

The Prohibition of Holocaust Denial

By Joseph P. Bellinger

***"Once any idea is expressed...no matter how repugnant it may be to some persons or, simply, to everybody, it must never be erased by the Government."
– Kurt Vonnegut***

On 8 July 1981, the sovereign nation of Israel became the very first country in the world to specifically outlaw "Holocaust denial." The Israeli Knesset passed the bill, entitled "Denial of Holocaust [Prohibition Law], 5746-1986 by majority vote, thereby setting a precedent which subsequently influenced European legislators to follow in suit.

The Israeli law stipulates that "A person who, in writing or by word of mouth, publishes any statement denying or diminishing the proportions of acts committed in the period of the Nazi regime which are crimes against the Jewish people or crimes against humanity, with intent to defend the perpetrators of those acts or to express sympathy or identification

with them, shall be liable to imprisonment for five years."¹

This law was recently strengthened by a controversial bill introduced into the Knesset by MK Aryeh Eldad of the National Union Party on 20 July 2004, which in theory enables the state of Israel to demand the extradition of any "Holocaust denier" anywhere in

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the world to face prosecution in Israel. Critics of the law opined that the bill might never have gathered enough support to pass muster in the Knesset were it not for the unswerving support of former Israeli Justice Minister and Holocaust survivor Yosef "Tommy" Lapid. Expressing his satisfaction with the bill to a journalist representing the widely read Israeli newspaper *Am Haaretz*, Lapid

averted that denial of the Holocaust

"is a clearly neo-Nazi crime. Anyone involved in this belongs to the group of criminals whom



Yosef 'Tommy' Lapid

our arm must reach anywhere in the world. This is essential even if the law remains declarative. We will not hunt them, but they should know that they are on our list of criminals. What I want is that if a Holocaust denier publishes a book in England, he will be considered a criminal in Israel."

Lapid concluded the interview by expressing his joy and "satisfaction" that Holocaust deniers

will now be added to Israel's list of criminals.²

As of November 2006, twelve European countries have followed Israel's precedent—Spain, Romania, Germany, Austria, Lithuania, Poland, France, Switzerland, Slovakia, the Netherlands, Belgium, and the Czech Republic have all enacted similar legislation that legally proscribes any person from questioning the mainstream version of the Holocaust under pain of prosecution.

Aside from widely publicized high profile cases, it is impossible to definitively state the specific number of victims who have fallen under the punitive arm of Holocaust denial legislation since these laws were first enacted. It has been estimated that over 58,000 individuals in Germany alone have been prosecuted for various thought crimes during the period 1994–1999. During the course of one year, 1999, Germany's aggressive policy of enforcing these repressive laws accounted for 11,248 convictions. Of this number, 8,968 cases were "right-wing" violations, 1,015 were categorized as "leftist," and the remaining 1,525 cases primarily involved foreigners or other non-German related issues.³

Further complicating matters is the fact that human rights organizations ostensibly committed to monitoring governmental violations of basic human rights, such as Amnesty International, routinely ignore and distance themselves from the plight of convicted "Holocaust deniers" who continue to languish in Cimmerian gaols throughout the continent of Europe. Publicly branded as "Holocaust deniers," dissident historians are thus relegated to the status of outcasts, "neo-Nazis," outlaws, and pariahs, exposed to public con-

tempt by an unsympathetic media and "politically correct" politicians.

The social stigmatization normally associated with "Holocaust denial" has become so pervasive and all-encompassing that only the most committed advocates of free speech will publicly risk an unfettered defense of the right to unrestricted expression of opinion for revisionist historians and independent researchers. The courageous defense of such advocates and assorted *literati* is especially commendable in view of the fact that their statements of conscience are sometimes published at considerable risk to themselves and their own reputations. One of the few organizations that actively campaigns in defense of free speech issues for revisionists is the Institute for Historical Review, in Costa Mesa, California, which closely monitors the carefully orchestrated, well-organized, and highly financed attempts by special interest groups to stifle free inquiry, research, and open debate.

As will presently be seen, individuals and special interest groups concerned with stifling freedom of expression constantly test, suggest, update, and introduce novel and legally questionable methods designed to curtail free speech and inquiry. Additionally, a number of libraries and organizations, such as Steven Spielberg's Survivors of the Holocaust Visual History Foundation and the Wiener Institute of Contemporary History in London openly restrict access to their materials by independent researchers unable to provide acceptable "credentials" or referrals.

Nevertheless, to date jurists have been unable to unanimously agree upon a precise, legally acceptable definition of just what

constitutes "Holocaust denial" or to provide any satisfactory reason as to why an act of denial or questioning of an historical event warrants special legislative and judicial attention.

In response to the question, what *is* Holocaust denial, it is difficult to provide an exact definition due to the legal complexities surrounding the issue, as legislative definitions vary from country to country just as they can vary from one individual to another.

Overall, current laws pertaining to Holocaust denial appear to be loosely interpreted, vaguely worded, and erratically applied, each case being adapted as circumstances warrant.

In those countries which have enacted laws restricting freedom of expression, citizens live under an ever menacing sword of Damocles. In the present dystopian age, a casual remark uttered in jest may lead to denunciation, arrest, and prosecution in scenes reminiscent of George Orwell's prescient novel, *1984*.

Thus the term "Holocaust denier" is misleading, nebulously defined, and a misnomer in view of the fact that there exists no consensus of opinion even among mainstream historians or revisionists in respect to a uniform definition of the Holocaust. Nevertheless, this elusive, nebulous definition of the Holocaust and Holocaust denial is precisely what animates and facilitates the job of prosecutors whose primary task appears to be limited to an arbitrary application of the law directed against those deemed politically undesirable.

In his *Essay on Tolerance*, Voltaire wrote,

*“For a government to have the right to punish the errors of men it is necessary that their errors must take the form of crime; they do not take the form of crime unless they disturb society; they disturb society when they engender fanaticism; hence men must avoid fanaticism in order to deserve toleration.”*⁴

It is precisely this logic which appears to motivate those individuals who argue for legal remedies to address the issue of “Holocaust denial.” The “error” of “denying the Holocaust” is invariably de-

finied as a “crime” which “disturbs the public peace,” because “



François-Marie Arouet
or, Voltaire

deniers” are perceived as engendering ideological or racial fanaticism. That the “Holocaust” is not

denied, but redefined according to the evidence or how it may be variously interpreted and applied, offers no legal loophole for those deemed to have transgressed the substance of the law. Furthermore, it is not “society” in general which is disturbed, but those who seek to impose their beliefs on others by suppressing opinions with which they are at variance. It is by these means that “deniers” are deemed “unworthy of toleration.”

For those who advocate harsh legal measures against “deniers,” any pretext will often suffice to advance their agenda. Thus, as laws are reformulated, revised and

amended, stiffer penalties and charges are appended to existing law in order to snare greater numbers of “deniers” within the legal net. Rather paradoxically, the legal definitions are in revision just as surely as the facts of the Holocaust are being revised by individuals falling within the orbit of legal retribution. Harsh sentences are expected to serve as a deterrent to other prospective “deniers.” Out of sheer necessity, Holocaust denial laws invariably become more elastic in order to assure the maximum number of convictions with the least amount of publicity or trouble. Clearly, minatory decisions are being made in intramural “star chambers” removed from public purview, where harsh judgments are subsequently applied and meted out to suspect individuals.

Thus, in an attempt to circumvent orthodox legal procedures and avoid any possible legal ramifications, accused “deniers” are charged by prosecutors with “defaming the dead,” although the laws fail to specify precisely how the dead are any more defamed than the living if the statements considered to be defamatory happen to be true and factual. In actuality, what the system seeks to punish is the perceived “intent” of the accused. However, since the “dead” cannot face the accused, state prosecutors and interested agencies such as the World Jewish Congress, the Anti-Defamation League (ADL), and the British-based Institute for Jewish Policy Research (IJPR) have appointed themselves as proxies claiming to act on behalf of the dead.

In respect to the latter-mentioned agency, the IJPR offers a rather formulaic assessment of Holocaust denial, opining:

*“Holocaust denial is...not the expression of good faith of a legitimate interpretation of history; it is designed to engender hostility against Jews, and is insulting and offensive to Jews, other victims of the Holocaust and all who value truth and the lessons we can learn from history.”*⁵

The definition offered by the IJPR is in fact misleading at best and begs the question, “Shouldn’t



Rabbi Marvin Hier has just heard about Voltaire’s crazy talk about not agreeing with what you say but being willing to defend to his death your right to say it

those who ‘value truth’ also value the right of individuals to tell the truth as they perceive it, whether their views and interpretations turn out to be right or wrong over time?” If it is indeed possible to “learn from history,” the best preventative against repeating the mistakes of the past might consist of education, dialogue, open debate, and reconciliation, but according to Rabbi Marvin Hier,

dean of the vaunted Simon Wiesenthal Center in Los Angeles, California,

“...it is not in the power of people living now to forgive...the only people who have a right to forgive are the victims, and they are not here...”⁶

If, in Rabbi Hier’s opinion, it is impossible for the present or any other generation to forgive, how can it ever be possible for the healing process to begin? At what point and with what living generation can the spiritually rejuvenating process of reconciliation begin, if not here and now?

Another school of thought holds that the Holocaust is so unique that it supersedes and surpasses all other historical episodes of racial or religious persecution, and as such is deserving of special status and recognition. The advocates of censorship vigorously defend these and similar views, perceiving revisionist historians as a threat to public order, whose research and published statements constitute “incitement to hatred.”

Rather paradoxically, it would seem that the “Holocaust deniers” have only succeeded in inciting hatred against themselves!

While penal codes may vary from nation to nation, most are based upon commonly accepted legal norms which have been universally applied from generation to generation. Holocaust denial laws, by way of contrast, are designed to punish unpopular thoughts and ideas deemed pernicious by self-appointed watchdogs for special interest groups who evidently feel that any criticism of the Holocaust by individuals whose motives are politically sus-

pect demeans people through insensitivity.

Yet historical events are hardly a matter for the criminal courts to decide, for the revision of history is a legitimate function and exercise associated with responsible scholarly research. Moreover, even criminal law allows for the overturn of previous convictions whenever new evidence surfaces which exonerates the accused. Why, then, is only the Holocaust considered to be exempt from all normative applications of law?

In attempting to deny revisionists and “Holocaust deniers” legitimate status, denigrators conveniently attempt to equate them with racists and neo-Nazis. Marginalized and consigned to the “lunatic fringe,” revisionists struggle to achieve parity with non-suspect historians and researchers. In ways reminiscent of the McCarthy era, revisionists are suspected of harboring politically incorrect opinions. The fact that Holocaust denial laws purposefully target individuals prejudged as holding unorthodox political views or individuals suspected of anti-Semitic tendencies underscores the discriminatory basis of such laws.

Thus, as the laws now stand, it is impossible for revisionist historians to profess their belief in the Holocaust per se, simply because they, unlike “accepted” authors such as Arno Mayer, Raul Hilberg, Jean-Claude Pressac, Robert Jan van Pelt, et al., are considered to be politically suspect or in some way ideologically motivated. Nevertheless, it may be considered an established fact that Holocaust revisionists are not necessarily “Holocaust deniers.”

Although criticism of “deniers” appears to be socially acceptable

at present, it may prove to be a daunting task for proponents of censorship to explain or justify how or why the published views of men such as Daniel Goldhagen and David Kertzer, both of whom have authored polemical books in which Christianity is equated with virulent anti-Semitism, deserve to be accorded special status over and above the published writings of men like David Irving or Germar Rudolf.⁷ For the law to be truly equitable, it must apply equally to everyone, without favor or exemption, with none deserving of special status.



Daniel Goldhagen

An innovative idea that seems to be gaining momentum throughout the world media is that a sovereign nation is “outside the family of respectable nations” if it fails to adopt Holocaust denial laws or expresses solidarity with nations where such laws are already a fait accompli. For example, Holocaust denial is routinely used as a pretext for inciting public hostility and contempt toward the nation of Iran and its recently re-elected president, Mahmoud Ahmadinejad.

Thus, at the present moment, any revision or repeal of Holocaust

denial laws seems out of the question, as more countries fall meekly into line with the majority nations, enacting laws designed to punish, ostracize, and relegate skeptics to the “lunatic fringe” of society. The recent violent attack upon the Holocaust Museum in Washington by a crazed sociopath merely adds fuel to the existing fire. Moreover, legislators appear to be of the opinion that enactment of such laws provides “legitimate status” to nations desiring recognition, and/or “parity” with the great powers of the Occident. Cynics, on the other hand, perceive their performance in more prosaic terms, such as jumping on the bandwagon.

Concomitantly, organizations supposedly dedicated to safeguarding human rights consistently refuse to serve as advocates for persecuted revisionists or free thinkers. The right to be able to think freely and express one’s thoughts without fear of retribution has been irretrievably compromised. If the current and dangerous trend continues, there will not exist one square inch of free soil among the western nations where an individual accused of violating the nebulous “Holocaust denial” laws will find refuge or elude the heavy arm of retribution. Free-thinkers will have “nowhere to run, and nowhere to hide.”

In ages past, the Catholic Church served as a place of sanctuary for those unjustly branded by an intolerant society, but even this refuge has been effectively neutralized. The widely publicized ostracism of Bishop Williamson underscores the enormous pressure that is being placed on the Pope and the Vatican as it struggles to defend itself against a formidable array of relentless critics who un-

scrupulously accuse it of being the ideological precursor of “Nazism,” the author of “theological anti-Semitism,” and “refusing to save the Jews of Europe from extermination.” Thus, compassion and mercy have been neutralized to feed the Holocaust Moloch.

The subject of Holocaust denial continues to permeate and suffuse nearly every organ comprising the body politic of the Western world, and nary a day passes by without this topic being raised somewhere in the international media as it increasingly assumes inordinate world-wide significance with world-wide consequences and repercussions. It has, in fact, become an international obsession—an unhealthy fixation in a visibly hurting and ailing society tremu-

lously awaiting the coup de grace to our civil liberties.

Notes:

1 The full text of the law is published in *Sefer HaChukkim*, Number 1187 of Tammuz 9, 5746 (July 16, 1986), page 196.

2 <http://www.haaretz.com/hasen/spages/496841.html>, November 4, 2004. “The Long Arms of Rabbi Elyashiv and of the Knesset,” Shahar Ilan, *Haaretz* (Israel).

3 *The Journal of Historical Review*, vol. 19, no. 3 (May-June 2000), p. 7.

4 http://oll.libertyfund.org/Texts/Voltaire0265/OnToleration/0029_Bk.html#hd_1f029.head.009

5 http://www.jpr.org/Reports/CS_Reports/no_3_2000/main.htm

6 Rabbi Abraham Cooper, “Editor’s Column,” *Response: The Wiesenthal Center’s World Report*, vol. 11, no. 2 (May, 1990), p. 2.

7 Daniel Goldhagen’s two books, *Hitler’s Willing Executioners* (1997), and *A Moral Reckoning: The Role of the Catholic Church in the Holocaust and its Unfulfilled Duty to Repair* (2004), have been deemed by many critics to have crossed the line of responsible historiography. Similarly, David Kertzer’s *The Popes Against the Jews: The Vatican’s Role in the Rise of Modern Anti-Semitism* (2001), prompted similar criticisms.