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Book Review
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Holocaust Denial and the Law [A Comparative Study]

Robert A. Kahn, New York and Basingstoke: Palgrave-Macmillan, 2005, 207 pages, £45.00, ISBN 1-403964769.

“When law fails society fails. But to have the power to set boundaries law must be legitimate. To be legitimate, the law must be fair.” (p.159).

The understanding that law has a representative function in society and that every unpopular accused needs to be prosecuted sets the dynamic for this book – an incisive read into one of the thorniest problems of expression and interpretation of history. It is extensively researched and carefully written with evidential proof about how courts in Germany, France, Canada and United States resolved dilemmas posed by Holocaust-denial litigation. While on one hand the work gives an understanding of the legal processes or situated forces in question when adhering to the principles of legal fairness, on the other hand it studies criminal prosecution of the deniers and critically assesses the need of “protecting” the Holocaust from its (right wing) extremist commentaries. Though some might argue that Holocaust Denial is old news as there’s a general acceptance of deniers, Robert Kahn advocates that society must criminalize Holocaust denial “for its assault on truth; the offense it gives to survivors; or the danger of a right-wing (or anti-Semitic) revival it carries with it.” (p. 2).

Very few books on comparative criminal procedures can be read in common parlance. Kahn writes the severity and complexity of the problem with clarity, painstakingly explaining every narrative, legal provision, code and related symbolic representation in the legal cases lucidly. This substantiates diverse legal norms and the attitudes both for and against them, an insightful read for criminal lawyers, criminologists, researchers with an interest in legal pluralism, legal writing, international law and human rights, as well as scholars of history and genocide studies. He demonstrates that a specific historical experience of a country with the holocaust has an impact on the expectations of how the denial trial should unfold; for example, when thinking about a criminal trial, the inquisitorial (judge-centred) approach bears a different procedural meaning for a German or French than for an American, as does the idea of political censorship. Kahn agrees with Geertz’s anthropological interpretation that all law is local knowledge and not just a “placeless principle” (p.5) – as oft-perceived in the West, political factors

subsume and condition legal norms differently in different countries, influencing holocaust denial prosecutions. Investigating the ability of law and legal institutions to question and resist such conflation, Kahn probes into three central tensions: questions of proof, implications of a ruling in favour of the deniers, and the impairment caused to society by tolerating Holocaust deniers and refusing to prosecute them.

A clear structure runs through the book; from the outset Kahn scrutinizes the idea of political context of holocaust denial litigation country wise, teasing out the legal syllogism embedded in the trials. Kahn summarises the intent of his project in the introduction: "How does a legal system remain fair when society wants the justice system to repudiate the accused before the trial begins?" (p. 9).

The first section investigates what takes to prudently notice the Holocaust in legal terms and procedurally accept or assess the holocaust beyond a tragic event. It focuses on the differences in common law and civil law approaches in recognizing and justifying the "hearsay" divide in the denial cases as well as the duality of legal norms involved in all four nations. Through the Canadian *R vs. Zundel* trials and the French *Gayssot Law*, the second section discusses the uncertainty involved in the trials – whereby legal victories can acquire symbolic esteem or political value for the deniers if legal language is used in favour of the deniers and the limits of such symbolic repression. It amazes the reader to learn that such propaganda in the US and Canada originated in some higher educational institutions, predominantly Jewish, to a heinous degree, including a news headline in Canada claiming how there was a ballroom and swimming pool in Auschwitz. The final section on the dilemma of toleration questions whether not prosecuting the denier and allowing them to advertise their views openly in the media has a negative influence on society. More importantly, Kahn probes into the drives that led the student editors take such a standing by publicizing these views and the responses they got out of each political scandal. Overall the book shows how the distinctive mix of different symbolic representations like political knowledge, criminalizing hate speech together with legal factors made each countries' legal system respond uniquely to the denial cases.

To understand the diverse legal inferences it is interesting to contrast the German Court's verdict in denial cases and the *Irving vs. Lipstadt* case in the book. The German Federal Constitutional Court's consideration of the *Zionist Swindle* case in 1982, indeed a huge political *faux pas* to harbour such a thought for the citizens of erstwhile West Germany as Holocaust Denial, was more than just a historical argument or falsity, it was an implicit repetition of Nazi crimes – a threat best be avoided. Thus the Court tersely played its judicial notice through the doctrine of *Offenkundigkeit* (meaning: general or obvious knowledge) – yet another example of simplification and "fact finding" (p.16) in legal rhetoric, the same pattern followed in few other cases, notably nine years later in the *Deckert* case which established *Offenkundigkeit* of the Holocaust "as a matter of law" (p.22), thus, prohibiting self-expression of deniers-as-denial was not official opinion. In the other three countries however, which had more legal space both in terms of domestic politics and international reputation, the take on the legal norms was exclusively

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otherwise. In the famous *Irving vs. Lipstadt* case, British Holocaust denier David Irving sued Professor Deborah Lipstadt for alleged libel in the United Kingdom as a result of her describing him as a denier in the book *Denying the Holocaust* – where Lipstadt contends that denying the Holocaust is a form of anti-Semitism. Lipstadt used five expert witnesses (i.e. survivors) to confront Irving. The defense was allowed full access of Irving's records and there came a stage where Irving was offered to settle the case with the publishing house, Penguin, which the latter refused but stood by the author on principle. Of course in the end Lipstadt won the case and the rest is history, but this is to suggest how the same "obvious knowledge" wasn't just passed as a known fact but measured differently through different legal norms in the two specific legal contexts – German and British. Likewise, Kahn projects this unbounded binding of free speech, press laws and administrative censorship in the trials like the Canadian *Zundel* case and the US *Bradley Smith Ad Campaign* among many others.

Kahn gives the reader an idea about the template of social concerns over the Holocaust, their varied perceptions on usurpation and restorative acts, although the national enforceability of Holocaust Denial Laws still needs to be explored, as right wing revivals continue to subsist. However, the book tactically studies the importance of historical liability through legal procedures to explain how Holocaust denial poses a dilemma for the law. It provokes the readers to strengthen sensibility, to upkeep a regard, a requisite moral magnitude to recognize the terrible wrongs done in the past so that a 'just' re-examination is rendered – the least we can do for such a huge burden on humanity.