“History is the mental form in which society accounts for its past.” Johan Huizinga

“History must not be a slave to contemporary politics nor can it be written on the command of competing memories.” (from the Blois Appeal, manifesto for Liberte pour Histoire; published 10 October 2008)

In light of these contrasting statements, assess the viability of recent European laws aiming to criminalise Holocaust denial and, by extension, genocide denial in terms of their long-term implications for the purpose and use of history.

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**Synopsis**

This essay is a response to the recent European trend of enacting ‘memorial laws’ as a defence against historical denialism. My argument is primarily concerned with the European Union (EU) Framework Decision of April 2007, aiming to outlaw genocide denial. The Decision was spearheaded by German Justice Minister Brigitte Zypries, who proclaimed her nation’s “historical obligation” to legislate against Holocaust deniers.

Zypries subscribes to the view that “history is the mental form in which society accounts for its past”, in contrast with the group of historians Liberte pour l’Histoire, who believe the study of history should be detached from contemporary politics. My focus question is structured around these diametrically opposed views of history. In this way my purpose is not to assess legalities or the free speech issue, but historical imperatives. The ‘viability’ of these laws, as my question phrases it, is defined here as the relationship between their ‘ends and means’.

This essay is framed within contemporary debate; I have also provided case studies, on Deborah Lipstadt and Holocaust denial, to address the complexities of the current political atmosphere. Evidence for this issue is rarely dispassionate, with both sides of the argument using overstated rhetoric to persuade the public. Also, because it is such a recent issue my major research methodology has been Internet and media consultation, where such perspectives have free forum.

It is my hope, therefore, that I have produced a fair assessment. This issue is important to me not only because it is an ongoing historical debate, but because I have chosen personally to approve the Blois Appeal, manifesto for Liberte pour l’Histoire. I hope my conclusions reflect my unease about the growing place of the law in history, and the philosophical assumption that history is answerable to the present-day.

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The criminalisation of genocide denial operates fundamentally on the notion that the end justifies the means. Most recently, the EU Framework Decision of April 2007 and internal state parliaments (particularly in Western Europe) have championed the state as the final arbiter for historical ‘justice’. Yet as the term justice implies, to correct debate of such contentious nature results in winners and losers, with several important assumptions underlying such legislation. Such issues include broad-brush definitions of ‘denial’ and ‘genocide’, the supposition that denial of all forms constitutes racism, and the belief that the court-room rather than classroom is the most appropriate venue for historical debate (thus diminishing the historian’s role). Perhaps most troubling, an implicit conclusion is made about the purpose of history; as simplistic moraliser, a peace-broker with destructive pasts. An assessment of these flawed assumptions exposes this legislation as detrimental to the scrupulous practice of history and in the long-term counterproductive.
Firstly, one must assess the nature of opposition to such laws. On October 10 2008, a full-page advertisement appeared in the French newspaper *Le Monde*. The Blois Appeal, manifesto for the group Liberté pour l'Histoire, argued vehemently against the “retrospective moralisation of history,” alleging that competitive claims-making amongst victims of genocide had resulted in an official history that constituted a denial in itself. The French government, who had taken memorial laws to their extreme by criminalising denial of the slave trade, had brought a number of historians to outrage, among the Appeal’s signatories such eminent historians as Pierre Vidal-Naquet and Eric Hobsbawm. This testifies to the differing contexts of each historian involved with Liberté pour l’Histoire, whether Hobsbawm the Marxist or Vidal-Naquet the Jewish historian who lost relatives at Auschwitz, linked by their views on the purpose of history.

The Appeal attained an international dimension when liberal historian Timothy Garton Ash published articles in Britain decrying the “nanny state and its memory police.” In addition, the French historian Rene Remond condemned the legislation as the “confiscation of history;” such hyperbole invoked a rather negative visceral reaction in the historical community. In Britain, where public debate became more heated, historian David Cesarani counter-attacked liberal historians who “bury their heads in the sand.” This statement brought into wider perspective the broader philosophical imperatives for such legislation, suggesting their possible necessity.

With the arrival of Deborah Lipstadt, the opposition gained wider credence. Ironically, many point to Lipstadt’s victory over denialist David Irving in a 2000 libel case as a successful example of using the law to resolve historical issues. Yet in a bizarre reversal, many respected historians (for example, British military historian John Keegan who dismissed Lipstadt as “self-righteously politically correct”) have proclaimed Lipstadt as censor and Irving as victim. Such a misperception is predicated on the falsehood that Lipstadt initiated the trial. Furthermore, because the largely liberal British historical community tends to disapprove of legal institutions presiding over history, their frustration would no doubt be compounded with anti-denial laws because they take the verdict of the libel trial to a legal extremity. However, the main question that arose from the Lipstadt v Irving trial was far more elemental; whether historians could ethically use the arguments of deniers to strengthen their own, or whether they were bound by professional duty to renounce these views entirely. As British diplomatic historian D.C. Watt wrote, “truth needs Irving’s challenge to keep it alive.”

British historian David Cesarani, who asserts that historians must renounce denial in all forms, criticises the “classic liberal line” of his peers, which he believes reduced the trial to a “deleterious sideshow.” He holds that the verdict “demarcated between Holocaust denial and controversial interpretation.” Cesarani provides an interesting means of comparison with Lipstadt; both are of Jewish background, write modern history in genocide studies, are committed to Jewish political issues, and adhere to the precept to never debate with deniers. Here their fundamental difference emerges; while Lipstadt believes in exposing deniers’ arguments, for Cesarani they deserve only silence because they rob the Holocaust of its contemporary purpose, as a “lodestone for determining good and evil.”

Yet his dismissal of Lipstadt’s views as weak-willed libelism is over-simplistic. Her main argument is, “to study the history of what happened, not to find a moral ground; historians get into trouble when they do that.” The Holocaust may evoke a moral ground that we cannot ignore, but the danger lies in allowing this purpose to dictate research. This danger is realised in its most extreme consequence when the law intervenes. As one commentator observed, “an English libel court is for justice, not for history.” Consequently this debate should not be primarily one of free speech but one of justice; justice to historical facts where research is conducted equitably, rather than legal justice. Trials of denial have no place in the court-room because they suggest history should ignore complexities, holding it to be accountable to victims of genocide and present-day politics.

In keeping with this line, one must assess the definitions embedded in such legislation to be advantageous to their key stakeholders; those in communities historically affected by genocide. For example, the definition of denial in the EU’s Framework Decision, “publicly condoning, denying or grossly trivialising of crimes of genocide, crimes against humanity and war crimes... as defined in the [Rome] Statute of the ICC” raises serious questions about misuses of history.

Firstly, this definition of denial is adequately broad
to invite institutional abuse. The condemnation of vaguely labelled crimes; ‘relativism’, ‘banalisation’ and ‘comparativism’, appears to be subjective and ambiguous. Outright denial is one thing, but because these invented legal terms lack stipulations, the legislators create a one-size-fits-all assumption which Pierre Non, the current president of Libérté pour l’Histoire, confronts with his question about the “margin of discussion and evaluation [that] will remain.”17 Furthermore, one must examine the premise that denial is a form of racist incitement. Henry C. Therault argues that, “denial compounds the original harms,”18 and Gregory Stanton, the president of Genocide Watch, lists the eighth stage of genocide as its denial.19 However, even if there is a causal relation between denial and incitement and even if liberal historians do “bury their heads in the sand,”20 one must challenge the notion (clearly valuable to politicians and victims of genocide) that history’s judgements should be arbitrated in the court-room.

Furthermore, the EU Framework Decision’s definition of genocide under the Rome Statute invites the question of to what extent genocide denial can be seen as legitimate. Under the Statute, to assert the occurrence of genocide one must clearly connect the act of massacre and slaughter with genocidal intent (dolus specialis), the compulsion to exterminate an entire people. Unfortunately, these laws arrive against the backdrop of twenty first-century politics, where the proliferation of the term ‘genocide’ as an “all-purpose moral metaphor” and “cynical political tool”21 has, counterproductively, worked to dilute the word of its horrific origins.

A clear example of historical misuse to shut down debate was the Western presentation of Serbia’s actions in Kosovo as genocide, when US President Bill Clinton compared the Kosovo war to the Holocaust. This justification of interventionist wars abroad in the language of humanitarianism reflects a politically expedient use of history. Regardless of whether the Serbs’ actions were genocide or massacre, in light of continuing research into the death toll it remains legitimate to claim otherwise. In such a climate, where to deny (even partially) is according to Robert M. Hayden, “secular heresy,”22 there exist no clear parameters within which denial is legitimate. While the desire for revenge and accountability may motivate the Kosovar Diaspora to claim genocide, historical consensus should be reached by questioning facts intellectually, not emotionally or ideologically.

Perhaps it is helpful, therefore, to consider a case where genocide denial is not legitimate; Holocaust denial, for there is a valid argument that Holocaust denial alone should be criminalised. Such an argument revolves around its uniqueness as the “moral absolute for our relativist times.”23 If the Holocaust is a ‘golden truth’ that demands remembrance, then the liberalism of historians such as Garton Ash, holding that there should be no overriding view to writing history, is misguided. One German commentator, Sabine Seifert, in fact actually states that, “Asli is upholding a liberal Anglo-Saxon tradition that is diametrically opposed to prevalent opinion in Germany and Austria.”24 Lipstadt herself believes that whereas Holocaust denial laws are aimed at “malicious pseudo-historians,” genocide denial laws have the potential to frustrate serious debate.25 Under such a premise, it is clear that one should not treat genocide denial as a logical extension of Holocaust denial. This is because a genuine historical consensus has been reached on the Holocaust whereas research into many recent conflicts such as Rwanda and Srebrenica is ongoing.

When the EU Justice Minister Brigitte Zypries proclaimed her nation’s “historical obligation,”26 it is the task of historians to scrutinise such a view that aims to use history to account for its past. On the one hand, there is the argument that modern German values are seen “through the mirror fetish of its bitter experiences;”27 that is to say, the inheritance of war-guilt. Its popular culture is, according to Lipstadt, based on acceptance of the Holocaust.28 Conversely, German jurist Georg Nolte raises the valid objection that due to the substantial minority in a neo-Nazi scene, these groups may gain a public platform, hence disseminating the views the initial legislation sought initially to reverse.29

German jurist Bernard Schlink concludes that a reductionist view of truth, reducing the historical record to a more palatable public form, may in itself be a denial.30 This seems at odds, however, with public opinion in France and Germany where, due to significantly higher levels of anti-Semitic activity, their respective denial laws have much greater operational and symbolic meaning. The conflict for the contemporary European historian lies in the fact that Holocaust remembrance has, for Rene Remond (president of Libérté pour l’Histoire until his death in 2007), become a “civic responsibility” yet their profession demands that they illustrate “the complexity of social reality.”31 Although
genocide studies are a sensitive subject, one must consider whether these studies are unique in historical scholarship, and whether they warrant a special place in law. This conflict for the European historian fundamentally concerns history's purpose; as either socially instructive or a carefully protected practice. Perhaps pragmatically, anti-denial laws have their place in continental Europe where the historian has acquired a public responsibility.

Such a concession must not be regarded as concluding that history's purpose is to exonerate; modern Germany can be fairly claimed as an extenuating circumstance. To transpose this circumstance across the Channel to Britain is not a fair comparison. Report Number 3, commissioned by the British government in 2000 to investigate these laws, concluded that, "free speech restrictions must be a proportionate response," yet ultimately warned against them.32 The Report is useful because although compiled from a purely legal perspective, it reads; "the law should not be regarded as a tool for countering general ignorance."33 In light of such a statement, the arguments of Timothy Garton Ash for Britain's "strong free-speech tradition," become clearer because such a political culture does not necessitate this legislation. Criminalisation of denial should only exist where historical antecedents demand it; not legislated on the basis of competitive claims-making or an EU mandate.

Through this systematic inquiry one arrives inevitably at the question of the 'slippery slope' to which the Blois Appeal, in its mention of "competing memories," alludes. If history is to be used to account for society's past, then surely the main stakeholders of these laws' "retrospective moralisation" must be the victims themselves; their demands are understandable but short-sighted. These groups would include the Jewish community, as well as the Armenian and Ukrainian Diasporas. On the one hand, one may argue that people have a stake in their own history; therefore its creation must not be completely divorced from those who lived it and those who are its legacy. However, in transcribing these histories to legal institutions, one may argue as Remond does that they are "used as substitutions for denial itself. Secondly, the differentiation must be made between the criminalisation of Holocaust denial (which is not its logical extension) and genocide denial (which, of course, the Turkish state categorically denies).

In this political environment, Garton Ash envisions the tragic use of the EU legislation as a bargaining chip in state diplomacy; "we'll give you the Armenian genocide, you give us the Ukrainian famine." The ownership implied by the word 'give' suggests a reductionist view of history at odds with the belief that collective memory belongs to us all. Furthermore, if these official histories belong to "possibly contradictory parliamentary minorities," they may be irreconcilable. For what makes genocide studies so unique is that, as a generally modern phenomenon, its stakeholders are heavily invested in its conclusions. Such a use of history would eliminate what historian Ben Kiernan sees as the hallmark of all genuine historical works on genocide, the balance between victims' claims for justice with the need for objective scholarship.

The short-sighted intrusion of contemporary politics to which the Blois Appeal believes history is made a "slave" therefore brings into starker relief questions of justice. If history is, as Johan Huizinga believes, to be used as a way to redress past injustices by outlawing genocide denial, it has been shown this works to its own detriment. This is because when history is refracted through a contemporary lens, means are defeated by ends; and the multifarious conceptual problems of such an assumption are ignored.

Firstly, there need to be clearer, more contextualised definitions of genocide as well as the parameters of denial itself. Secondly, the differentiation must be made between the criminalisation of Holocaust denial and genocide denial (which is not its logical extension) as well as the political context of those nations in which the laws are received. In continental Europe, these laws are more likely to avoid the perception of state custodianship than in Britain, where anti-
denial laws would constitute an expedient misuse of history. Without this "very pragmatic conception of history," historians may reach consensus without political interference, at the thin dividing line between revisionism and reductionism. There is no need to silence deniers but to defend historical practice by exposing them as the practitioners of a "tissue of lies" as they may be. Consequently, the means should justify the end.

Endnotes

3. English: 'Liberty for History'
5. Garton Ash, T., 16 October 2008. 'The freedom of historical debate is under attack by the memory police.' The Guardian, [Internet source; accessed 8 February 2009] <http://www.guardian.co.uk/commentisfree/2008/oct/16/humanrights>
11. Ibid.
15. Ascherson, op. cit.
31. Rémont, op. cit.
32. Julius, op. cit.
33. Julius, op. cit.
34. Garton Ash, op. cit.
35. Liberte pour Histoire, op. cit.
History Alive!

Convict History Connected to your Classroom

Toni Hurley, HTA

The Historic Houses Trust (HHT) is introducing an adventurous, interactive new program about Sydney's convict past via the Connected Classroom videoconferencing technology. The one hour program features an actor/presenter assuming the identity of 'Ivan Gottney' (get it??) a colourful convict from Sydney's early days. He comes complete with Cockney accent — including convict slang — and a fascinating array of artefacts from the Hyde Park Barracks collection which introduce the students to the details of everyday convict life in the early colony.

Students have the opportunity for interaction by dressing in convict costume and answering questions about the convict identities which each has been assigned beforehand or by identifying artefacts and drawing conclusions about them. They are able to ask questions and sing along with the convict ballads.

The program has been trialled with great success in some Sydney classrooms during 2010. HTA visited Rose Bay Public School in November to see the program in action with a class of Year 3 students and their teacher Deb McIlwain. The program features aspects of convict life including, daily work, rations, clothing, sleeping arrangements, recreation and musical instruments. Most popular with Year 3 at Rose Bay — and no doubt with many of their peers around the state — are the gruesome details of punishment including flogging and the use of 18 kg leg irons. Toilets and associated activities were also winners! (Ivan's friend 'Cec Poole' received an honourable mention at this point - one for the grown-ups perhaps!)

Of particular interest is the use of original source material throughout, both written sources and artefacts recovered from the Hyde Park Barracks excavations. The hour passed all too quickly — the pace and pitch of the material keeping Year 3 well on task throughout! The presenter John Lanzies (aka Ivan Gottney) and his HHT research team have succeeded in bringing the convict experience to life in an entertaining and memorable virtual excursion.

36. Nora, op. cit.
37. Remond, op. cit.
40. Carton Ash, op. cit.
43. Liberté pour Histoire, op. cit.
44. Vidal-Naquet, op. cit.