

On the (Ab)use of Law to Remake the Historical Narrative of World War II in the Baltics

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Depuis la chute de l'URSS, la tendance révisionniste connue sous le nom de théorie du « double génocide » a émané de cercles (ultra)nationalistes et d'extrême droite en Europe orientale, en particulier dans les pays Baltes et en Ukraine. Leur programme inclut la relativisation de la Shoah, la redéfinition du terme « génocide » pour inclure pratiquement tous les crimes soviétiques, le dénigrement des survivants de la Shoah qui ont rejoint la résistance anti-nazie, la glorification de collaborateurs des nazis et de la Shoah au motif qu'ils étaient « anti-soviétiques », la proclamation obligatoire de « l'égalité » entre crimes nazis et soviétiques. Cet article examine la manière dont la loi et son application (inéga)le ont été sollicitées dans ce but. Les lois locales comprennent la criminalisation des opinions contraires au « double génocide » et leurs corollaires, notamment contre ceux qui s'opposent à l'héroïsation des collaborateurs de la Shoah.

Mots-clés : Double génocide, négationnisme, révisionnisme, Shoah en Europe de l'Est, déclaration de Prague, déclaration des Soixante-Dix-ans, la Shoah et la loi.

In recent years, a number of eastern EU and NATO member states (plus Ukraine) have been constructing components of their official (and protected-by-law) national narratives on heroes who were collaborators, or even perpetrators in the Holocaust on the grounds that they were “anti-Soviet heroes.”¹ These countries indeed had to face two Soviet occupations (1939/1940–41 and 1944/45–1991), and the occupation by Nazi Germany (1941-1944/5). The “liberating” state was also the author of major crimes such as repressions, deportations, forced labor and executions, and the statutes of post-Soviet Europe lacked a text on the crimes of communism. The ensuing moral problem is as follows: while these States would have legitimate heroes who struggled for freedom against dictatorial Soviet domination, they also honor those who participated in the Holocaust and even criminalize criticism against them.

The state glorification of wartime collaborators with Nazi Germany may be the most emotive component of

the historical revisionism underway, particularly in the Baltic countries. But it is also a component of a larger and more historical-philosophical edifice that has come to be known as “double genocide” theory, claiming that Nazi and Soviet crimes are inherently equal in the history of the region. The notion has been further codified to the point of criminalization of opposing views in a number of states (see Katz, 2016, p. 11-12; idem, 2018, p. 249-250). For example, on the critical point of freedom of speech, Latvia passed a law in 2014 that threatens up to five years in prison, for a person who commits glorification, denial, acquittal or gross trivialization of committed genocide, crime against humanity, crime against peace or war crime, including *genocide*, crime against humanity, crime against peace or war crime *committed by the U.S.S.R. or Nazi Germany against the Republic of Latvia and its inhabitants*, the applicable punishment is the deprivation of liberty for a period of up to five years.²

The wording is somewhat inscrutable to Westerners. It might look like an expansion of Western Holocaust Denial

[1] “Collaborators Glorified,” *Defending History*, 2019. Cf. <http://defendinghistory.com/category/collaborators-glorified> [23/06/2019].

[2] Legal Acts of the Republic of Latvia (LARI), § 74.1; “Latvian Saeima Approves Criminal Liability for Gross Derogation of Crimes Perpetrated by Soviet Union or Nazi Germany,” 15 May 2014. Cf. <http://www.baltic-course.com/eng/legislation/?doc=91593> [23/06/2019]. *Italics are added for emphasis throughout this paper.*

laws, themselves problematic. But in Eastern Europe, it is both politically loaded and eminently clear: negating the Soviet “genocide” is punishable by law, *equally* to negating the genocide of the Jews. The law has the chilling effect of making it clear to any young scholar that a diverging line of thought and research could be fatal to his or her career. And, the people risking exposure by taking on the state-sponsored history would not find a tenable defense in the argument that only the Nazis in Latvia committed genocide: for it has been long encoded in Latvian law that “for all the time of the occupation, the USSR had conducted a *deliberate genocide against the people of Latvia*.”³ Indeed, in an earlier legal enumeration of official holidays, *two* days, in March and June, were designated “Commemoration Day for Victims of Communist Genocide.”⁴

Latvia is not alone in the production of such laws. On the question of genocide, Lithuania’s parliament passed a law in 1992 including the wording: “The killing and torturing and deportation of Lithuanian inhabitants committed during the occupation and annexation of Lithuania by *Nazi Germany and the USSR correspond to the crime of genocide as contemplated by international law*.” Even the finest local scholars have had to engage in substantial acrobatics in coming to terms with such laws and the results of their attempted application (Budrytė; Žilinskas).

Turning from the definition to the punishment for disagreement, it is illuminating to study the prelaw discussions in the Lithuanian parliament, where it was stated explicitly that “in the Lithuanian legal system, acts related to the crimes of Soviet genocide, i.e. their denial, justification, are not criminalized, which, according to experts, is an obstacle to *seeking legal equivalence of Soviet genocide crimes to the Nazi genocide*.”⁵ The context was of course the rise of right-wing populist, nationalist movements in Eastern Europe. Hungary led the way in the actual passage of such “red-brown laws” that dictate equality of Nazi and Soviet crimes. In February 2010 Hungary had passed a run-of-the-mill Holocaust Denial law. Shortly after the rise of the right-wing Fidesz party to power, it was amended on 8 June 2010. The word “Holocaust” disappeared and in its place came “the *genocides* committed by national socialist or communist systems.” While the word “Holocaust” may be disputed for a number of reasons, what is problematic here is the notion of “double genocide” and the competition of memories leading to the widening of the use of the concept to encompass Communist persecutions. The Hungarian law stipulates up to three years of imprisonment for violators.

It was followed the same month, June 2010, by the Lith-

uanian parliament whose own punishment maxes out at two years and whose wording was modified after various public challenges (Criminal Code of the Republic of Lithuania 2010). Within Lithuania, it was rapidly denounced by Milan Chersonski, then editor of the official newspaper of the Jewish community (Chersonski), who had published the late Lithuanian philosopher Leonidas Donskis’s protest against *both* the inflation of the concept of genocide *and* the criminalization of debate (Donskis, 2008).

The weaker Estonian Law of 2012, known informally as “the Valentine’s Day Law” for its publication on 14 February of that year, stops at equal condemnation of Nazi and Soviet crimes, as well as preservation of the heroic status of pro-Nazi figures in the nation’s wartime history. These were all capped by EU and NATO aspiring Ukraine in 2015, whose laws punishing those who disagree with the state’s version of history, including glorification of major Holocaust perpetrators, provide for up to ten years of imprisonment. Unlike the others, the Ukrainian laws attracted some Western media attention (Cohen; Rudling & Gilley). Still, these issues are usually avoided by Western mainstream media concerned that covering these issues could provide a propaganda gift to the Putinist regime, which is indeed prone to taking advantage of scenarios arising.

The double genocide movement’s foundational text is the Prague Declaration (2008), which in itself does not use the words “double genocide” but contains specific proposals for new laws in Europe and beyond to take into account the crimes of Communism.⁶ The following five excerpts, particularly the repeated use of the word “*same*” (italic type added), provide an idea of its prevailing discourse: “(1) Consciousness of the crimes against humanity committed by the Communist regimes throughout the continent must inform all European minds to the *same* extent as the Nazi regime’s crimes did. (2) Believing that millions of victims of Communism and their families are entitled to enjoy justice, sympathy, understanding and recognition for their sufferings in the *same* way as the victims of Nazism have been morally and politically recognized. (3) Recognition that many crimes committed in the name of Communism should be assessed as crimes against humanity serving as a warning for future generations, in the *same* way Nazi crimes were assessed by the Nuremberg Tribunal. (4) Establishment of 23rd August, the day of signing of the Hitler-Stalin Pact, known as the Molotov-Ribbentrop Pact, as a day of remembrance of the victims of both Nazi and Communist totalitarian regimes, in the *same* way Europe remembers the victims of the Holocaust on 27th January. (5) Adjustment and overhaul of European history textbooks so that children may learn and be warned about Communism and its

[3] LARL, “Declaration on the Occupation of Latvia,” 22 August 1996 [Latvia]. Cf. <https://likumi.lv/ta/id/63838> (23/06/2019).

[4] LARL, “On Festive, Commemorative and Celebrated Days,” 3 October 1990.

[5] “Wanting the Equals Sign for Communism and Nazism,” 19 March 2009 [Lithuanian]. Cf. <https://www.delfi.lt/news/daily/lithuania/nori-lygybes-zenklo-tarp-komunizmo-ir-nacizmo.d?id=21075147> (23/06/2019).

[6] *Prague Declaration on European Conscience and Communism*, 3 June 2008, Senate of the Parliament of the Czech Republic, Prague. Cf. <http://www.praguedeclaration.eu> (23/06/2019).

The main flag at a municipality-approved independence day parade in the center of Vilnius on 11 March 2019 features the skull and bones with the “Lithuanian swastika” in the upper right hand corner (it has added lines supposedly representing a medieval national symbol).



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crimes in the *same* way as they have been taught to assess the Nazi crimes.”

For the most part, the Prague Declaration went unnoticed in scholarly circles. Exceptions have included critiques by Uhl (2009) and Arad (2012), who deals with the mystery of Václav Havel’s signature on a document signed mostly by right-wing politicians. The Prague Declaration aimed at inscribing the crimes of Communism in the foundation of Europe, but what is problematic here is the repeated use of the word “same” and the instrumentalization by the Far Right of the paradigmatic value of the Holocaust in European culture. The underlying phenomenon of East European governments rewriting history in the direction of “double genocide”, and especially the obfuscation of the Holocaust and the glorification of local perpetrators, had been noticed by a small number of scholars, most prominently Michael Shafir, with frequent emphasis on Hungary and Romania but a broad eye for the wider East European nature of the phenomenon (Shafir 2002; 2014; 2018). Others have focused on the new Holocaust revisionism as a distinct branch of twenty-first century antisemitism, among them Donskis (2006) and Zuroff (2005). In the realm of politics, the human rights advocate and member of the UK parliament John Mann rose in the House of Commons to denounce the resolution of the Prague Declaration’s precursor conference held in Tallinn in 2008: “On 22 January,

in Tallinn, Estonia, five MEPs from five different countries met to launch a group called Common Europe – Common History [...]. It is just a traditional form of prejudice, rewritten in a modern context. In essence, it is trying to equate communism and Judaism as one conspiracy and rewrite history from a nationalist point of view. Those are elected MEPs.” (Mann).

The most sensational chapter in the movement to “downgrade the Holocaust” while “upgrading local Soviet crimes to genocide” is one that took place in Lithuania, where from 2006 onward, state prosecutors initiated “pre-trial investigations” against elderly Jewish Holocaust survivors who joined the anti-Nazi resistance in the forests of Lithuania, and are heroes of the free world. That itself may be the one greatest abuse of law in the entire saga, humanistically speaking. In 2006 such investigations were started against Yitzhak Arad, who had been persuaded to join the Lithuanian government’s “red-brown commission,” the International Commission for the Evaluation of the Crimes of the Nazi and Soviet Occupational Regimes in Lithuania.⁷ Many have called the name somewhat Orwell-

(7) “Critiques of the International Commission for the Evaluation of the Crimes of the Nazi and Soviet Occupational Regimes of Lithuania,” *Defending History*, 1998-2018. Cf. <http://defendinghistory.com/red-brown-commissions/critiques> (23/06/2019).

lian: “international” for that which must be faced up to nationally and locally; equal treatment of Nazi and Soviet crimes foreshadowing a foregone conclusion; and perhaps most chillingly, a formulation of crimes by two outside regimes aimed at eliminating serious inquiry of the massive local participation in both “occupational regimes” and indeed participation in the genocide on the part of “national heroes.”

Lithuania tried to use prosecution of Jewish anti-Nazi veterans as part of the attempt to equalize the crimes on both sides. As the country’s head of the Jewish community put it in a protest letter co-signed by the head of the country’s union of ghetto survivors, there were “only Jewish names” on the prosecutors’ lists of people sought for interview (Alperovich & Jafet). On 5 May 2008, armed plainclothes police came looking for two women in their eighties, Dr. Rachel Margolis (1921-2015) and Fania Brantsovsky (b. 1922), on suspicion of “crimes against humanity,” though no charges were ever filed, and the matter was legally dropped in the face of an international scandal. Both had escaped the Vilna Ghetto, lost their entire families, and made it to a Jewish unit of partisans in the forests. The same Lithuanian prosecutors so loathe to prosecute Nazi war criminals, were keen to look for “criminals” among Jewish Holocaust survivors (Lucas; Brook).

Another potential abuse of legal instruments came in actions against Holocaust survivors who spoke up in opposition to various aspects of state history policy. In 2011, Joseph Melamed (1924-2017), head of the last organization of Lithuanian Holocaust survivors, was disturbed at his office in Tel Aviv by agents of Interpol on orders of Lithuanian authorities who were accusing him of “libeling” Lithuanian heroes in his 1999 book on Lithuanian collaboration in the Holocaust.⁸ The British House of Commons issued a motion protesting the action.⁹ In 2013, the above-cited commission branded Holocaust survivor Professor Pinchos Fridberg a “liar” and demanded an apology from the Jewish Community). One of the reasons these actions against the country’s last Holocaust survivors did not call forth a major media response may be the simultaneous investment in Yiddish and Judaic studies projects, as well as medals and honours for foreign Jewish dignitaries.

All the while, Eastern European government agencies have been attempting to export aspects of “double genocide” revisionism to the West. One early success of the Prague Declaration was the recognition of August 23rd as a mixed commemoration day for victims of Nazi and Soviet crimes. It was accepted as a non-binding measure by the European and the Canadian Parliaments in 2009 and by



The prestigious Vytautas Magnus University in Kaunas less than a decade ago honoured the country’s 1941 Nazi puppet prime minister, Juozas Ambrazevičius-Brazaitis, with a lecture hall naming *and* bas relief sculpture. Brazaitis personally signed the Lithuanian language versions of the orders for selected Jews from his city, Kaunas, to be sent to a murder camp, and then for the rest to be incarcerated within one month.

the United States Congress in 2013. There was virtually no public debate about the actual East European motivation behind the implied equalization of Nazi and Soviet crimes “through the back door.” Few people know that the European Union has invested considerable finance in a unit established in Prague, one of whose prime purposes is the propagation of the Prague Declaration. With close ties to far right figures in European politics, it is known as the Prague Platform; Critiques of the Prague Platform).¹⁰

This Prague Declaration movement was only partially stemmed, temporarily, by a counter-declaration known as the Seventy Years Declaration of 2012. It was signed by seventy-one Euro-parliamentarians (including eight Lithuanians, all Social Democrats). It explicitly rejects attempts to obfuscate the Holocaust by diminishing its scope and deeming it to be equal to crimes of Communism as suggested by the 2008 Prague Declaration; attempts to have European history school books rewritten to reflect the notion of “double genocide” (“sameness” of Nazi and Soviet crimes); glorification of Nazi allies, and of Holocaust perpetrators and collaborators, including the Waffen SS in Estonia and Latvia, and the Lithuanian Activist Front in Lithuania; attempts to sanitize the public display of the

[8] “Believe It or Not: Vilnius Prosecutors Launch Campaign Against Another Holocaust Survivor, 86, This Time via – Interpol,” 20 October 2011. Cf. <http://defendinghistory.com/believe-it-or-not/72245> [23/06/2019].

[9] House of Commons, UK Parliament, “Lithuania and Holocaust Survivors,” Early Day Motion, 8 September 2011. Cf. <https://edm.parliament.uk/early-day-motion/43239/lithuania-and-holocaust-survivors> [23/06/2019].

[10] [Prague] Platform of European Memory and Conscience, 2011. Cf. <https://www.memoryandconscience.eu> [23/06/2019]; “Critiques of the 2008 Prague Declaration,” *Defending History*, 2008. Cf. <http://defendinghistory.com/prague-declaration/opposition> [23/06/2019]; “Prague ‘Platform,’” *Defending History*, 2011. Cf. <http://defendinghistory.com/category/prague-platform?order=asc> [23/06/2019].

The 16 February 2018 torch-lit neo-Nazi independence day parade, sanctioned by city authorities and blessed by the dominant Catholic Church, the front banner featured six Nazi collaborators, five of them implicated in Holocaust criminality.



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swastika by racist and fascist groups; efforts to have the Holocaust remembered on one common day with the victims of Communism.¹¹

As this paper goes to press, a curious case is underway in the Lithuanian courts. G. Gochin, a South African born businessman resident in California sued the Lithuania's state-supported Genocide Center, calling for its withdrawal of the award of national hero of Jonas Noreika, a notorious Holocaust collaborator honored in Vilnius with two major public plaques.¹² Gochin had many relatives who perished in the northwest of Lithuania where the perpetrator was active. He has been joined, sensationally, by Noreika's American granddaughter, Silvia Foti, who pursued the truth about her grandfather (Foti). On 27 March 2019, the court ruled in favor of the state Genocide Center's insistence on the heroic status of Noreika. An appeal is in progress. The case has been covered by the *New York Times* and the *Chicago Tribune* (Higgins; Grossman).

Whatever the fate of this new case, one must not lose

[11] "Seventy Years Declaration," *Defending History*, 2012. Cf. <http://defendinghistory.com/the-seventy-years-declaration-in-various-languages> (23/06/2019).

[12] "Holocaust History Trial Slated for 15 January in Vilnius," *Defending History*, 13 January 2019. Cf. <http://defendinghistory.com/holocaust-trial-of-the-21st-century/96578> (23/06/2019).

sight of the main issue: an EU government agency is defending in court, with public funds, the public glorification of a proven Holocaust collaborator. Because of current East-West tensions, the United States State Department and other western powers often do their best to cover up such cases on the implicit grounds that Russia's democratic opponents in Eastern Europe should virtually not be critiqued. Indeed the far right has politically succeeded in some degree in placing the legitimate debate about the use of the law to "fix" World War II history in the category of "helping the Russians," a hapless assertion that the Western civic and political community needs to counter. The events of World War II and the Holocaust do not in the slightest justify the repressive, undemocratic and revanchist nature of the Putin regime. Moreover, there have been (and need to be in much greater degree) projects to educate the world, and particularly the West, about the crimes of Communism and particularly, Stalinism. Before the "Prague process" took over with its unwritten rule that "Nazi" and "Soviet" must always appear together in texts, almost as a mantra, numerous legitimate resolutions condemning the crimes of Communism were issued, including the Council of Europe Parliamentary Assembly resolutions 1096 (of 1996) and 1481 (of 2006),

The laws passed determining the redefinition and infla-

tion of the concept of genocide to encompass Communist persecutions; the purported equality of Nazi and Soviet crimes; criminalization of disagreement; the use of laws to make uncriticizable national heroes of Nazi collaborators and to punish dissenters are waged with state budgets across much of Eastern Europe. This noxious mix did not rise in a vacuum. Behind the campaign there lurks a toxic far-right and xenophobic attachment to local ethnic purity, and a disdain for precisely the same groups targeted by the Nazis (Jews, Roma, Leftists, Gay people, and in some cases, Slavs). These legal devices go hand in hand with the financing of museums and research institutions dedicated to the revisionist model (Katz, 2016; 2017a; 2017b; 2018b).

While investigating the abuse of law for “repair” of history in the eastern reaches of the European Union and neighboring countries that wish to join it, one needs to take into account the interests of nationalist and far right circles for which “fixing the history” is a prime goal to achieve hiding one’s own gloomy pages of history of collaboration.¹³ /

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