

# A BODY DOES NOT JUST COMBUST: RACISM AND THE LAW IN GERMANY

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A dead pig wearing a yellow T-shirt and dark trousers was burning in a custom-built shed. Outside, as the light gradually dimmed over the Irish city of Waterford, five of us peeled clementines and watched thin ribbons of smoke waft out from the top of the doorframe.

It was August 2013, and this was the last fire test of the weekend. A group assisting the family of a man burned to death in a German cell had invited me to attend these experiments. As a lawyer, I had observed the trial that acquitted officers of responsibility for the man's grisly demise. These activists had not been able to find any fire experts in Germany willing to participate in the most dramatic death-in-custody case since the country's reunification in 1989, and so we found ourselves in Waterford in the company of Maksim Smirnou, a former Belarusian police officer who specializes in arson investigations.

Eight years earlier, in 2005, an asylum applicant from Sierra Leone was burned, possibly alive, while chained by his ankles and wrists to the floor of a holding cell in a police station in Dessau, Germany. The man's name was Oury Jalloh, and the pig—fully clothed and chained to a mattress—was his proxy. The process of having to recreate the scene was as humiliating as it was traumatic, particularly for those who knew Jalloh. This investigation, however, was necessary. Smirnou's goal was to ascertain whether or not Jalloh could have been so thoroughly scorched without the use of fuel or some other chemical accelerant.

It felt as though these tests, along with the very question of police involvement in Jalloh's death, had been banished to a place beyond the German border. These inquiries were only allowed to exist in exile, away from the fears and preoccupations of Germany's post-racial imaginary. As the smoke thinned and the fire died, we opened the shed doors to inspect the scene. We were shaken but convinced: Neither this pig's flesh, nor the mattress it was laid upon, resembled Jalloh's charred remains. (Of course it wouldn't, I thought, a body does not just combust.)

For legal reasons having to do with the production of evidence, the results of this fire analysis could not be entered directly into evidence in a new trial. But that does not mean Smirnou's work was shoddy science. In terms of the dimensions and materials of the cell, air circulation, mattress materials, clothing on the body, and alleged heat source, it was a fairly accurate recreation of Jalloh's death. The outcome, presented at a press conference, raised doubts as to whether the assumed circumstances of his death were even physically possible.

If one includes pretrial hearings and post-trial investigations, the Jalloh case had been active for almost a decade—and the whole affair was haunted by the specter of racism. One of the only explicit mentions of race entered the courtroom in the form of a telephone conversation, wherein the police testify to having called a doctor to ask if he could come to the station to draw blood from Jalloh, who they describe as a "black African." In the recording, the doctor complains that he is never able to find veins in "dark-skinned people," and the officer on the other end of the line instructs him to bring along a "special needle." That conversation, as chilling as it was coming in the last hours of Jalloh's life, was merely the shadow cast by bigger problems—the overall mishandling of the trial, the harassment of the activists, and the distinct feeling that Jalloh's life was not worthy of thorough investigation. But the call did give context to the unspoken racial thinking that pervades German institutions by virtue of their social and cultural makeup.

## TRIALS AND ERRORS

The Jalloh trials in 2007 and 2011 revealed myriad mistakes: Police were reported not to have informed the fire department that there

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was a person in the cell that was ablaze, so firefighters were surprised when they arrived and found a burnt corpse chained to the mattress on the floor. Police testified that they had turned off the smoke alarms that registered the fire, claiming to have assumed the alarms were faulty. They also claim to have turned down the two-way radio and missed Jalloh's screams for help. There were inconsistencies in police testimony, including parts of their timeline, and the judge presiding over the initial trial admonished police for their failure to cooperate. In the appellate trial, an officer who witnessed the events on the day invoked her constitutional right not to testify for fear of self-incrimination.

Despite the admissions by police officers, the prosecutor did not see it fit to entertain murder or voluntary manslaughter charges. Further mistakes were made in the collection of evidence. The autopsy commissioned by the police forensics team missed injuries on Jalloh's body that an independent autopsy found—a broken nose and a burst eardrum. Forensics footage was erased or not properly recorded, so only a few moments' recording of the cell examination exists, which means a proper determination of the chain of custody of the evidence left behind cannot be established. The debris in the cell was not tested for accelerants during the initial trial, which, because of the half-life of such substances, is a time-sensitive matter. This is ostensibly because the authorities believed Jalloh had committed suicide.

A lighter was discovered among the debris collected in the cell three days into the inventory investigation, and its presence constitutes the only hard evidence that Jalloh may have committed suicide. Later tests would reveal, however, that the lighter, which was partially melted, had no fibers from Jalloh's clothing or the mattress and none of Jalloh's DNA on it. It was simply assumed through the initial trial and the subsequent appeal that this was an

unfortunate case of suicide, which the police, at worst, failed to prevent. In the first trial, police were acquitted, and the retrial found police guilty of negligence, which resulted in a relatively modest fine of about 10,000 euros, or \$14,000.

The prosecutorial services are reportedly running a special investigation, but the probe is rife with conflicts of interest since prosecutors are essentially embedded between police and courts. What seems clear is that if there were no public pressure to scrutinize the details surrounding his death, there would have been little political will to probe beyond the initial 2007 prosecution for negligence. Had

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## THESE THINGS JUST DO NOT HAPPEN IN GERMANY.

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activists not raised tens of thousands of euros to finance the independent fire experiments or a team of arson and forensics experts from outside London to examine the medical reports, questions around the initial findings may never have been taken seriously. After all, in Germany, there is no public process for examining the cause of death (as there is, for example, in the U.K., with the Coroner's Inquest system), and there is no public resource dedicated to independent medical or scientific examination of evidence.

The fire tests and specialist analysis commissioned by activists showed persuasively that the types of burns that Jalloh sustained would likely have been impossible without either accelerant or a significantly different timeline than the one presented by the defendant police officers. This sends a startling message to the broader German public: If you want a proper investigation, you may have to do it yourself.

## RACISM IGNORED

For many Germans, neither the fire that killed Jalloh nor the handling of the trial could have been the result of systemic or institutional racism; these things just do not happen in Germany. The public has a strong faith in the justice system and the independence of the courts. State structures are not held responsible for institutional violence or repeated failures to investigate or litigate. While cases like Jalloh's should raise the question of systemic racism, they're seen as exceptional.

In the U.S., it often seems as if police shoot and kill someone every day. Yet the reality is somehow even worse: So far this year, American cops have killed an average of three people a day, about a quarter of whom have been black. With this frequency of death in the U.S., there is still a sense among Germans that the United States has a monopoly on racism and that racism in the U.S. defines all that racism can be. Racial prejudice in Germany is understood more to be a problem of right-wing extremists and neo-Nazis, not attitudes or policies that result in overpolicing, disproportionate use of force, and a lack of investigation.

As an anthropologist and a lawyer, it is not the numbers of police-related deaths in Germany but the quality of the stories that concern me. And in Germany, these narratives reveal unacknowledged institutional and structural racism but also innovative forms of black-led resistance to the state. Organizers have rallied around the stories of other black people who have been killed in policing situations, such as Christy Schwundek (2011), Dominique Koumadio (2006), and N'deye Mareame Sarr (2001) for disproportionate use of force, as well as Laye-Alma Condé (2005) and Michael Paul Nwabuisi (2001) for the fatal forced administration of an emetic. The Jalloh case actually went to trial, but many others did not, partly because the sole power to bring such cases before justice rests with the prosecution—civil

action is not an option. These cases all illustrate what activists regard as a pattern of ineffective investigatory capacity.

Ultimately, organizers have two battles to wage—one in reconstructing situations in which people have died, in the hopes that a recreation will give a fuller account of the situation, and another in defending their narratives of where and when racism enters the scene. The purpose of this is to establish more complete accounts of policing violence that might inform future cases, as well as to try and force people to acknowledge structural problems. It also gives families and friends the peace of mind found in having greater understanding of how their loved ones died.

## GERMAN RACISM IN CONTEXT

Generally speaking, race is not an easy topic of conversation in Germany. First, talking about contemporary ideas of race is difficult, partly owing to fear that the German term for race, *Rasse*, harkens back to the biological race thinking of the Third Reich. This trepidation stifles discussion of race in general. Second, many don't believe racism affects Germany to an extent significant enough to warrant policy change.

Europe is experiencing a political shift to the right that is central to understanding the current state of affairs. In the U.K., the Conservative Party has consolidated its strength and the nationalist, populist U.K. Independence Party (UKIP) has gained surprising influence. In the Netherlands, the party of right-wing populist Geert Wilders came in second in this year's parliamentary elections. And Marine Le Pen's anti-immigrant platform pushed her into the runoff in the French elections. In Germany, while the center-right Christian Democrats remain in power, the right-wing Alternative für Deutschland (AfD) has gained representation in a majority of German state parliaments. Meanwhile, the far-right anti-immigration group PEGIDA has also garnered national media attention. Mem-

bers of PEGIDA and AfD have been involved, for example, in mobilizing anti-immigrant, racist discourse against refugees in the aftermath of sexual assaults allegedly perpetrated by North African and Arab men during New Year's celebrations in Cologne at the close of 2015.

Refugees and people of color in Germany experience overlapping vulnerabilities. Refugees face hardship in Germany, even if the country is lauded in Europe for accepting larger numbers of asylum seekers than its neighbors. They are often housed in small, remote towns hostile to outsiders, and a legal prohibition on travel to other parts of Germany makes their social integration difficult. Activists, including many migrants themselves, have drawn attention to the poor quality of the lives of refugees in Germany. In 2012, they marched nearly 400 miles across the country; in 2014, they occupied a school building and established a

tent city in Berlin. Through these actions and countless others, they have called upon the state to recognize systemic marginalization, and highlighted a status quo regularly challenged by black, Turkish, and Muslim communities, as well as anti-fascist and anti-police-brutality activists.

Germany owes a great deal of gratitude to those who have for years exposed the injustices faced by the country's most vulnerable residents. The policing statistics might not be as startling as those in the U.S., but Jalloh's horrific end as well as other deaths in custody make clear the need for Germans to acknowledge and oppose the patterns of systemic racism within the justice system. With the inspiring work of activists, Jalloh may yet help Germans realize this and serve as a pivotal figure in the transformation of German society. Perhaps then he will not have died in vain. ●