

Poland's "Holocaust Law" and the Complexity of Holocaust Revisionism in Europe

On January 26, 2018, on the eve of International Holocaust Remembrance Day, members of the Polish parliament introduced an amendment to the country's 1998 Act on the Institute of National Remembrance that has since been dubbed "the Polish death camp law," or the "Holocaust Law." The law, which was established in 1998 to maintain World War II-era archives, now makes it a crime, punishable by fine or imprisonment for up to three years, to accuse Poland of responsibility or complicity in Nazi atrocities during World War II. It also gives the country's Institute for National Remembrance power to bring civil charges against anyone who defames or tarnishes the reputation of Poland or the Polish people.

On February 6, 2018, following an international outcry, Polish President Andrzej Duda expressed concern that some provisions of the bill might violate Poland's constitution. However, instead of vetoing it, he signed the bill into law and referred the provision regarding criminal penalties for using the term "Polish death camps" to the country's Constitutional Tribunal. The Tribunal will determine whether this provision violates free speech protections and clarify what speech can be prosecuted. In the meantime, the law's provision establishing potential civil penalties takes effect on February 28.¹

The law generated significant criticism from the U.S. State Department, the Congressional Bipartisan Anti-Semitism Task Force, the government of Israel, and numerous Jewish and human rights organizations from around the world. Malgorzata Szuleka, a lawyer for the Helsinki Foundation for

Human Rights, one of the most-well-respected NGOs in Poland, said of the law: "We prefer to call this the Censorship Law, rather than the Holocaust Law, because it is about curtailing speech far and beyond that related to the Holocaust."

The Polish government has in recent years severely undermined the independence of the country's judicial system, as evidenced by recent laws radically altering the composition of the Supreme Court and regional courts, and establishing processes for appointing new judges. There are fears that the Constitutional Tribunal will either act in the government's interests or at its direction, whether in affirming the criminal provisions of the Holocaust law, or, conversely, by finding it unconstitutional, which would allow the government to preserve their position on the law and subvert international criticism. If the Constitutional Tribunal finds the provision unconstitutional, a further concern is that the government will use its ruling to legitimize the (politicized) Tribunal, since the international community will perceive a functioning Tribunal regardless of the controversies surrounding politicization and appointments.

Implications of the amendments to the law

Although media attention has focused on the connection between the new law and the concept of "Polish death camps," no such language exists in the law. The law provides penalties—imprisonment of up to three years and a fine—for public accusations "against the facts" that would tarnish the reputation of the Polish government and people. The

ambiguity of the language raises significant concerns of how the law will be applied.

Further, amendments to articles 1 and 2 of the law contain controversial provisions within the context of Holocaust distortion, in that they equate Nazi crimes with communist crimes.

The January amendments also give the INR increased power, and create broad-based censorship on political and historical dissent. One amendment to article 55 of the law reads:

“whoever accuses, publicly and against the facts, the Polish nation, or the Polish state, of being responsible or complicit in the Nazi crimes committed by the Third German Reich...or other crimes against peace and humanity, or war crimes, or otherwise grossly diminishes the actual perpetrators thereof, shall be subject to a fine or a penalty of imprisonment of up to three years.”

The law would also prosecute those who “act unintentionally.”

Additionally, the amendments give the INR authority to bring civil charges, which could lead to imprisonment of those perceived as harming the reputation of Poland. This provision could be used against individuals that express dissent or criticize government policy. The law is also not limited to acts committed in Poland, giving it an extraterritorial effect. This raises the question of whether human rights advocates from Poland could be prosecuted when they travel abroad to discuss their concerns about the policies of the current government. Adding

fuel to these worries, a report issued by the head of the Polish Senate on February 15 “ordered” Poles living abroad to notify authorities of any “harmful comments by compatriots outside of Poland.”

While the law provides an exemption for scientific/academic research and art, the specific boundaries of what constitutes academic or scientific research and art remain unclear. While the government asserts that the law will not affect Holocaust research either in Poland or abroad, as written it could clearly have transnational implications. In addition, the likelihood of any such exemption being granted diminishes given the phrase “against the facts.” Furthermore, whether journalists fall within the exemption remains an open question.

Who Owns the Death Camps?

German and Soviet armies invaded and occupied Poland in September 1939, shortly after the two governments concluded the Molotov-Ribbentrop pact. Unlike many other countries under Nazi occupation, no collaborationist government arose in the country, while the Polish government-in-exile directed wartime efforts from western Europe. According to estimates, the Nazi regime killed at least 1.9 million non-Jewish Polish civilians during World War II, as well as at least 3 million Polish Jewish citizens as part of the Holocaust. A great deal of these murders occurred at Auschwitz and other camps constructed by the Nazis on Polish soil. Many non-Jewish Poles risked their lives to oppose the Nazis and to save their Jewish countrymen, but others collaborated with the Nazis, murdering their neighbors and turning in Jews.¹

¹ For more on Polish complicity during the Holocaust and to understand the complexity of the Polish narrative of World War II see JAN GRABOWSKI, HUNT FOR

THE JEWS: BETRAYAL AND MURDER IN GERMAN-OCCUPIED POLAND (2013); JAN GROSS, NEIGHBORS: THE DESTRUCTION OF THE JEWISH COMMUNITY IN JEDWABNE, POLAND

The controversy around the Holocaust Law is part of a greater intellectual and political debate in Central and Eastern Europe around ownership of memory and identity politics.

Given the history of the Holocaust in Poland, the Polish government and people are right to be upset by the shorthand term “Polish death camps.” Even well-intentioned actors, such as former President Barack Obama, have used this inaccurate phrase, sparking immediate condemnation from Polish leadership. While the term is misleading, and undermines the experiences of many Poles during World War II, the Polish government’s attempts to legislate prosecution of the phrase clearly undermines free expression.

Poland’s Holocaust-related legislation falls into a pattern of repressing historical facts deemed “unpatriotic” in an attempt to rewrite or re-legislate history, often to whip up political support for a party or government. Similar laws and policies have recently been enacted in Hungary, Russia, and the Baltic countries.

In Poland, controversy over narratives of responsibility for atrocities committed during World War II have resurfaced with greater frequency when the Law and Justice Party has been in power.

For example, after being awarded a Polish national honor in 1996, Princeton University professor Jan Gross published three books that delved into the connection between Polish antisemitism and nationalism during and after the war – *Neighbors* in

2001, *Fear* in 2006, and *Golden Harvest* in 2012. The government had mixed responses to Gross’s books, and in particular to *Neighbors*, which documents the murder of the Jews of Jedwabne by their Polish neighbors during the Nazi occupation, and *Fear*, which documents the 1946 Kielce pogrom, where 40 returning Jewish survivors were murdered. In 2006, the Law and Justice-led government, under control of former Prime Minister Jaroslaw Kaczynski and former President Lech Kaczynski, passed Statute 132 criminalizing anyone who “publicly ‘accused’ the Poland of participating in, organizing, or being responsible for Nazi or Communist crime.”² Under the law, Polish prosecutors threatened criminal charges against Gross for “slandering the Polish nation.”

The Law and Justice party has now resumed efforts to criminalize actions and expressions deemed to tarnish the reputation of Poland as part of a larger nationalist campaign.

With a resurgent populism and nationalism spreading across Europe, many right-wing European parties have claimed it is time to stop apologizing for the Holocaust.² In Poland, some politicians are asserting that the Poland has nothing to apologize for, since non-Jewish Polish people were also Nazi victims. Increased government tolerance of antisemitism was reflected in its reaction to a nationalist march held in Warsaw in November 2017, which included heavy participation by neo-fascists, and where tens of thousands called for a purely Catholic and white Poland.³ The Polish government

(2002). See also NORMAN DAVIES, NO SIMPLE VICTORY: WORLD WAR II IN EUROPE, 1939-1945 (2008); KATYN: A CRIME WITHOUT PUNISHMENT (Anna M. Cienciala, et. al. eds., 2008).

² The Law was later revised due to pressure from human rights organizations. It should also be noted that Jaroslaw Kaczynski is the current head of Law and

Justice, known as the kingmaker. His brother Lech died in a plane crash in Russia during his Presidency.

³ Governmental responses to the march, rather than condemning instances of antisemitism and xenophobia, bolstered the narrative of the marchers. Foreign Minister Witold Waszczykowski called the march valuable for its “stirring patriotism and love for Polish history.” In addition, Interior Minister Mariusz Blaszczak

failed to condemn the supremacist attitudes of many of the marchers, just as it failed to condemn a recent increase in hate crimes.⁴ The government also cut funding to groups that work to combat xenophobia and antisemitism, and awarded significant government contracts to a Catholic priest associated with the Law and Justice Party who has been called out by two popes as antisemitic and xenophobic.

Part of a Regional Trend

A number of European governments recently engaged in Holocaust distortion through policies and actions similar to those of Poland's Law and Justice party.⁵ Examples include state-run museums, monuments, and memorials dedicated to nationalist heroes. In 2013, Hungarian Prime Minister Viktor Orbán established the Veritas Institute for Historical Research. The institute, which is directly subordinated to the prime minister's office, and is led by controversial revisionist historian Sándor Szakály, aims to take a "multidisciplinary approach...to support the development of a realistic, well-established national and historical consciousness." Hungary also boasts the so-called "House of Terror" museum, whose exhibits have been criticized as

¹ There are conflicting reports about the law's actual enforcement. Yet, should the law remain codified but unenforced, other rule of law issues will emerge.

ordered no detentions or arrests of the protestors, who displayed white supremacist slogans, however, detained counterprotestors. He also claimed that he did not see any racist banners.

supporting historical revisionism. The Hungarian government and members of its ruling party sought to commemorate antisemitic WWII-era leaders Miklós Horthy and Bálint Homan. Latvia and Estonia each have museums dedicated to their Nazi occupations that seek to minimize their respective collaboration with the Nazis, and both glorify national Waffen-SS groups with plaques and memorials. In Lithuania, the government repatriated the remains of 1941 Nazi puppet prime minister, Juozas Brazaitis, and erected plaques in his honor. Lithuania also has the Museum of Genocide Victims, which emphasizes the genocides perpetrated by the Soviet and Nazi governments.

Poland does not yet engage in other forms of historical revisionism, and in fact maintains the Polin Museum—one of the foremost museums on Polish Jewry and the Holocaust. Yet, by enacting a law that subordinates free expression to unbridled nationalism marks a troubling turn away from the truth, in all its complexity. ■

⁴ "Following the elections in October 2015, the new Minister of Justice in the Prawo i Sprawiedliwość (Law and Justice) government, declared that he sees no need to introduce any changes in this area to the Criminal Code."

⁵ See Jeffrey Blutinger, *An Inconvenient Past: Post-Communist Holocaust Memorialization*, 29 SHOFAR: INTERDISC. J. JEWISH STUD. 73-94 (2010).