

Holocaust and Genocide Denial

A Contextual Perspective

Edited by
Paul Behrens, Nicholas Terry
and Olaf Jensen

Holocaust and Genocide Denial

This book provides a detailed analysis of one of the most prominent and widespread international phenomena to which criminal justice systems have been applied: the expression of revisionist views relating to mass atrocities and the outright denial of their existence. Denial poses challenges to more than one academic discipline. To historians, the gradual disappearance of the generation of eyewitnesses raises the question of how to keep alive the memory of the events, and the fact that negationism is often offered in the guise of historical ‘revisionist scholarship’ also means that there is need for the identification of parameters that can be applied to the office of the ‘genuine’ historian. Legal academics and practitioners, as well as political scientists, are faced with the difficulty of evaluating methods to deal with denial and must in this regard identify the limits of freedom of speech, but also the need to preserve the rights of victims. Beyond that, the question arises whether the law can ever be an effective option for dealing with revisionist statements and the revisionist movement. In this regard, *Holocaust and Genocide Denial: A Contextual Perspective* breaks new ground, exploring the background of revisionism, the specific methods devised by individual States to counter this phenomenon, and the rationale for their strategies. Bringing together authors whose expertise relates to the history of the Holocaust, genocide studies, international criminal law and social anthropology, the book offers insights into the history of revisionism and its varying contexts, but also provides a thought-provoking engagement with the challenging questions attached to its treatment in law and politics.

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Introduction

Paul Behrens, Nicholas Terry and Olaf Jensen

The facts of the Holocaust are clear; the suffering of its millions of victims is beyond reasonable dispute. It is evidenced by the words and writings of those who escaped the machinery of death, and indeed of those who devised it and kept it in running order. The documentary and architectural proof is overwhelming. Films demonstrate the conditions of the concentration camps; there are witness statements of those who liberated Bergen-Belsen, Auschwitz and the other places in which the human capacity for evil had been given a new definition.

As if that were not enough, the events have been subjected to judicial examination – ranging from the trial of the International Military Tribunal at Nuremberg to trials in the 21st century; proceedings in which the killings, torture and mistreatment received meticulous examination and had to withstand scrutiny under adversarial systems.

That is not only true of the Holocaust: other instances of mass violence, in particular the killing of an estimated 800,000 Tutsis in Rwanda in 1994 and the massacre of some 7,000 Bosnian Muslims at Srebrenica in 1995, are equally well documented, and they, too, were subjected to examination in courtroom settings, where exacting standards for the evaluation of evidence were applied by international criminal tribunals.

In light of this, it is legitimate to ask why Holocaust and genocide denial would merit a study in its own right. The claims of deniers, after all, carry a degree of absurdity which puts them well within the ranks of those who maintain that the landing on the Moon was a hoax and that the Earth is flat. And there is the risk that even the mention of such claims gives them a prominence that they do not deserve. Ignoring them seems the safer option and in due time, so the thinking goes, they will wither away.

In that regard, however, the denial of mass violence is a rather different matter. There is nothing trivial about it. To the survivors of the events and their families, denial causes renewed suffering. It targets one of the few things that they salvaged from the horrors of the time: their right to the memory of the events, which is an integral part of their personalities. It typically attacks their dignity, for the denial of mass violence carries the implied message that the reports of these events had been an invention.

Nor is such denial the pastime of a few eccentric individuals. Holocaust denial in particular has become an industry. The denialist movement has held conferences,¹ publishes journals² and has established organisations such as the ‘Institute for Historical Review’ and the ‘Committee for Open Debate on the Holocaust’. Its followers are keen to occupy the spotlight in print media³ and on the internet.⁴

For the denialist movement, that is not the limit of its impact. For a considerable while now, the message sent out by its leaders has occupied a political platform too, underlining the gravity of the conduct and the danger of its consequences. Jean-Marie Le Pen, the former leader of the French Front National, was quoted as saying that the Nazi death camps were a ‘footnote of history’,⁵ Nick Griffin, the leader of the British National Party, called the Holocaust a ‘holohoax’.⁶

Holocaust denial that thus enters the political arena, carries the potential of triggering responses from politicians of the ‘established’ parties and of receiving a platform in the mainstream media.⁷ It is a dangerous development: it shows that the treatment of deniers as outsiders with a message that is considerably removed from serious political discourse can no longer be guaranteed. Once they are included in debates with political figures from mainstream parties, they may well appear, to an average viewer, to have equal standing in such discourse and their message as worthy of consideration.

Even that is not the limit of the consequences of denial. Not all situations of political denial are alike, and not all denial on the political stage is promoted by parties that are somewhat on the fringes of the political spectrum in their own countries. In 2006, it was a head of State who welcomed some of the world’s most prominent deniers to a government-run conference under the title ‘Review of the Holocaust: Global Vision’: Iranian President Ahmadinejad,⁸ who, even

1 Cf US Newswire, ‘Arab League Holocaust denial symposium is no surprise, AJ Congress says, as it calls on European Community to denounce conference’, 29 August 2002; Xinhua General News Service, ‘Right-wing antisemitism in Europe on rise’, 27 November 1993.

2 Notable examples include the *Journal of Historical Review* (1980–2002), *Vierteljahreshefte für freie Geschichtsforschung* (1997–2006) and *Inconvenient History* (2009–present).

3 Cf the reference in P. Grosswiler, ‘Sunlight on Holocaust Denial’, *Bangor Daily News* (Maine), 27 January 2000. Grosswiler highlights the numerous newspaper advertisements taken out by deniers in the 1990s.

4 For an early report on the use of the internet by Holocaust deniers, see Anti-Defamation League, ‘High Tech Hate: Extremist Use of the Internet’, *US Newswire*, 21 October 1997.

5 Geoffrey Varley, ‘France Repents Holocaust, but Le Pen Prospers’, *Agence France Presse*, 1 October 1997.

6 Robert Mendick, ‘Loophole Lets BNP on to Council’, *The Independent*, 16 April 2000.

7 See e.g. for a critical evaluation of Nick Griffin’s 2009 appearance on the BBC programme ‘Question Time’: Robert Winnett and Rosa Prince, ‘BNP on Question Time: Nick Griffin Uses BBC Appearance to Attack Muslims and Gays’, *The Telegraph*, 22 October 2009.

8 US Fed News, ‘Top Academics, Political Leaders Seek “Incitement to Genocide” Charges Against Iran, President Ahmadinejad’, 12 December 2006.

before that event, had been quoted as saying that the killing of the Jews in Europe was a ‘myth’⁹ and who, on the second day of the meeting, asserted that the ‘Zionist regime will be wiped out soon the same [as] the Soviet Union was’.¹⁰ In circumstances of this kind, it is not easy to dismiss the view that denial is capable of preparing the commission of new crimes – against the same victim group that had been targeted when the violence first reared its head.

It is not the purpose of this book to engage in a debate with deniers, and it does not aim to elevate their statements to the level of academic discussion. Its objectives, and the questions it seeks to answer, are quite different. They can, broadly, be understood under four principal categories.

There are, first of all, questions that attach to the denialist movement itself. They relate to the individuals who engage in conduct of that kind and highlight the need for an investigation into the purposes that are at the root of their activities. Do all deniers act from the same motivations, and is there room for differentiations according to their position within the movement, their presence in journals and internet fora and other platforms? What are the historical origins of denialism, and have its techniques changed over time? An examination of that kind also raises questions about the character of the movement. How far is it possible to speak of a coherent organisation? Have splits within the movement emerged? And how prevalent is the danger of denial today?

Second, how does the law deal with denial? Criminalisation certainly occupies an increasingly important position in the battle to protect the dignity of victims and survivors of the atrocities and to preserve the memory of the relevant events. Yet the legal option has also invited criticism – not least with regard to the impact that criminalisation may have on specific human rights. Recent cases – including that of *Perinçek* before the European Court of Human Rights (ECtHR)¹¹ – have also invited the question whether laws against denial can rely on a justifiable basis in all situations in which mass violence had been committed, or whether the temporal and spatial relationship between the events and its negation must play a role in the decision to resort to this option. The efficiency of sanctions under the criminal justice system is a further point of consideration in this context. But questions also arise from the position of courts even outside the application of laws criminalising denial: do courts dealing with the adjudication of genocide and crimes against humanity have an obligation to work towards the preservation of memory and the defeat of denialism as well?

Third: if the law courts controversy, the question of alternative options to address denialism must be explored. Are methods outside criminalisation –

9 Ibid., Gregory Gordon, ‘From Incitement to Indictment? Prosecuting Iran’s President for Advocating Israel’s Destruction and Piecing Together Incitement Law’s Emerging Analytical Framework’, 98 *Journal of Criminal Law and Criminology* (2008), 868.

10 Ibid.

11 ECtHR Grand Chamber, *Perinçek v Switzerland* (Application no. 27510/08), (2016) 63 EHRR 6, Judgment, 15 October 2015.

educational initiatives and even direct confrontation with the deniers – viable, and do they carry a legitimate expectation of efficiency? Are there dangers that attach to their adoption? Similar points arise where responses by the international community are concerned. What tools are at its disposal to combat denialism, and would it even be possible to establish common ground among independent States for the adoption of a homogenous position on conduct of this kind?

A fourth point concerns the role of historians in situations marked by denialism. What is the position in which they find themselves when faced with statements that negate or seek to minimise the relevant international crimes? Given, in particular, the fact that denialism in certain contexts might have been advanced not only by private individuals, but might have been adopted as State policy, questions unavoidably attach to the range of options available to historians and other scholars of social sciences to address denialism and to present an accurate factual account to their peers as well as the public at large. Has the capacity of academics to do their work, at least in some countries, come under threat?

A study of that kind can, inevitably, not stay within the domain of one particular academic subject area. Denialism crosses disciplinary boundaries. As long as criminalisation remains a popular tool for combatting denial, practising lawyers and legal academics are directly concerned by the underlying phenomenon; and it is the legal profession that has to evaluate the suitability of this option in light of its potential impact on human rights law.

For historians and scholars of the social sciences, the impact of denialism is even more direct. It is, after all, a typical feature of the denialist movement that some of its prominent members strive for the veneer of scholarly writings and claim that their texts have to be taken seriously in the discourse of the relevant discipline.¹² That poses a direct challenge to professional historians and social scientists, and highlights the need for the high standards of quality that the discipline expects of those who are its acknowledged members. Genocide scholars are not unique among academics in contending with pseudoscholarship, due to the proliferation of conspiracy theories,¹³ pseudosciences,¹⁴ pseudohistory,¹⁵

12 In this regard, genocide denialists follow a playbook used by science deniers and other ‘merchants of doubt’; cf Naomi Oreskes and Erik M. Conway, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming* (New York: Bloomsbury, 2010).

13 The academic literature on conspiracy theories is now vast; the best introduction is Jovan Byford, *Conspiracy Theories: A Critical Introduction* (Basingstoke: Palgrave Macmillan, 2011).

14 For a good summary of the extensive literature on pseudoscience, see the contributions in Massimo Pigliucci and Maarten Boudry (eds), *Philosophy of Pseudoscience: Reconsidering the Demarcation Problem* (Chicago: The University of Chicago Press, 2013).

15 Unlike the phenomena of pseudoscience and conspiracy theories, relatively little research has been conducted on pseudohistory. But see Ronald H. Fritze, *Invented Knowledge: False History, Fake Science and Pseudo-religions* (London: Reaktion Books, 2009).

pseudoarchaeology¹⁶ and pseudolegal theories¹⁷ in the late 20th and early 21st centuries. Genocide denialism profits from this wider climate of misinformation and distrust of academic consensus, and seeks to establish itself as the ‘other side’ of a debate that does not in fact exist.

For the purposes of the current study, it was therefore essential to offer a view of Holocaust and genocide denial that was not restricted to one academic area, but to take a contextual view of the underlying phenomenon. It is for that reason that the work was conceived, from the outset, as a collaborative effort. What emerged was a volume to which 18 authors from the fields of history, law and anthropology contributed, dealing with topics which range from denial in relation to the Nuremberg trials to denial as addressed by the European Union Framework Decision of 2008, and from denial of the massacre of the Armenians in 1915 to denial in the age of the internet.

The chapters of the substantive part of the book have been grouped into three main parts. Part I is dedicated to a scholarly investigation of the history of Holocaust denial as one of the principal emanations of denialism even in the 21st century. It thus traces the development of the phenomenon from the very days of the Second World War to the age of Web 2.0 and offers reflections on the evolution of the movement, but also on trends and methodologies that may have been apparent even in its early stages but which carry significance even to this day.

Part II opens up the debate to the denial of genocide and crimes of mass violence in various parts of the world. That includes the negation of the Holocaust in Germany, denial in the former Soviet Union, but also denialist activities in Rwanda, Bosnia and Herzegovina, Turkey and in Iran under Ahmadinejad. In so doing, it reflects not only on the factual phenomenon of denial and the driving forces behind activities of this kind, but also offers an investigation of criminalisation and other methods employed by States and institutions that are faced with denial and negationism.

Part III takes up the thread and critically analyses options at the disposal of individual States and the international community to address the relevant conduct. It thus explores key features of national and supranational strategies, but it also reflects on other, especially educational, initiatives and examines the efficiency of the relevant alternatives. A conclusion offers reflections on some of the key findings that were introduced in the substantial part of the study.

The phenomenon that emerges from these examinations is disturbing. It is capable of exerting a grave impact on survivors of the events and their families, but its consequences reach beyond that: they challenge societies and the international community as a whole and can disrupt relations between independent

16 Garret G. Fagan (ed.), *Archaeological Fantasies: How Pseudoarchaeology Misrepresents the Past and Misleads the Public* (London: Routledge, 2006).

17 Pseudolegal theories have been advanced in recent years by the ‘sovereign citizen’ and ‘freeman on the land’ movements; cf Donald J. Netolitzky, ‘The History of the Organized Pseudolegal Commercial Argument Phenomenon in Canada’, 53:3 *Alberta Law Review* (2016), 609–642.

States. Holocaust and genocide denial are activities that academia can ill afford to ignore.

For the context of this study (and unless otherwise indicated in the individual chapters), the terms ‘denialism’ and ‘negationism’ are employed to refer both to the outright denial of the Holocaust or a situation of genocide, and to revisionism. They thus encompass any deliberate attempt to falsify information or to misinform an audience about the factual events underlying the Holocaust or the relevant genocide. The terms ‘denial’ and ‘negation’ are used to refer to the negation of the facts of the Holocaust or a situation of genocide; the term ‘revisionism’ is used to refer to a modification of the account of the Holocaust or a situation of genocide that had been established by reputable scholars – frequently in the form of a trivialisation or attempted justification of the relevant events.

Opinions expressed by the individual authors are their own; they are not necessarily indicative of the opinions of the institutions of which they may be members, or of other contributors of this work. The cut-off point for the consideration of literature, law and factual developments was 31 October 2016.