival at Auschwitz, Mann told her younger brother to go with their mother as he was sick. In her interview with CNN, Mann recalled: "I didn't know that with my advice I killed my brother because all the mothers and all the children were taken to the gas chamber right away." Mann was the only member of her family to survive the Holocaust. Ibid.

²⁵⁰ Ibid.

²⁵¹ Zuroff quoted in Ravitz and Weisfeldt, "Nazi victim: Can people without a soul be punished?"

²⁵² Rosenbaum, 121.

rather than in their favour.²⁵³ This position is supported by the fact that Canada imposes no statute of limitations for such crimes, implying that war crimes are too serious to employ a time limit on justice and that war criminals are to be brought to justice whenever they are finally discovered.²⁵⁴ On this point it is also important to note that during the Holocaust, the Nazis never discriminated towards their victims based on age. Mercy was not shown to the very young nor to the elderly and victims of all ages were beaten, tortured and murdered indiscriminately.²⁵⁵ Therefore, if age had no bearing on the treatment of victims, it should logically follow that age should have no bearing on meting out justice to the perpetrators.

Secondly, it is not fair to claim that the Nazi war criminals remaining in Canada do not pose a danger to society because of their age, their ability to assimilate into Canadian society or that they only played a minor role in the Holocaust. Society must know what humanity is capable of, even in what are thought to be the most civilized parts of the world. Perpetrators of war crimes, crimes against humanity and genocide have often blended into society without exhibiting signs of danger. And before committing their crimes most were just ordinary individuals, capable of living amongst the rest of society- including their future victims- in relative peace. However, Canadians must know what their now ‘non-violent’ neighbours were capable of when

²⁵³ Ibid.

²⁵⁴ In addition to the non-applicability of a statute of limitations for indictable offences as listed in the Canadian Criminal Code, Canada’s adoption of the principles of the Rome Statute through the enactment of the Crimes Against Humanity and War Crimes Act also made the crimes of the Nazi regime not subject to any statute of limitations. See *Criminal Code of Canada*, RSC 1985, C-46 and “Rome Statute of the International Criminal Court,” art. 29.

²⁵⁵ In fact the very young and elderly often fared the worst as they were viewed as having no use to the Nazi regime. Although in the camps circumstances wavered, and the ages of prisoners used for forced labour were not static, on October 26, 1939 the Nazi regime declared that Jews between 14 and 60 years were expected to perform hard labour. As a result, those below or above that age were designated as unproductive and useless to the Nazi regime and were often the first to be murdered or deported as a result. Based on United States Holocaust Memorial Museum. “Forced Labour.” 2015 <http://www.ushmm.org/outreach/en/article.php?ModuleId=10007732> (accessed July 15, 2015).

circumstances allowed violence to breed and spread as they did in 1933, when the people put Hitler in power; in 1938, when Kristallnacht (“the night of the broken glass”) transpired without resistance; or in 1942, when many allowed their Jewish neighbours to be transported to the first extermination camps. In contrast to the arguments made by many critics that most of the war criminals in Canada were simply accomplices- many did participate in the murder, torture or deportation of innocent people. This is true of all the Canadian cases discussed throughout this paper. But even for those who did not directly commit murder, it is important that society know that many still committed war crimes and crimes against humanity through their actions. Although it could be argued that the majority of Germans were not strongly anti-Semitic or interested in perpetrating genocide, the majority of Germans played roles which allowed the horrors of the Second World War to occur. And in the process, many became accessories to murder.²⁵⁶ The President of the World Jewish Congress, Ronald Lauder spoke of this after Oskar Groening’s sentence was handed down. Commending the conviction, Lauder stated: “Mr. Groening was only a small cog in the Nazi death machine but without the actions of people like him, the mass murder of millions of Jews and others would not have been possible.”²⁵⁷ Even those who simply collected belongings and preserved order as Groening did helped to make the process of extermination more efficient. For many survivors, bringing to justice even these minor perpetrators is important and symbolic to the prevention of future conflicts.²⁵⁸ Referencing Oskar Groening, Canadian Holocaust survivor Hedy Bohm confessed: “what I hope to hear is that aiding in the killing machinery is going to be considered a crime so then no one in the future can

²⁵⁶ Under the Crimes Against Humanity and War Crimes Act, anyone who conspires, attempts to or counsels one to commit genocide, a war crime or crime against humanity is an accessory to murder, an indictable offence liable to life imprisonment. See *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24, secs. 6.(1.1)(2).

²⁵⁷ Ronald Lauder quoted in Reuters, “Oskar Groening, former Auschwitz guard, found guilty in Germany.”

²⁵⁸ Ibid.

do what he did and claim innocence."²⁵⁹ Continuing to bring Nazi war criminals to justice reminds Canadians of the danger that these seemingly ordinary people posed during the period between 1933 and 1945, while also mitigating the dangerous message that would be perpetuated if these individuals were allowed to live without consequences. We must hold perpetrators accountable and justice must be done, "even if it's too late."²⁶⁰

As for Elisabeth Mann's argument, it is beyond the scope of this paper to determine whether any punishment could possibly fit the crimes that were committed or whether any punishment would have a significant impact on the perpetrators of the Holocaust, especially since they have already lived full lives. However, justice is not solely characterized by seeing former war criminals serve lengthy prison sentences. Discussed earlier, justice is more holistic. Condemning the perpetrators publicly, bringing their crimes and the crimes of the Nazi regime to light, educating society about the impact of racism and bigotry and demonstrating support for the victims of Nazi atrocity are all worthwhile aims. But if Canadian authorities choose to ignore the remaining perpetrators because it will never be known what kind of punishment is sufficient or how much is enough, they simultaneously ignore the potential of achieving other forms of justice. Although it is possible that the legal system is incapable of securing truly adequate punishments for such heinous crimes now that seventy years have passed, continuing with the practice of Nazi hunting will at least demonstrate to the victims of Nazism and to world society that "people do care what happened."²⁶¹

²⁵⁹ Hedy Bohm, now a Canadian citizen, was a Holocaust survivor of Auschwitz who testified at Groening's trial. Bohm is quoted in *BBC News*, "Auschwitz guard trial: Oskar Groening admits 'moral guilt.'"

²⁶⁰ Bohm quoted in, Reuters, "Oskar Groening, former Auschwitz guard, found guilty in Germany."

²⁶¹ Elisabeth Mann's son, Thomas, quoted in Ravitz and Weisefeldt, "Nazi victim: Can people without a soul be punished?"

Didactic Legacy of the Holocaust

The second set of arguments in the debate surrounding continued Nazi hunting are in regards to the didactic legacy of the Holocaust. Critics of Nazi hunting suggest that the practice should be abandoned as there are better ways to commemorate the Holocaust and have its lessons remembered throughout the generations. First, critics of the practice argue that the goals of remembrance and memorialization are best served through projects dedicated to the events of the Holocaust and its victims rather than the perpetrators. Canadian organizations such as the National Holocaust Remembrance Committee (NHRC) have organized memory projects, remembrance programs and commemoration services to keep the Holocaust in public memory. One such initiative was the *Oral Documentation Project*. The purpose was to record testimonies from Holocaust survivors living in Canada in order to maintain the “personal dimension” of the Holocaust so that future generations may know what it was like.²⁶² The Oral Documentation Project eventually resulted in the creation of *Voices of Survival*, a documentary based on the recorded testimonies of survivors.²⁶³ Ever more successful projects have been undertaken by international organizations such as Yad Vashem, the world’s leading center for the documentation, research, education and commemoration of the Holocaust. Yad Vashem sponsored the *Pages of Testimony* project, an effort to document the names and experiences of all six million Jews who perished during the Holocaust.²⁶⁴ The center is also responsible for numerous travelling exhibits dedicated to keeping the memory of the Holocaust alive.²⁶⁵ It is

²⁶² For more information on the Oral Testimonies Project, see Bialystok, 182-183.

²⁶³ *Ibid.*, 183.

²⁶⁴ For information about the Pages of Testimony or to download survivor(s) testimonies, see Yad Vashem- the Holocaust Heroes’ and Martyrs’ Remembrance Authority, “The Hall of Names,” http://www.yadvashem.org/yv/en/about/hall_of_names/index.asp (accessed 20 November 2014).

²⁶⁵ For a list of all Yad Vashem’s sponsored traveling exhibits, see Yad Vashem- the Holocaust Heroes’ and Martyrs’ Remembrance Authority, “Travelling Exhibitions,” http://www.yadvashem.org/yv/en/exhibitions/traveling_exhibitions/index.asp (accessed 20 November 2014).

often argued by critics that unlike the practice of Nazi hunting where focus is centered on the perpetrators, these projects are intended to remember the events of the Holocaust and commemorate its victims; more worthwhile aims for public memory.

Similarly, it is often argued that society should abandon the practice of Nazi hunting and concentrate resources on educating younger generations about the Holocaust and the effects of anti-Semitism, racism and bigotry. This was a fundamental pillar of the NHRC which promoted that “only through education was there a possibility of maintaining a historical memory of the destroyed civilization of the European Jewry.”²⁶⁶ The first step was to bring Holocaust education into the classrooms. As interest in the subject increased during the 1980s, more classrooms across Canada began to incorporate the Holocaust into the curriculum. The logical conclusion was that by educating younger generations on the events of the Holocaust, they would simultaneously learn about what horrible atrocities can result from societal racism, prejudice and bigotry.²⁶⁷ It was also thought that education would help to instill the values of tolerance in younger generations; thereby weeding out racism. Through these initiatives, the prevention of future occurrences of mass violence and genocide would become an ulterior priority. Critics suggest that another component of Holocaust education is to create dialogue between different groups of individuals in some way touched by episodes of mass violence. In a renowned study conducted by Mona Sue Weissmark, a clinical and social psychologist, first and second generation Holocaust survivors and perpetrators were brought together to discuss the legacies of the Second World War and issues of suffering, justice, forgiveness and healing. During the study a second generation Holocaust survivor exclaimed, “what better way to remember the [Holocaust] than through working on something new- on people seeing each other as human

²⁶⁶ Bialystok, 182.

²⁶⁷ For more information on the introduction and evolution of Holocaust education, see Bialystok, ch. 7 (177-220).

beings. If we remain enemies, then we continue Hitler's work."²⁶⁸ Critics of Nazi hunting have deduced that by continuing to bring war criminals to justice decades after the fact, society simply reinforces the cleavages that were fostered during the Third Reich, creating new generations of enemies. On the contrary, critics argue that by working to educate society on the consequences of racism and the importance of tolerance, Canadians also work towards uniting together all members of society and building a more tolerant world.

While on the whole proponents of Nazi hunting do not discredit any of these initiatives, they do argue that continued Nazi hunting has a distinct role to play in the protection and promotion of Holocaust memory and education. In contrast to the points offered by critics of the practice, supporters of Nazi hunting suggest that continued efforts to locate and bring war criminals to justice often carry greater benefits for Holocaust memorialization than other attempts at commemoration. For example, the national (and often international) media coverage that follows the extensive process of identifying, locating and bringing suspects to justice is often more successful at bringing and keeping the Holocaust in public memory.²⁶⁹ Whether through attempts at prosecution under Canadian criminal law or through trials directed at denaturalization, deportation or extradition, Efraim Zuroff has argued that "a successful conviction...[has] a greater impact than an hour-long commemorative ceremony to honour Holocaust victims."²⁷⁰ Evidence of this can be seen in the case of Oskar Groening. Details of Groening's crimes and his trial were reported by various news outlets across the world and

²⁶⁸ In a study which brought together first and second generation Holocaust survivors and perpetrators, Mona Sue Weissmark discussed the legacies of the Second World War, the issues of justice, forgiveness, healing and generational inheritance. Mona Sue Weissmark, *Justice Matters: Legacies of the Holocaust and World War II* (Oxford University Press, 2004), 89.

²⁶⁹ Efraim, Zuroff, "The Importance of Prosecuting Nazi War Criminals in Post-Communist Europe," in *Antisemitism the Genetic Hatred*, ed. Michael Finberg, Shimon Samuels and Mark Weitzman (Portland, Vallentine Mitchell, 2007), 148.

²⁷⁰ *Ibid.*

followed and shared on social media platforms.²⁷¹ Such coverage forced even the most unaware of individuals to learn about Groening's crimes, but also the events of the Holocaust more generally and what real people were forced to suffer. Therefore, Groening's trial has kept the Holocaust in public memory and informed new generations who have yet to learn about the tragedy which was the Holocaust.

However, the long term impacts of Groening's case have yet to be studied. The Canadian case of Ernst Zundel, on the other hand, has demonstrated the positive impacts and long term effects that trials can have on Holocaust memory. Although Zundel was himself not a Nazi war criminal but a Holocaust denier, the press coverage that followed his case brought significant awareness to the topic of the Holocaust. After years of disseminating hate propaganda, in 1974 Zundel published a pamphlet entitled 'Did Six Million Really Die?' which claimed that the Holocaust never occurred.²⁷² Ten years later Zundel was charged with two counts of spreading false news, acts in violation of section 181 of the Criminal Code.²⁷³ Although the defence attempted to offer evidence in support of Zundel's claims during the trial, Zundel was convicted in 1985.²⁷⁴ A study published on the impact of the trial on public consciousness showed two

²⁷¹ Although not a complete list, the following is a list of news sources that covered the Groening trial: BBC, CNN, the Telegraph UK, Daily Mail, the Guardian, ABC, etc. Each of these sources published articles on the trial, Groening's crimes and the Holocaust in general. And these articles were shared across the world on various platforms, spread quickly by the aid of social media.

²⁷² A Holocaust denier and member of the "revisionist history" school, Zundel attempted to argue that, while many people perished during the Second World War, what has come to be known as the Holocaust "was a myth perpetuated by a worldwide Jewish conspiracy." *R. v. Zundel*, [1992] 2 SCR 731, 1992 CanLII 75 (SCC); rev*g [1988]; aff*g [1985]

²⁷³ Section 181 of the Canadian Criminal Code holds that "everyone who willfully publishes a statement, tale or news that he knows is false and that causes or is likely to cause injury or mischief to a public interest is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years." *Criminal Code of Canada*, RSC 1985, C-46, sec. 181.

²⁷⁴ Although Zundel was convicted in 1985 his case came before the courts a number of times. In 1987 Zundel's first appeal was heard. After deliberation the Ontario Court of Appeals allowed Zundel's appeal and ordered a retrial. During the second trial, Judge Ronald Thomas upheld the decision of the earlier court to convict Zundel. Zundel appealed twice more before taking his case to the Supreme Court of Canada which acquitted Zundel in 1992 on the grounds that section 181 of the Criminal Code was unconstitutional. However, it is the result of Zundel's initial conviction that is the subject of this analysis. *R. v. Zundel*, [1992] 2 SCR 731, 1992 CanLII 75 (SCC); rev*g [1988]; aff*g [1985].

major effects. First, interest in the Holocaust among the general population drastically increased while support for Holocaust deniers and their movements rapidly declined.²⁷⁵ Secondly, the trial greatly impacted survivors, many of whom were encouraged to break the silence on their experiences and contribute to the education of younger generations on the events of Holocaust and the impacts of anti-Semitism.²⁷⁶ Before the trial many survivors had remained quiet for years. Many “did not have the courage to speak publicly about their experiences, and they had not been asked.”²⁷⁷ This was only reinforced during the 1970s when Holocaust denial and “revisionism” began to gain traction.²⁷⁸ Zundel’s conviction in 1985 represented a turn of events and a symbolic victory for survivors; an assurance that Holocaust denial, neo-Nazism and profound disrespect for the suffering of millions would not be tolerated. The sense of vindication arising from Zundel’s conviction encouraged survivors to join local Holocaust remembrance organizations and speak to students about their experiences, expose the lies perpetuated by deniers and shed any doubt among them about what happened during the Holocaust.²⁷⁹ In this way, Zundel’s trial managed to bring and keep the Holocaust in public memory.

The case of Ernst Zundel also greatly impacted the direction of Holocaust education. Aside from bringing details and evidence of the Holocaust to public knowledge, the trial revealed just how unaware the general public was about the events of the Holocaust at that time. Previously, the Holocaust had largely been confined to a footnote in history textbooks. Historian, author and educator Franklin Bialystok recalls being asked by his senior class after playing the

²⁷⁵ Bialystok, 235.

²⁷⁶ Ibid.

²⁷⁷ Ibid., 178, 235.

²⁷⁸ Feeling like second-class citizens, many survivors elected not to speak about their experiences during the Holocaust. When Holocaust denial gained traction, many survivors viewed support for the movement as a retraction of already limited support for survivors, further encouraging them to bury their experiences. Ibid., 235.

²⁷⁹ Ibid.

NBC documentary *Holocaust*, whether “things were really that bad.”²⁸⁰ Witnessing his class’ innocent shock after watching the documentary, Bialystok realized how completely unaware the general public was about the history of the Holocaust. The public’s ignorance was made even more evident when Zundel’s case came before the courts. Problematic media coverage of Zundel’s trial brought to light failures in nationwide education on the topic of the Holocaust. During the trial credible news sources such as the *Toronto Sun* and *Globe and Mail* published headlines such as “Expert’s Admission: Some Gas Death ‘Facts’ Nonsense,” “Camp Gas Chambers Fake, Holocaust Revisionist Says,” and “Prisoners at Auschwitz Dined, Danced to Bands, Zundel Witness Testifies.”²⁸¹ These misleading headlines and the media’s preoccupation with defence witnesses and revisionist “evidence” gave Holocaust denial “undue credence” and Zundel a “totally undeserved sense of legitimacy.”²⁸² “By reporting both sides as if each were credible,” the media made it appear to readers “that the Holocaust might have happened, or, on the other hand, might not have.”²⁸³ The Executive Director of the CJC, Manuel Prutschi blamed the problematic and uncritical media coverage on a lack of education; on reporters working without a fundamental knowledge of Holocaust history.²⁸⁴

After the trial the survivor community and CJC took it upon themselves to initiate an educational revolution with respect to the Holocaust. First, the CJC made a press release concerning the sensitivity of the topic, the vulnerability of both the survivor and Jewish

²⁸⁰ *Ibid.*, 176.

²⁸¹ Based on the following articles:

“Expert’s Admission: Some Gas Death ‘Facts’ Nonsense,” *Toronto Sun*, January 17, 1985. Kirk Makin, “Camp Gas Chambers Fake, Holocaust Revisionist Says,” *Globe and Mail*, February 12, 1985, sec. M4.

Wendy Darroch, “Prisoners at Auschwitz Dined, Danced to Bands Zundel Witness Testifies,” *Globe and Mail*, February 13, 1985. 26.

²⁸² Robert Khan, *Holocaust Denial and the Law*. (Hampshire, England: Palgrave MacMillian, 2004), 89.

²⁸³ *Ibid.*, 90.

²⁸⁴ *Ibid.*

populations and the media's responsibility to cover such issues in an informed and sensitive manner.²⁸⁵ Media authorities were receptive to the criticism and advice, and when Zundel's first appeal was heard the media altered its coverage techniques.²⁸⁶ Secondly, the trial induced the CJC to present a resolution for the amendment of the Canadian high school curriculum so as to include a mandatory unit on the Holocaust.²⁸⁷ Although it was not implemented at the national level it encouraged educators to cover the Holocaust more broadly in the classroom and sparked smaller local projects dedicated to Holocaust education.²⁸⁸ It could therefore be argued that without cases such as Zundel's bringing the Holocaust to public attention and highlighting flaws in public knowledge, progress in Holocaust education may not have occurred when it did. Therefore, continuing to bring Nazi war criminals and their followers to justice has proven to be an effective way of promoting informed discussion about the Holocaust so that people never forget what really happened.

However, continuing to bring Nazi war criminals to justice also serves another educational function: deterrence. Although important, it is not enough just to teach younger generations about the importance of tolerance and educate society about the crimes of the Nazi regime. Canadian authorities must also demonstrate that such crimes are intolerable. And to do this, concrete action must be taken against those who have committed war crimes, crimes against humanity or genocide. Proponents of Nazi hunting suggest that continuing to bring war criminals to justice substantiates the claim that neither the crimes of the Holocaust, nor the racism that produced them will ever be tolerated.²⁸⁹ But if the practice were abandoned, proponents suggest

²⁸⁵ Ibid.

²⁸⁶ See details of the media coverage of Zundel's subsequent trials in Khan, 90-95.

²⁸⁷ Based on Resolution 47, 21st Plenary Session of the Canadian Jewish Congress, May 7-11, 1986, Toronto.

²⁸⁸ Bialystok, 185.

²⁸⁹ Ibid.

that inaction towards war criminals may be interpreted by younger generations as indifference to their crimes, or worse, passive toleration, which may “fan the fires of anti-Semitism...and [make] future generations ask if whether what the Nazis did was really so bad.”²⁹⁰ But more importantly, inaction towards war criminals may shape how some people in the world understand and behave towards others in the future. This was one of Simon Wiesenthal’s greatest fears.²⁹¹ Efraim Zuroff illustrates this well in his book *Occupation Nazi Hunter*, when discussing Wiesenthal’s motivation for bringing Nazi war criminals to justice. In a concise statement, Wiesenthal warned: “he who ignores the murderers of the past paves the way for the murderers of the future.”²⁹²

Unfortunately, Wiesenthal’s fears have come to fruition. The world’s failure to properly address the crimes of the Nazi regime has only resulted in further conflicts and the perpetration of more war crimes, crimes against humanity and genocide across the world. Canadian passivity has contributed to this and has encouraged violent perpetrators to turn to Canada for refuge. In fact, the first individual charged under the *Crimes Against Humanity and War Crimes Act* was not a Nazi war criminal, but a perpetrator of the Rwandan genocide.²⁹³ Not only does this demonstrate that the need to prevent episodes of mass violence and genocide has not ceased. It also demonstrates that Canadians have not fully learned from their mistakes in regards to Nazi

²⁹⁰ Rosenbaum, 86-87.

²⁹¹ In his book, *Justice Not Vengeance*, Wiesenthal comments, “sometimes I am seized by the fear that a few hundred years from now teachers and children in history lessons will be saying: in the twentieth century Hitler tried to set up a great empire in Europe under National Socialist leadership. Contemporary witnesses maintained that he had attempted to exterminate the Jews of Europe. It seems that excesses were in fact committed, though these accounts are probably greatly exaggerated.” Simon Wiesenthal, *Justice Not Vengeance* (London: Weidenfield and Nicholson, 1989), 352.

²⁹² Zuroff, *Occupation Nazi Hunter*, 10.

²⁹³ Reference to the case of Desire Munyaneza. As the first person charged under the *Crimes Against Humanity and War Crimes Act*, there was no precedent to inform the case. *Munyaneza v. R.*, 2009 QCCS 2201. See further details of Munyaneza’s case discussed below.

war criminals. This was made evident by the way that the Canadian government responded to the Rwandan genocide. Despite knowing what horrible atrocities could manifest from the pervasive racism in Rwanda, the Canadian government failed to provide aid which could have assisted the persecuted Tutsi population or helped to suppress the conflict. Despite a long and positive record of Canadian-Rwandan relations, the Canadian government ignored the pleas of the Tutsi population and their own peacekeeping forces to offer that which was within their capabilities.²⁹⁴ After the 100 day massacre Canadian authorities only expanded their failings by allowing the nation to become refuge for numerous perpetrators of the genocide. One such case was that of Desire Munyaneza, the first man to be charged under Canada's *Crimes Against Humanity and War Crimes Act*.²⁹⁵ Munyaneza came to Canada in 1997 after participating in the Rwandan genocide- raping, looting and slaughtering Tutsis in the district of Butare, Rwanda.²⁹⁶ Following a 5 year investigation Munyaneza was arrested in 2005 and charged with seven counts of war crimes, crimes against humanity and genocide.²⁹⁷ After hearing from numerous witnesses of the genocide, many of whom had personally been raped or tortured by Munyaneza, the court convicted the defendant on all counts.²⁹⁸ In 2009 Munyaneza was given two sentences of life

²⁹⁴ Prior to the 1994 conflict, Canada and Rwanda maintained positive relations. "Large numbers of Rwandans studied, lived, worked and made lives in Canada, while countless Canadians have been associated with Rwanda. Yet in its moment of supreme need...the Canadian government largely abandoned the Tutsi to their terrible fate." There was a modest Canadian peacekeeping force deployed to Rwanda when conflict broke out but little effort was expended to support the troops. As genocide erupted, General Romeo Dallaire pleaded with both the Canadian government and the UN to send more troops to Rwanda but was denied. Despite knowing full well what was transpiring, the Canadian government abandoned their forces and the persecuted Tutsi population in Rwanda. Based on information given in Sylvia Thomson, "Rwanda genocide: Canadian soldiers struggle with psychological legacy," *CBC News*, April 6, 2014. <http://www.cbc.ca/news/world/rwanda-genocide-canadian-soldiers-struggle-with-psychological-legacy-1.2598407> (accessed July 10, 2015) and Gerald Caplan, "Our Rwandan betrayal," *The Globe and Mail*, November 28, 2009. <http://www.theglobeandmail.com/news/politics/our-rwandan-betrayal/article4294562/> (accessed July 10, 2015).

²⁹⁵ *Munyaneza v. R.*, 2009 QCCS 2201.

²⁹⁶ Munyaneza came to Canada with his family as permanent residents. *Munyaneza v. R.*, 2009 QCCS 2201.

²⁹⁷ See the charges laid out in *Munyaneza v. R.*, 2009 QCCS 2201.

²⁹⁸ Many of the witnesses who testified against Munyaneza detailed horrific stories of rape, abuse and murder. One witness, identified as C-15 in the trial records, gave a lengthy testimony in which she recalled surviving an arson attack on the school she was taking refuge in only to wake up covered by corpses. She remained under the weight and blood of other Tutsis to hide herself from the perpetrators. When she finally freed herself, she was taken

imprisonment to be served consecutively with no chance of parole for 25 years.²⁹⁹ Although Munyaneza's conviction was a success, one question still remains: why was it necessary?

Canada's record of inaction and indifference towards perpetrators of war crimes has fostered an environment of enablement. It has promoted the image that Canadians are unwilling to contribute to the global fight against impunity but will allow their country to become refuge for war criminals. To remedy this Canada must work to promote an environment of deterrence. Not only is it imperative that society be educated about the wrongfulness of racism and the impact that such a negative phenomenon can and has had on the world, society must also see that there are consequences for those who have persecuted others on racial grounds. As Simon Wiesenthal once stated, even in today's world do "National Socialist cells continue to exist, and we have no guarantee that under different social circumstances they might not again grow into life-threatening tumours."³⁰⁰ Bringing those who have perpetrated war crimes to justice- no matter how long ago the crimes occurred- is the first line of defence against the repetition of similar crimes. It sends an assurance that anyone who commits such crimes will be held accountable.³⁰¹ Therefore, if our world is to see the end of violence, crimes against humanity and genocide, it cannot abandon attempts to hold those responsible for such crimes accountable.

prisoner by members of the Interahamwe gang and moved between various collection points where she was repeatedly beaten and raped by countless men, including Munyaneza. The rape of women was a repetitive element in her testimony. The witness also recalled watching countless Tutsis being murdered and many others being forced onto buses to be murdered elsewhere. The witness was only one of a number of witnesses with similar harrowing experiences. *Munyaneza v. R.*, 2009 QCCS 2201.

²⁹⁹ Munyaneza's sentencing judgement is given in *R. c. Munyaneza*, 2009 QCCS 4865.

³⁰⁰ Wiesenthal, *Justice Not Vengeance*, 359.

³⁰¹ Elly Gotz once said, bringing Nazi war criminals to justice should be continued "not only because of the sense of justice about [the perpetrators], but because it is a teaching tool for the rest of humanity. That if you do that [commit war crimes, crimes against humanity or genocide], you will be brought to court, someone will judge you, somebody will find you wanting as a human being." Based on Elly Gotz, Interview by author, Station Park Hotel and Suites, London, On, March 12, 2015.

Victims

The final point of dispute deals with the impact that continued Nazi hunting has on the victims of Nazi atrocity. To understand whether the practice should or should not continue based on its impact on victims, it is necessary to determine whether the world should accept the pleas of survivors who have forgiven, forgotten and moved on or those who continue to believe that every participating individual deserves to be brought to justice. It is also necessary to determine whether the world has a responsibility to those who lost their lives due to the policies of the Nazi regime. The critics of continued Nazi hunting often see these questions very plainly. Such individuals often argue that the practice should be abandoned because it is incapable of helping survivors overcome their suffering. Rather, it forces aging victims to relive their experiences, and in the process, become victim to them again.³⁰² Whether as witnesses who must testify to the crimes of specific perpetrators or as detached observers of attempts to bring war criminals to justice, some critics suggest that survivors are forced to revive “experiences better [left] buried.”³⁰³ Critics argue that this is especially likely when perpetrators are taken to court. On the chance that survivors are asked to testify, they are forced to face their torturers and often endure painful cross-examinations. For victims who “have had their position in the courtroom thrust upon them by the nature of their harrowing experiences,” being discredited for inconsistencies in memory or contradictions with others survivors’ testimonies is likened to being victimized again.³⁰⁴ Such was the case for witnesses during the Finta trial who were subjected to aggressive cross-examinations by the defence counsel and who had their memories, health and mental

³⁰² Matas, 144.

³⁰³ Ibid.

³⁰⁴ Landsman, 197.

stability attacked.³⁰⁵ Critics of continued Nazi hunting suggest that this is torturous to elderly victims whose suffering is trivialized so that undeserving war criminals may be exonerated. And worst of all, these tactics often succeed. Critics argue that survivors are frequently dragged through these difficult processes only for perpetrators to be acquitted and escape punishment; the ultimate insult to victims.

On the contrary, some critics argue that there are methods which allow victims to overcome their suffering in a positive and productive manner. One such method is for survivors to practice forgiveness. Critics suggest that practicing forgiveness is more beneficial to both victims and society than continuing to vilify perpetrators.³⁰⁶ A study was recently conducted on this topic, entitled “Forgiveness: Unveiling an Asset for Peacebuilding.”³⁰⁷ Part of the Refugee Law Project- an initiative undertaken by the School of Law at Makerere University and the Centre for Civil and Human Rights at the University of Notre Dame, the study examined the usefulness of forgiveness as an element of peacebuilding.³⁰⁸ Using the ongoing conflict in Uganda as a case study, researchers surveyed 640 individuals from five regions of Uganda who had been victims of serious injustices, war crimes and/or crimes against humanity.³⁰⁹ Of those surveyed, 68% reported having forgiven the perpetrators responsible for their suffering while 86% suggested that forgiveness was beneficial and “should be practiced in the aftermath of

³⁰⁵ For more information about the aggressive and insensitive cross-examination of witnesses during the Finta trial, see Landsman, 178-206.

³⁰⁶ The topics of forgiveness, and more especially the need to give, receive and find relief through it are discussed in John K. Roth, “Who Needs Forgiveness? Further Thoughts on the Moral Dilemma Posed by Simon Wiesenthal’s *The Sunflower*,” in *Antisemitism the Genetic Hatred*, ed. Michael Finberg, Shimon Samuels and Mark Weitzman (Portland, Vallentine Mitchell, 2007), 168.

³⁰⁷ The following is based on the report of the study published earlier this month by the same title. See, Refugee Law Project 2015 Report: “Forgiveness: Unveiling an Asset for Peacebuilding,” *Refugee Law Project*, an initiative of the School of Law at Makerere University and the Centre for Civil and Human Rights at the University of Notre Dame, July 13, 2015. http://refugeelawproject.org/files/others/Forgiveness_research_report.pdf (accessed July 29, 2015).

³⁰⁸ *Ibid.*

³⁰⁹ *Ibid.*, 5.

conflict.”³¹⁰ At its end, the Project concluded that forgiveness was a useful element of peacebuilding and held great benefits for victims, including, but not limited to the commencement of healing, the reduction of stress and anxiety and the restoration of peace and stability in their communities.³¹¹ Critics of Nazi hunting have commended this alternative form of justice, suggesting it is more conducive to survivors’ mental health. As a result, critics have suggested that more effort should be focused on promoting forgiveness and reconciliation, and the positive consequences that result from such peacebuilding efforts, rather than maintaining the divisions established during the Third Reich by continuing to bring perpetrators to justice.

It is possible to take issue with many of the aforementioned arguments, the first being the claim that the practice of Nazi hunting re-victimizes survivors. While many of the concerns that critics have addressed are genuine, it would be more insulting to victims if the practice were abandoned. For a country such as Canada where after the war it was easier for Nazis to enter than their victims, it is essential that the government demonstrate that it does care about victims and wishes to support them.³¹² By continuing to locate and try suspected war criminals, society demonstrates its commitment to the victims of the Holocaust. Although it is true that bringing Nazi war criminals to justice can revive painful memories that some survivors have found comfort in burying, there are a great number of other who want to bring those experiences to light.³¹³ Renowned Holocaust survivor and author Primo Levi suggests that “survivors are frequently driven by the need to tell the world about the Holocaust, not so much for themselves as for those who died. For those survivors, remembering is a duty.”³¹⁴ During the war many

³¹⁰ Ibid., 13-14.

³¹¹ Ibid., 35.

³¹² Bialystok, 230.

³¹³ Many of these survivors were also responsible for the earlier lobbying efforts demanding government to take action against Nazi war criminals in Canada. Based on Matas, 144 and Landsman, 197.

³¹⁴ Primo Levi quoted in Landsman, 197.

dying prisoners would ask other prisoners to tell their story after the war. For many who survived, it was common to have heard pleas from fellow prisoners asking them to tell the world what was done to them.³¹⁵ As a result, many survivors believe that speaking publicly about what they suffered during the Holocaust, testifying against perpetrators in court or simply supporting efforts to bring them to justice are ways of honouring the last wishes of those who perished; to ensure that they did not die in vain.³¹⁶ To take this away from survivors by ceasing the practice of Nazi hunting would be to abandon them once again.

Secondly, it is possible to take issue with the claims that some critics have made about the practice of forgiveness. In contrast to the arguments discussed earlier, practicing forgiveness is not the only method survivors can utilize to induce healing. Although forgiveness can help survivors rid themselves of burdensome and unproductive hatred and anger, other sources of action are equally if not more likely to bring about healing. For survivors of mass violence, simply talking to a receptive audience about the suffering they endured has proven to be a crucial part of the healing process. In the study conducted by Mona Sue Weissmark, it was found that by being able to tell their stories and bring their feelings to consciousness, victims began to heal and move forward.³¹⁷ Even those who remained silent about their experiences for years after the war have found it beneficial to talk publicly about what they suffered.³¹⁸ An excellent forum for this is through the legal system, with countless individuals listening to survivors' stories and working

³¹⁵ Based on the recollections of Elly Gotz shared in Elly Gotz, interview by author, Station Park Hotel and Suites, London, On, March 12, 2015.

³¹⁶ Landsman, 197.

³¹⁷ This was proven in Weissmark's study. The participants suggested that "telling other participants about their personal and family history had the effect of bringing terrible memories to consciousness, affording them expression, and then inducing relief." Mona Sue Weissmark, *Justice Matters: Legacies of the Holocaust and World War II* (Oxford University Press, 2004), 89.

³¹⁸ In his book *Delayed Impact*, Franklin Bialystok quotes Holocaust survivor Gerda Steinitz-Friberg as suggesting that "the main reason survivors didn't speak is that they had a real problem with recalling terrible memories. They tried to push it out of their lives. They tried to live their normal lives, not realizing that speaking about it made it easier to cope with." Bialystok, 178.

towards justice. Although truth commissions would offer the safest space for survivors' to speak about their experiences, trials under Canadian law or for the purpose of deportation, denaturalization or extradition also serve this function. This argument has been validated by many other studies and in victim experience. Holocaust survivor Nathan Leipziger recalls the first time he spoke about his experiences during the war. He suggested:

“By speaking publicly I developed a strategy to overcome my own emotions. I could talk about it and detach myself from the story, almost as an observer. This became the means of dealing with my own feelings, reliving my own experience, being able to vocalize things...I always have nightmares before I'm going to talk, never after I talk.”³¹⁹

The next argument is a direct response to the claims made by critics about forgiveness. While it has already been noted that forgiveness is a useful tool for survivors attempting to rise above their pain, suffering and anger, it is not a remedy that is meant to substitute other methods of justice. Rather, it is intended to supplement them.³²⁰ The same study which found that victims of injustice have achieved peace through forgiveness also found that forgiveness should accompany other forms of justice.³²¹ Those surveyed in the Refugee Law Project reported that they equally desired trials, truth commissions, reparations and other methods of justice.³²² Referencing such methods of justice, the report concluded that “forgiveness is complementary to these practices and ought to be coordinated with them according to the context of the situation.”³²³ So while the practice of forgiveness is valuable, effective and should be promoted, utilizing other methods of justice in combination with forgiveness is still worthwhile and

³¹⁹ *Ibid.*, 178.

³²⁰ Forgiveness, while beneficial to survivors' mental health, can “can be dangerous because it can minimize accountability, trivialize suffering and condone injustice” if offered alone. But if practiced in combination with other forms of justice, it can have the effect of relieving survivors of anger and suffering while mitigating risk and achieving justice. Landsman, 172.

³²¹ Refugee Law Project 2015 Report: “Forgiveness: Unveiling an Asset for Peacebuilding.” *Refugee Law Project*, 44.

³²² *Ibid.*, 20.

³²³ *Ibid.*, 44.

necessary.

But last and most importantly it is crucial to note that forgiveness, while commendable, can never be a truly universal remedy. While survivors are able to forgive specific perpetrators for crimes committed against them directly,³²⁴ “no living person”- not even another survivor- “can extend forgiveness for the suffering” of another.³²⁵ Least of all for the victims who perished during the Holocaust.³²⁶ To do so would be to “cast the victims into oblivion.”³²⁷ This is a position that has been accepted by countless historians, Holocaust survivors, proponents of Nazi hunting and even critics of the practice. This position was even accepted by the victims of Nazi atrocity during the period in which they experienced their suffering. Simon Wiesenthal demonstrates this by recalling a personal experience he had during the Holocaust in his book *The Sunflower*. While imprisoned in a Nazi concentration camp Wiesenthal was asked to visit a dying SS member known only as ‘Karl.’³²⁸ Knowing of his impending death and experiencing enormous guilt for the atrocities he committed, Karl wished to gain the forgiveness of a Jew.³²⁹ During their meeting Karl admitted to all of the crimes he committed as a member of the SS.³³⁰ After confessing his crimes Karl begged Wiesenthal for his forgiveness, suggesting that “without [Wiesenthal’s] answer [he] could not die in peace.”³³¹ In the end Wiesenthal left without saying a word, leaving Karl to die with his guilt.³³² Despite wrestling with the encounter for years after

³²⁴ Although forgiveness cannot be demanded or coerced, and it is not an obligation on the part of the victim to a repentant criminal it can be offered freely by victims to those who have asked for it. The process and conditions of forgiveness are thoroughly discussed in Roth, 166-173.

³²⁵ Ibid. 168.

³²⁶ Ibid., 168-169, 172.

³²⁷ Matas, 258.

³²⁸ Simon Wiesenthal, *The Sunflower: On the Possibilities and Limits of Forgiveness* (New York: Schocken Books, 1976), 28.

³²⁹ Ibid., 28-30.

³³⁰ To read about the conversation and the confession of Karl’s crimes, see Wiesenthal, *The Sunflower*, 31-52.

³³¹ Ibid., 54.

³³² Ibid., 55.

the war, Wiesenthal recognized in that moment that it was not his place, even as a victim himself, to extend forgiveness on behalf of those who died around him.³³³ What can be gained from Wiesenthal's story is the recognition of the limited power of forgiveness. When considering the millions who perished during the Holocaust, all of whom were unable to offer forgiveness for the injustices that were done unto them, one would recognize that no survivor has the power to absolve any Nazi war criminal of their guilt through the process of forgiveness. Consequently, if no one person has the power to absolve any Nazi war criminal of their guilt, it logically follows that no one person has the power to decide if or when justice should be suspended. And therefore, it should not be.

CONCLUSIONS

Seventy years have now passed since the end of the Second World War. Soon, the world will no longer have the ability to support the victims of the Nazi terror or seek justice for their crimes through the legal system. There are, undeniably, differing opinions regarding the proper way to proceed against the remaining Nazi war criminals in Canada, with convincing arguments on either side of the debate. But both sides can agree that what is done with the minimal time remaining will impact how future generations understand the Holocaust and its legacy. After examining the history of Nazi war criminals in Canada, exploring how this issue has been handled by the Canadian legal system and balancing the arguments on both side of the debate, this paper has concluded that the practice of Nazi hunting must continue until the last perpetrator is brought to justice. However, there is one last reason why continued efforts to identify, locate and bring Nazi war criminals to justice are still so imperative. At the end of his book, *Justice Not*

³³³ The remainder of Wiesenthal's book details his curiosity about Karl and what kind of person he was. Ibid., 55-98.

Vengeance, Simon Wiesenthal perfectly encapsulated this reason when he wrote,

“Many young people today would wish to fight against the Gestapo, against the SS, against Hitler... These are heroic aims. But where they live there is no Hitler, no Gestapo and no SS. They should understand that none of these existed in the 1930s either, that they grew, slowly and unnoticed at first, and then ever more quickly. Until it was too late. That is why one must fight from the outset. You should... go into battle against the small injustices—often this takes just as much civil courage and bravery as the struggle against great wrongs.”³³⁴

Allowing those who committed horrible crimes during the Second World War into Canada has been this country's injustice. And the forty years of inaction that followed. It is undisputed that the easiest thing to do is to do nothing at all, to simply forget. But if we hope to build a better world, one characterized by an absence of violence and racism, we must withdraw from what is easy and continue to right our wrongs with the minimal time that is left. It is important to battle these small injustices, even if the only reason is to prove to the survivors and victims of the Nazi regime that *we will never, ever forget them.*

³³⁴ Wiesenthal, *Justice Not Vengeance*, 359.

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