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CONVENTIONAL WISDOM ABOUT YUGOSLAVIA AND RWANDA: METHODOLOGICAL PERILS AND MORAL IMPLICATIONS

Aleksandar Jokic*

Abstract

While ostensibly a response to a critique, the main goal of this Article is to demonstrate how easily conventional wisdom, usually shaped by the media and politics, can corrupt scholarship when it is simply presupposed by those engaged in what should be an academic polemic, yet often also includes 'activism in scholarship'. The examples of approved narratives in the West on Yugoslavia and Rwanda are used for the sake of this demonstration.

INTRODUCTION

David Polizzi, editor-in-chief of the *Journal of the Theoretical and Philosophical Criminology*, has published a critical response to my 'What's A Just War Theorist?'.¹ He characterized my 'exploration and critique' of just war theory, as developed by Michael Walzer in 1970s, as 'provocative'. This suggests some disagreement with my position, which can only be welcomed by any scholar, as long as criticisms are well reasoned and factually accurate. These provisos, unfortunately, were not followed in this case. In fact, what should be a critical response appears to be little more than an appeal to conventional wisdom on Yugoslavia and Rwanda.² Hence, in this Article I set out to explore, from ethical and methodological points of view, a more wide spread phenomenon of how conventional wisdom, usually shaped by the media and politics, corrupt fact based scholarship, particularly when that conventional wisdom or the standard narrative is simply presupposed as factually accurate by those engaged in what should be an exercise of scholarship and academic polemic. We may refer to this as a novel error in reasoning: the Appeal to Conventional Wisdom fallacy. I also focus on the contribution within the academic habitus³ of what passes for scholarship in constructing conventional wisdom as a result of practicing what I call 'activism in scholarship'. It is my purpose to demonstrate these errors and fallacies here using the two examples of conventional wisdom on Yugoslavia and Rwanda in the 1990's presented in separate sections of the article. But first, in the section immediately following, I shall present the relevant details of the disagreements between Polizzi and myself and connect the appeal to conventional wisdom fallacy to 'activism in scholarship'.

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¹ Aleksandar Jokic, 'What's A Just War Theorist?' (2012) 4 *Journal of Theoretical and Philosophical Criminology* 91.

² David Polizzi, 'Just War, Genocide, or Necessity: A Critical Response to Jokic' (2012) 4 *Journal of Theoretical and Philosophical Criminology* 115.

³ I use this term in the well-known sense developed by the French sociologist Pierre Bourdieu. It refers to a set of values, rules, practices, dispositions, and expectations that are acquired by a social group (or community) in a way dependent on the group's history and collective memory, which turns a certain behaviour or belief into an element of that group's structure when the original purpose of that behaviour or belief can no longer be recalled and becomes socialized into individuals who belong to the group or share its culture. We live, I believe, in a period when the effort to socialize us to accept 'activism in scholarship' (and similarly 'activism in journalism') as positive new values even though this is in clear violation of long standing methodological standards of scholarship, which is supposed to be truth and discovery oriented rather than ideological or interest based. I develop these points further in this section, elaborating an important contrast between 'activism in scholarship' and 'activism with scholarship'.

THE CONTROVERSY: JUST WAR THEORY AND AGGRESSION

In ‘What’s A Just War Theorist?’ I noted that the resurgence of just war theory within the moral normative order should have been surprising, especially because it ended up being used as a tool to argue in favour of specific US (and in general Western or Israeli) military campaigns as morally justified (regardless of whether or not they were in violation of international law). The surprise at its resurgence should have occurred because just war theory, though it originated in a Catholic theological context formulated by St Augustine and was quickly understood to have moral implication, in fact developed by the end of 19th century, its final formulation as a theory applicable in the purely secular domain of a legal interpretation within positive international law. Taken as a contemporary legal theory it consists of two components: the *jus ad bellum* is that part of international law governing resort to international armed conflicts. The *jus in bello* is the law of war properly so formulated, namely, the body of rules governing the conduct of parties engaged in international armed conflict.

Extreme caution is in order when considering the revival of the medieval just war theory and its application in the *moral* (rather than simply legal) domain—a revival we have witnessed in the last third of the 20th century (initiated in Michael Walzer’s *Just and Unjust Wars*). There are two reasons for caution here, a theoretical and a practical one. On the moral-theoretical side the point is well made by the most important Enlightenment thinker, Immanuel Kant, who saw war as beyond the rules of good and evil, and hence not a practice that can be just or unjust. It belongs, he claimed, to the domain of necessity, and the only imperative regarding war is to end it as soon as possible. Moral philosophers, in particular Kantians, thus cannot condone this endeavour by just war theorists for they see them, in inimitable words of Judith Shklar, as ‘encouraging people to enter upon wars recklessly and then baptizing [their] own side with the holy water of justice. Every enemy can easily be made to look the aggressor’.⁴ The significance of Kant’s arguments is that no moral rules are possible that would confer a moral-theoretic imprimatur on some wars characterized by specific attributes. Any violent conflict could be claimed to satisfy such descriptions whether it did or not. Hence, the entire project should be rejected. Kant, writing at the time when a decisive transition of just war theory from the moral to the secular domain of international law was taking place, was opposed to the idea of constructing (moral) ‘theories’ that would render specific wars ‘just’ or ‘unjust’, for an endeavour of this sort could easily be used to rhetorically turn even an obvious aggression into a (morally) ‘good war’.

This brings us to the practical problem with the application of the just war theory in the period of history that saw the unprecedented progress in international law where, regarding *jus ad bellum*, aggression was marked as the supreme crime in international law, as per the Nuremberg precedent and embedded as such in the UN Charter. Even more so as a number of elements of such crime were introduced and refined in the positive international law regulating *jus in bello*, such as the Nuremberg Principles or the four Geneva Conventions, and so on. This opens up the unpleasant possibility that judgments based on international law and just war theoretical (presumably moral) judgments about a specific violent episode could come in opposition to each other. What to do about a war that is deemed ‘illegal but good’? A powerful state, bent on waging war, could in such a case want to emphasize the alleged moral justness of its decision to go to war and ignore its (supreme) illegality. I argued that this was inaugurated as a practice in the first instance with the case of the US-led NATO aggression against Yugoslavia in 1999. Similarly, I noted the peculiar nature of *ex post facto* revisions of the ‘factual’ violations—i.e. the conventional wisdom or

⁴ Judith Shklar, *Ordinary Vices* (Harvard University Press 1984) 80.

narrative—of the existing legal rules of war as morally justified (in order for the ‘good side’ to win the war), are regularly made by the practitioners of just war theory. Hence, I concluded my inquiry with the claim that in virtue of their application of just war theory to concrete cases of international violence, just war theorists themselves teeter dangerously towards actually committing war crimes, both on the count of incitement by agitating in favour of aggression (by calling on powerful countries to intervene militarily in other countries in violation of international law) and on the count of aiding and abetting aggressing troops to commit war crimes (by the promise of *ex post facto* morally absolving them). What just war theory effectively accomplishes, therefore, is decriminalization of aggression, when conducted by the most powerful countries against the weak ones, and decriminalization of the war crimes committed by troops of the most powerful states in the military theatres on the territories of the weaker states.

On the way to this conclusion I considered whether just war theorists, who like Walzer do not hesitate to apply their wisdom to prophesise about moral attributes of specific wars, are a kind of (international) activists and I argue against this type of mixing of scholarship and activism. I show the dangers of this sort of activism in the example of Alison des Forges, an expert who at the same time openly acted as an activist in court, and whose testimony did not fare well in the analysis of the judges of the Federal Appeals Court of Canada in *Mugesera v Canada* (Minister of Citizenship and Immigration) (FCA). In her testimony Des Forges ‘acknowledged that, as a human rights activist, she could not claim objectivity although attempting to maintain neutrality as between political factions’. In their analysis the Appeals Court judges explicitly rejected her testimony as a result of her open activism and concluded that ‘Ms. Des Forges testified as an activist with a clear bias against Mugesera and an implacable determination to have his head’.⁵

On the basis of examples like these, and given that just war theorists engage in practices essentially of this nature, I argued a more general point that activism and scholarship are incompatible activities that cannot simultaneously characterize what one does. They cannot occur simultaneously because activism quickly consumes scholarship. This consuming of one by the other can go further than the case of activism overwhelming scholarship just mentioned, as in the case of an intelligence operative who takes as cover the role of an activist; in this latter case, activism is consumed by the intelligence operation. Hence, proper scholarship must be conducted independently of any activism or intelligence scheme. The just war theorists clearly do not appear well positioned in this regard.

In order to clarify my position even further for the sake of the present discussion, I want to introduce here a distinction between ‘activism *in* scholarship’ and ‘activism *with* scholarship’. The above objections are meant against the former type of practice as it leads to findings and recommendations that are not based on proper methodology or correct facts, but instead on ideological grounds or are entirely conventional wisdom or narrative based. To crystalize this distinction we can take as example the French sociologist Pierre Bourdieu.

Bourdieu is not only the best example of someone who practiced what I call ‘activism *with* scholarship’, but he also extensively theorized it, while at the same time he rejected ‘activism *in* scholarship’ as heteronomous and irresponsible, in his conception of ‘committed scientist’ or ‘public intellectual’. In order to count as intellectuals ‘cultural producers’, seen by Bourdieu as ‘bi-dimensional beings’, must satisfy two conditions. First, they ‘must belong to an intellectually autonomous field, one independent of religious, political, economic or other powers, and they must respect that field’s particular laws’, which means that the questions they ask, problems they formulate, and methods they use seeking answers must be

⁵ *Mugesera v. Canada* (Minister of Citizenship and Immigration) (FCA) is available online at <http://reports.fja.gc.ca/eng/2003/2003fca325/2003fca325.html> (accessed last on March 9, 2013).

de facto recognized as belonging to the field by its practitioners. Second, 'they must deploy their specific expertise and authority in their particular intellectual domain in a political activity outside it'.⁶ In other words, for Bourdieu, the proper engagement of a scholar or intellectual is outside academia but relying on the tools of her specialization to accomplish political interventions.

The former condition spells out the existence of autonomous fields as the foundation of symbolic authority, which when exercised *outside* scholarship or academia, as interventions in politics, per the later condition, represents the proper domain of civil engagements for intellectuals equipped with scientifically-obtained knowledge. Thus, Bourdieu endeavoured to keep scholarly methodology rigorous and free from all external interests be they economic or political. Bourdieu's own activism was motivated by his belief that 'those who have the good fortune to be able to devote their lives to the study of the social world cannot stand aside, neutral and indifferent, from the struggles in which the future of that world is at stake'.⁷

He argued that his theorising of habitus, field and symbolic power gave him greater understanding of the institutions he sought to influence. He developed a view of multinational corporations, international institutions such as the IMF and World Bank, and the US as together embodying 'the cunning of imperialist reason'⁸ in an international situation in which 'the global community has given carte blanche to the US to enforce a particular kind of order' in which 'relations of force overwhelmingly favour the dominant' and 'might alone makes right'.⁹ Thus his engagement based on the findings of his research included his many appeals and protests in *Le Monde Diplomatique* and appearances at rallies and demonstrations, where he spoke against the government's neoliberal strategies of welfare cuts, immigration policies and complicit journalism.¹⁰ This is 'activism *with* scholarship' in its most robust form. But, importantly, he does not see this as a solitary effort, instead Bourdieu encouraged 'all competent researchers to unite their efforts with those of responsible activists in order to collectively discuss and elaborate a set of analyses and proposals for progress that today exist only in the virtual state of private and isolated thoughts or circulate in fringe publications, confidential reports, or esoteric journals'.¹¹ At the same time Bourdieu rejected 'activism *in* scholarship' as a threat to autonomy, for its presence in any field signals dependence with regard to external economic, political or religious powers, which erodes any symbolic authority necessary for proper civic engagement by an intellectual. As such it also represents a kind of incompetence as a violation of the basic value of all authentic scholarship, its 'interest in disinterestedness'. Thus, when Bourdieu calls for full adherence to scholarship of 'the collective intellectual' he is envisioning 'an improbable but indispensable combination: *scholarship with commitment*, that is a collective politics of intervention in the political field that follows, as much as possible, the rules that govern the scientific field'. This Bourdieusian account gives us clear sense of the dual failure of 'activism *in* scholarship' that amounts to

⁶ Pierre Bourdieu, 'The Corporatism of the Universal: The Role of Intellectuals in the Modern World' (1989) 81 *Telos* 81 99, 99.

⁷ Pierre Bourdieu, *Firing Back: Against the Tyranny of the Market 2* (Verso 2003) 11.

⁸ Pierre Bourdieu and Loïc Wacquant, 'On the Cunning of the Imperialist Reason' (1999) 16 *Theory, Culture & Society* 41.

⁹ Quoted in Jean Hillier and Emma Rooksby, 'Introduction to Second Edition: Committed Scholarship' 3, 6 in Jean Hillier and Emma Rooksby, eds *Habitus: A Sense of Place* (Ashgate 2005).

¹⁰ More than a decade after his death, given the predicament France and Europe are currently in, all of these initiatives undertaken by Bourdieu seem particularly relevant, and I see this Article as humble attempt to offer a philosophical application of specific conceptualizations by the accomplished theoretician from a cognate discipline of sociology.

¹¹ Bourdieu (n 7) 15.

pseudo-scholarship (because it lacks autonomy) and fake activism (as it is neither collective nor universal).

In his critical response Polizzi takes issue with my views by advancing the following claims: (i) NATO's 1999 attack against Yugoslavia was not an aggression; (ii) it was a justified 'humanitarian intervention' in the on-going genocide committed by the Yugoslav government forces in Kosovo; (iii) it stopped a continuation of genocidal policies initiated by Serbian forces in Bosnia; (iv) which policies and Serbian acts inspired Western just war theorists and other activists to call for military means in order to oppose the genocide; (v) and motivated NATO action by referring to their decisive humanitarian failure to intervene in the Rwandan genocide of 1994. In order to support these five claims Polizzi makes appeals to conventional wisdom on both Yugoslavia and Rwanda and relies on authors who clearly practice 'activism *in* scholarship'. For this reason, rather than simply responding to Polizzi, my goal in the remaining parts of the Article is to explore the larger phenomenon of the methodological and moral implications of assuming 'conventional wisdom' in what should instead be a product of scholarship.

CONVENTIONAL WISDOM ON YUGOSLAVIA

Polizzi starts with an unexplained assumption that I must be a citizen of Serbia. He makes that clear by stating that I 'chastised' those elites in Serbia—my 'fellow countrymen'—who awarded an honorary doctorate to someone, in this case Michael Walzer, a person famous for advocating aggression against their own country. Is Polizzi's idea that a US citizen (me) could not possibly object to an award given to another American (Walzer) in whatever foreign country?¹² Yet, despite Polizzi's ideas, this is exactly what I was doing.

In fact, I took it for granted, as an obvious judgment, that there must be something wrong (perhaps an expression of the 'colonized mind-set', in Albert Memmi's sense of the phrase) with individuals who would want to celebrate those who had successfully called for a supreme crime of international law—aggression¹³—to be committed against their own country, during which, by the way, they themselves or their children could have been killed; hence my descriptions of bombed out and pulverized buildings in the centre of Belgrade, not far from where those people work and live. Yet, this is not obvious to Polizzi, and he enjoys speculating about the ways those intellectual elites in Serbia might have been right in celebrating Walzer. Suddenly, and completely unmotivated by any explanation as if we must all know what is on his mind, Polizzi invokes 'this genocide' to make his point: 'Could it be that these intellectual elites actually agreed with the idea that this genocide needed to be brought to an end?' But, what genocide? Does he mean the genocide that was already under way somewhere in Serbia? What was that genocide to which he oddly attributes this 'need to end,' in the year 1999 in Yugoslavia? His attempts to isolate the event he is trying to discuss are unsuccessful, and rather serve to further confuse the time and place of pertinent events that one could meaningfully talk about in connection to any of my arguments.

My statement clearly related to the 78 day bombing campaign, from 24 March to 6 June 1999, which was in violation of international law and without UN approval, and was

¹² Yet, many Americans were outraged at a Nobel Peace Prize awarded to Barak Obama at the time he barely entered the White House.

¹³ As Justice Robert H. Jackson, chief prosecutor for the United States at the Nuremberg Trials stated: 'aggression...is not only an international crime; it is the supreme international crime, differing only from other war crimes in that it contains within itself the accumulated evil of the whole.' A few realize that this statement made by justice Jackson was also formulated verbatim in the IMT judgment and preceded by a distinctly Kantian phrase 'War is essentially an evil thing'. *Judgment of the Nuremberg International Military Tribunal 1946* (1947) 41 AJIL 172, 186.

carried out by the US led NATO air forces against Yugoslavia (then consisting of just two republics of former Socialist Federal Republic of Yugoslavia: Serbia and Montenegro). Rather than referring to a clearly identifiable historical event, Polizzi talks of some vague event ‘arguably initiated by Serbian and Bosnian-Serbian forces’ that started in 1992. And as if this were not vague enough, he takes us even further back to the death of ‘Marshall [sic] Tito’ in 1980. By now all focus is lost, and Polizzi has started a discussion without connection to anything that might have been the subject of my examination and argument.

Polizzi appears to believe that by going into the deeper past by several decades of ‘this current story’ (which actually dates from the last year of the previous century) he can more easily contest my claim that NATO committed aggression against Yugoslavia. Unfortunately for Polizzi’s attempt to provide the appearance of factual scholarship throughout his article he refers to then still non-existent country of Serbia. Perhaps even more inexplicable in the conclusion to his article he ridicules me for calling it Yugoslavia because, according to Polizzi, it could be seen as legitimate only from ‘a Serbian perspective to continue to embrace the name’. Yet, the historical record is unequivocal that ‘Yugoslavia’ was the name of the country in question in 1999, which became the State Union of Serbia and Montenegro in 2003, and finally the Republic of Serbia only in 2006 when Montenegro seceded.

For those who, like Polizzi, might find the view that NATO committed an aggression against Yugoslavia an idiosyncratic oddity, it is worth noting that it is not. Take for example a recent textbook on the ‘morality of war’ that states:

The ‘humanitarian intervention’ in Kosovo turned what had been a brutal repression of a brutal uprising into a humanitarian catastrophe, and led to the first massive bombing of a European country since World War II. At the same time, NATO transformed itself from a defensive alliance into *the first proud aggressor* in Europe since the Soviet Union’s invasion of Hungary in 1956 and Czechoslovakia in 1968.¹⁴

Polizzi agrees with me that Yugoslavia did not attack or threaten any of the state members of NATO in 1999, but disagrees that NATO attack on Yugoslavia (he continues to think it was simply Serbia—though many targets in Montenegro, including schools, hospitals, and factories were also hit) was unprovoked. This distinction is hardly meaningful as it suggests that perhaps ‘provoked’ aggressions are obviously justified. In order to substantiate his view, Polizzi thinks he must present a history of the region that goes further back in the past. To make his case Polizzi relies on a single source, a recent Ph.D. dissertation with a parochial bent, the selection of which he never justifies, and which he fails to examine critically. This latter omission of Polizzi’s scholarship is significant because there are several serious scholarly concerns about the dissertation, as we shall examine later on.

Even then, Polizzi’s ‘story’ of the history of Yugoslavia since 1980 is inaccurately told; he even fails to list the six socialist republics that used to make up SFRY by omitting to mention the republic of Croatia, and giving only half of the name for Bosnia-Herzegovina. There is no necessity to go into all inaccuracies and mistakes in Polizzi’s retelling of the history of Yugoslavia since this is entirely irrelevant to the discussion at hand pertaining to the proper characterization of the US led NATO attack on Yugoslavia and the role Walzer, and his instrumentalization of the just war theory (in the guise of ‘humanitarian intervention’), played in facilitating the aggression and its ‘justification’ to the middlebrow non-academic general audience.

¹⁴ Bruno Coppieters and Nick Fotion (eds), *Moral Constraints on War: Principles and Cases* (Lexington Books 2008) 233 (emphasis added).

It is surprising for anyone relying on a single source, to hold the epistemic attitude of certainty. It is simply shoddy scholarship to suggest that possession of a single source amounts to the possession of historical truth on Yugoslavia or much of anything for that matter. And, since I do not abide by Polizzi's disclosed truth, or conventional wisdom, in Polizzi's view, I must not be allowed to make my points unanswered. Polizzi's response to my article attempts to reconstitute the Western 'memory' of what went on in the Balkans of the 1990's. However, rather than show the mistakes I allegedly made, Polizzi exhibits a superficiality about the events of the historical record by simply appealing to what has become 'conventional wisdom' about those events in the West. Even though inconsequential for disputing my claims, it is important to point out some blunders in Polizzi's tenuous historical narrative.

Let us start by considering the merits of Polizzi's preferred source on the history of the Yugoslav dissolution. If he really wanted an expert account of the events leading up to the NATO initiative in Yugoslavia in 1999, with the hope that this would aid him in portraying it as something other than NATO's crime against peace, a natural thing would have been to consult the works of some established historians or scholars of the Balkans. There is no shortage of such experts.¹⁵ Instead, Polizzi consults no historian at all, but turns to a Croatian political scientist, Josip Glaurdić. This all-important source about Balkan history for Polizzi is simply a 2009 dissertation published as a book in 2011. One may wonder what Polizzi's point is here, or what his strategy may be. We have already seen how Polizzi's belief that I am a Serb has influenced his assessment of my position on NATO 1999 aggression against Yugoslavia. Is Polizzi's strategy to counterbalance what I—an assumed Serb—had to say by offering a pro-Croatian source and representing it as a final word on the history of Yugoslavia? Be that as it may, this 'methodology' of ethno-reading of people's research is of no interest to me. More importantly, however, from the perspective of scholarship is that Glaurdić's work can be of no help to Polizzi because it is not a work of history at all. The work's focus is not even the Balkans and the events there; rather, it is intended as an analysis of the policies of Western powers toward former Yugoslavia in the period between 1987 and 1992. From a historiographical point of view any scholar who would consider personal interviews with former diplomats,¹⁶ the declassified and redacted documents of the CIA and the Foreign Office,¹⁷ and the evidence used at ICTY¹⁸ as *sufficient* sources for writing a

¹⁵ A reader would certainly be less surprised had Polizzi consulted one of the now classic works on Yugoslavia such as for example, Susan L. Woodward, *Balkan Tragedy: Chaos and Dissolution After Cold War* (Brookings Institution Press 1995), or Leonard J. Cohen, *Broken Bonds: Yugoslavia's Disintegration and Balkan Politics in transition* (Westview Press 1995); or more recent edited volumes on this theme such as Charles Ingrao and Emmert Thomas Emmert A. (eds), *Confronting the Yugoslav Controversies: A Scholars' Initiative* (US Institute of Peace Press; Purdue University Press 2009), or Leonard J. Cohen and Jasna Dragović (eds), *State Collapse in South-Eastern Europe: New Perspectives on Yugoslavia's Disintegration* (Purdue University Press 2008); or excellent works that challenge the mainstream accounts of how Yugoslavia went out of existence, such as Diana Johnstone, *Fools' Crusade: Yugoslavia, Nato, and Western Delusions* (Monthly Review Press 2003), or Kate Hudson, *Breaking the South Slav Dream: The Rise and Fall of Yugoslavia* (Pluto Press 2003).

¹⁶ Raul Hilberg, the foremost Holocaust scholar, left out personal testimony as a matter of principle in his momentous *The Destruction of European Jewry* (Yale UP 2003).

¹⁷ Documents generated by intelligence outfits require great care, as most of their work is to produce and disseminate in targeted ways disinformation rather than anything that resembles historical facts. On the pervasive use of disinformation as a predominant task of intelligence services see, for example, Edward Jay Epstein, 'Disinformation' <<http://www.edwardjayepstein.com/archived/whokilled.htm>> (accessed 4 April 2013).

¹⁸ To consider as historical facts the information generated at an *ad hoc* international tribunal of questionable legality—for it is established by the UN Security Council, in contradiction to its actual mandate, rather than an international treaty or a vote in the UN General Assembly—is to ignore the warning by the respected Canadian lawyer and academic David Paccioco: 'history and justice cannot be written at the same time, and with the same pen, without distorting both'. David Paccioco, 'Defending Rwandans Accused before the ICTR: A Venture Full

history of how a country went out of existence could appear as relying on rather meagre sources.

To understand the extent of Polizzi's error in reading Glaurdić so uncritically, let us contrast Glaurdić's dissertation, taken by Polizzi as *the final history* of 'the course of events that led up to the military response by NATO' in 1999, to a decade long project by a committee of academics under the leadership of senior scholars in history, Charles Ingrao and Thomas Emmert, whose goal was to forge scholarly consensus about Yugoslavia's dissolution and the accompanying wars. The outcome of this group was rather different when it expanded to nearly 400 individuals from thirty countries among whom about 175 made substantive contributions to the project—but without Croatian scholars who refused to join with their Serb and other colleagues in the endeavour—published the result: *Confronting the Yugoslav Controversies: A Scholars' Initiative*.¹⁹ In the words of principal organizers:

At no point in this decade-long project have we expected anything approaching universal acceptance of the volume's findings—least of all in this first instalment in the process. Instead we have aimed at debunking myths and presenting 'inconvenient facts' to make everyone equally unhappy.²⁰

Rather than offer anything like the 'final history' the objective of this project was

an attempt by historians and social scientists to challenge the tendentious nationalistic narratives.. by exposing and discrediting each belligerent's myths about the Yugoslav conflicts while simultaneously inserting indisputable but inconvenient facts known to their former adversaries.²¹

Unlike Polizzi's portrayal of his source as achieving historical accuracy based on factual evidence generated in judicial proceedings at ICTY,²² personal interviews, and access to some CIA documents, *A Scholars' Initiative* emphasizes controversies and open questions while fostering proper methodology and established facts rather than partisan and parochial agendas. The contrast can be further explored, since as chance would have it the journal of *East European Politics and Societies* selected none other than Glaurdić to write a long review of *A Scholars' Initiative* to which its editors have forcefully responded.²³ First, let us consider Ingrao and Emmert's astonishment that Glaurdić would be chosen to write a review of their volume:

We are flattered that *EEPS* attaches sufficient importance to our edited volume, *Confronting the Yugoslav Controversies*, to commission an eight-thousand-word review—which is even longer than some of the journal's full-length articles! Hence our amazement that *EEPS* would entrust a very junior scholar (PhD, Yale University, 2008) with such a task. Evidently the reviewer has friends in high places or, perhaps, there are scholars in high places who are counting on the reviewer to serve their agenda. Indeed, responding to his criticisms, several of our research team leaders echoed our own view

of Pitfalls and Lessons for the International Criminal Law' in Hélène Dumont and Anne-Marie Boisvert (eds), *La voie vers la Cour pénale internationale: tous les chemins mènent à Rome* (Thémis 2004) 101.

¹⁹ Charles Ingrao and Thomas A. Emmert (eds), *Confronting the Yugoslav Controversies: A Scholars' Initiative* (US Institute of Peace Press; Purdue University Press 2009).

²⁰ Charles Ingrao and Thomas A. Emmert, 'Response to Josip Glaurdić's Review' (2010) 24 *East European Politics and Societies* 310, 314-315.

²¹ Charles Ingrao and Thomas A. Emmert (eds), *Confronting the Yugoslav Controversies: A Scholars' Initiative* (US Institute of Peace Press; Purdue University Press 2009) 3.

²² Hilberg warns that even Nuremberg trials cannot be taken as a source for writing history when he states that they 'were conducted not so much to understand Germany's history as to conclude unfinished business in order that Germany might be reconstructed with a clean slate in the North Atlantic community of nations confronted with the threat of communism'. Raul Hilberg *The Politics of Memory: The Journey of a Holocaust Historian* (Ivan R. Dee 1996) 69-70. The creation of ICTY/R may similarly be explained in terms of a political design for extinguishing in the post cold war period countries with viable and sustainable socialist economies.

²³ Charles Ingrao and Thomas A. Emmert, 'Response to Josip Glaurdić's Review' (n 20) 314-315.

that Dr. Glaurdić's *opus* represents the views and encyclopedic knowledge of more than a single, junior scholar.²⁴

Readers may be surprised to see reference to Glaurdić as 'a very junior scholar' as this may appear as an obvious *ad hominem*, and even more surprised to see the phrase 'friends in high places', which might strike them as unduly conspiratorial. But Ingrao and Emmert are pointing to a real phenomenon here. In fact, two important points from their comment should be made explicit: (i) rather than being really the effort of this 'very junior scholar' the review they suggest appears to have been a 'work by committee'; and (ii) that the review exhibits an agenda pushed by 'friends in high places'. To understand the first point one just has to be reminded of a phenomenon, recently made prominent during the last US attack on Iraq, of the so called 'embedded journalism' where select 'reporters' transmit information already prepared by Pentagon. These 'journalists' (actually, just force multipliers for the US campaign) are simple conduits of (dis)information that one belligerent party in a war wants to see widely disseminated. To understand the significance of something like Glaurdić's work, think about academics cast in similar roles within campaigns on the forefront of ideological or other battles for the sake of some group or agenda.²⁵ A good analysis of how democratic governments often exploit their citizens' faith in the independence of the media to generate popular support for government policies can be found in a recent study by Mark Wolfgram.²⁶ More specifically, and of particular interest for our discussion is that Wolfgram, using examples of Operation Horseshoe and the fighting at Racak and Rugovo during the Kosovo conflict of 1998 and 1999, illustrates how democratic governments in the US and Germany attempted to manipulate public perceptions of the Kosovo conflict to justify the 1999 war. The second point is in this case even easier to understand once we recognize that the editor of the *East European Politics and Societies* is Ivo Banac who happens to be not only a long time history professor at Yale, but also someone who has been very active in Croatian politics and public life.²⁷ The 'agenda pushed by friends in high places' easily finds its exponents among willing academic climbers. Hence, Glaurdić merely appears, according to Ingrao and Emmert, to represent the view of Croatian senior scholars' groupthink with their agenda. Ingrao and Emmert put it this way: 'Now, the question is whether senior scholars whose views [Glaurdić] represents will finally accept our standing invitation to join with their Serb and other colleagues in strengthening the present edition. Or will they continue to stand on the sidelines, doing what they can to defeat the process?'²⁸

With friends in high places things much bigger than a well-placed book review or a pamphlet with clear agenda can happen. But, it is quite another thing to take such *oeuvres* as genuine scholarship (rather than simply as exhibiting 'activism *in* scholarship'), and base one's arguments against seriously undertaken research on such sources as Polizzi has done.

²⁴ Ingrao and Emmert 'Response to Josip Glaurdić's Review' (n 20) 310.

²⁵ This is no novel phenomenon. Consider Congress for Cultural Freedom, lavishly funded by CIA through various front and real private foundations, along with 'left' magazines, journals, galleries, theatres, and public 'intellectuals'. Today this is so well known that the CIA's own Web site features an article about the agency's *involvement with anti-Communist groups in the Cold War*. The article details this construction of the fake left, describing the 'theoretical foundations of the Agency's political operations against communism' (<https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/csi-studies/studies/95unclass/Warner.html> last accessed October 29, 2012). For more, see Frances Saunders, *The Cultural Cold War: The CIA and the World of Arts and Letters* (New Press 2000).

²⁶ Mark Wolfgram, 'Democracy and Propaganda: NATO's War in Kosovo' (2008) 23 *European Journal of Communication* 153.

²⁷ Ivo Banac was a leader of Croatia's Liberal Party, a member of parliament, a cabinet minister, and, until recently, served as president of the Croatian Helsinki Committee funded by Human Rights Watch.

²⁸ Ingrao and Emmert 'Response to Josip Glaurdić's Review' (n 20) 315.

The attitude of ideological arrogance²⁹ may be the best way of explaining the complacency with which a scholar could assert the allegedly ‘final accounts’ of the histories of far away places are in one’s own hands despite the methods for data collection and analysis being well beyond one’s own expertise.

Another reason for my assertion that Polizzi has not chosen wisely when relying on Glaurdić to explain the destruction of Yugoslavia is that Polizzi wants to talk about ‘this genocide’ that allegedly took place in 1999 Yugoslavia (or as Polizzi insists, Serbia). Glaurdić cannot be a good guide on the issue of genocide since he does not, or does not want to, understand the legal definition of the term, and insists that ethnic cleansing³⁰ is indistinguishable from genocide. As Ingraio and Emmert point out, in his criticisms of chapter 4 of *A Scholars’ Initiative*, ‘Glaurdić insinuates that by differentiating between ethnic cleansing and genocide, the chapter authors denied the legitimacy of equating ethnic cleansing with genocide’.³¹ Then they rightly set the conceptual matters straight: ‘Glaurdić, in his apparent defense of a position that suggests that all ethnic cleansing is genocide, fails to understand and accept that distinction’.³² Glaurdić’s is a common gambit among those seeking to assign responsibility for genocide, the most stigmatizing of all crimes, on Serbs.

Francis Boyle, who argued Bosnia’s claim against Federal Republic of Yugoslavia at the International Court of Justice (ICJ), employed the same approach. This manoeuvre is clearly visible in the book *The Genocide Convention: An International Law Analysis* by John Quigley who is a scholar in the field of human rights and an activist. His book is a perfect example of ‘activism in scholarship’. He favours what is known as an expansive definition of the crime of genocide, and he *campaigns* for the enlargement of genocide’s ‘narrow’ definition (that is, the one found in the Genocide Convention). What is characteristic of his expansive approach concerns the act known as ‘ethnic cleansing’? This ‘conceptual’ effort bent on redefining ‘genocide’ to absorb ‘ethnic cleansing’ fits well with his personal engagements, such as in 1990s being part of a team of lawyers who argued Bosnia’s claim against FR Yugoslavia at ICJ. Without a gambit such as expanding the definition of genocide to include ethnic cleansing his client (the political entity of) the (Muslim and Croat) Federation of Bosnia-Herzegovina (which refers to one of the two ‘entities’ that make up the country according to Dayton Accords, the other being Republika Srpska) stood no chance of winning the case in front of ICJ. Hence, in the book we find Quigley arguing in favour of the thesis that ethnic cleansing equals genocide, which in its final judgment in the Bosnia case the Court later fully dismissed. Similarly, Ingraio and Emmert rightly reject Glaurdić’s attempt:

Not each and every single crime that happened in the context of ‘ethnic cleansing’ policy counts legally as genocide, and not each and every perpetrator counts legally as a ‘genocider.’ Crimes may also be classified as grave breaches of the Geneva conventions, violations of the customs of war, or crimes against humanity. This statement is not a mere conclusion of this research team but a simple empirical fact that emerges from the ICTY statutes as well as from its rulings, to which the team closely adhered in arriving at a consensus.³³

²⁹ For a detailed conceptual analysis of the ‘attitude of ideologically-based epistemic arrogance’ see Aleksandar Jokic ‘Genocidalism’ (2004) 8 *The Journal of Ethics* 251, 258-59.

³⁰ The article by James Nickel, ‘Moral Dimensions of Four Ways of Getting Rid of Groups’ in Aleksandar Jokic (ed), *War Crimes and Collective Wrongdoing* (Blackwell Publishers 2001) offers the best analysis of ‘ethnic cleansing’ and how it differs from genocide.

³¹ Ingraio and Emmert ‘Response to Josip Glaurdić’s Review’ (n 18) 311.

³² Ibid. 312.

³³ Ibid.

Unfortunately, something being conceptually a bad move will not stop people from trying it when they have an agenda (or a paying client). This is the ‘genocide or nothing’ attitude, as what is sought is the maximum stigmatization of one’s enemy. The complaint Bosnian Muslims were not interested in pursuing was that ‘crimes against humanity’ may have taken place in those instances labelled as ‘ethnic cleansing’ (not stigmatizing enough). They would rather lose their case at the ICJ claiming genocide than recognize that the acts that took place in the context of ‘ethnic cleansing’ are not necessarily genocide.

Unsurprisingly, therefore, in his brief historical narrative based on his deeply compromised source, Polizzi repeats some long falsified or suspect claims from the period of high Western ‘media hype’ or conventional wisdom about the Balkans.³⁴ I will discuss just three of them: (1) claims about concentration camps in Bosnia; (2) the narrative about Srebrenica massacre; and (3) the genocide discourse about Kosovo.

1. Claims about Concentration Camps In Bosnia

In his story of ‘how it all began’ that somehow should absolve NATO of its crime against peace when it attacked Yugoslavia from the air in 1999, Polizzi writes: ‘The United Nations in 1992 responded with imposed economic sanctions and peacekeeping forces as an answer to numerous documented reported atrocities, the shelling of the Bosnian city of Sarajevo and the construction of concentration camps in an attempt to stop the killing’.³⁵ Apparently, Polizzi believes that concentration camps were *constructed* in 1992 Bosnia. This conjures up images of WWII Europe under German occupation where in *Konzentrationslagern* slave-labourers from across Europe, in the first instance the (socialist and communist) political opponents of the Nazi, then increasingly Jews (slated for eventual wholesale destruction), criminals, homosexuals, Roma, the mentally ill and others were incarcerated for the most part without any judicial process. Their treatment was horrible; prisoners died from deliberate maltreatment, disease, starvation, and overwork, or were executed as unfit for labour. Why would anyone think such places existed in 1992 Bosnia?

It is all thanks to one TV report, one video, and in particular one picture. Here’s one description of how it all happened:

I have seen the out-takes of the ITN report on Trnopolje and film taken by what I am told is a Serbian cameraman and have analysed them both. Penny Marshall is seen and heard making every effort to discover what Trnopolje is. She asks several times: ‘What is this place?’ The person being questioned responds in Serbo-Croat but the translation seems unsatisfactory because she repeats the question. Meantime the ITN camera is wandering around the scene looking for an image that will illustrate whatever the real answer to Marshall’s question turns out to be. It homes in on a handgun worn by one of the Serb soldiers conducting the ITN party. But armed men are everywhere. It wanders across the ground to building then up to the first-floor windows of the building. They are barred. It lingers on the bars. But the bars might well be to stop people falling out, rather than to confine them. Then the camera shows Marshall walking across some ground towards some barbed wire. This is *not* a serious barbed wire fence. Compare it, for example with the barbed wire fences seen in countless images of Nazi death and concentration camps. This one looks more agricultural, intended to confine animals rather than people. But suddenly, at the other side of that barbed wire is a painfully thin man, ribs prominent. The camera zooms in on the man and the strand of barbed wire. The two together provide an image that spells out immediately Nazis, Jews, death camps, World War 2. No amount of qualification in the spoken report could overcome the power of this image. That’s the way television war reporting works.³⁶

³⁴ Among the best analyses of this Western media hype is certainly chapter two of Diane Jonstone, *Fools’ Crusade: Yugoslavia, NATO, and Western Delusions* (Monthly Review Press 2003).

³⁵ David Polizzi, ‘Just War, Genocide, or Necessity: A Critical Response to Jokic’ (n 2) 117.

³⁶ The quoted text is from a personal communication with Knightley, while his entire testimony is published online at the bottom of the following page: < <http://www.counterpunch.org/2005/11/05/storm-over-brockes-fakery/> > (last accessed 2 March 2013).

This is a testimony in a British court by the famed war reporter and professor of journalism, Phillip Knightley, author of the celebrated book on war propaganda, *The First Casualty*. Why was Knightley offering testimony in court about this infamous image out of Bosnia in 1992? As Knightley himself explains:

ITN had sued for defamation the magazine Living Marxism, which had published evidence discovered by a German freelance journalist Thomas Deichmann that the world was fooled. Deichmann asserted that the barbed wire, an essential element of ITN's image, was not intended to confine the Muslims but to protect a pre-war agricultural compound. Penny Marshall and her cameraman, Jeremy Irvin, had inadvertently entered this compound, so that if anyone was *behind* barbed wire, it was them the TV crew. Further, the camp was a collection centre for refugees and many Bosnians had come there voluntarily to seek safety and could leave if they wished.

Hence, from the claims of concentration camp we get to not even detention camp, but just a collection camp for refugees. But how is it possible then that smart people in the West, who believe themselves informed about 'atrocities' in former Yugoslavia and about who did what to whom, still live under the spell of the initial picture, the initial interpretation and myth long since debunked? The answer in part comes from the crucial role played by the public relations firms, agents for the interests of foreign nations and groups, whose intent is spreading the 'news' favourable to their clients. There is no better document explaining this *modus operandi* than the interview by Jacques Merlino (Deputy Director of the network France 2, Paris) with James Harff (Director of Rider Finn's Global Public Affairs Section) who represented the interests of Bosnian Muslims in the US:

HARFF: The great majority of Americans were probably asking themselves in which African country Bosnia was situated. But, by a single move, we were able to present a simple story of good guys and bad guys, which would hereafter play itself. We won by targeting the Jewish audience, the right target. Almost immediately there was a clear change of language in the press, with the use of words with high emotional content, such as 'ethnic cleansing', 'concentration camps', etc. which evoked inmates of Nazi Germany and the gas chambers of Auschwitz. The emotional change was so powerful that nobody could go against it...

MERLINO: But when you did all this, between 2 and 5 of August 1992, you had no proof that what you said was true. You only had two articles in Newsday.

HARFF: Our work is not to verify information. We are not equipped for that. Our work is to accelerate the circulation of information favourable to us, to aim them at carefully chosen targets. We did not claim that there were death camps in Bosnia we just made it known that Newsday claimed it.

MERLINO: Are you aware that you took on a grave responsibility?

HARFF: We are professionals. We had a job to do and we did it. We are not paid to moralize. And when the time comes to start a debate on all of this, we have a clear conscience. For, if you wish to prove that Serbs are in fact poor victims, go ahead, but you will be quite alone.³⁷

Because of the 'clear conscience' of 'professionals' like Harff, people like Polizzi still to this day believe that there were concentration camps (and why not death camps?) in 1992 Bosnia. By simply repeating exaggerated claims of (embedded) journalists (such as Marlise Simons and Ed Vulliamy) and agenda-pushing scholars (like Glaurdić) while at the same time never showing any awareness of the existing compelling contrary evidence presented by both other journalists and other scholars, Polizzi necessarily treads at the level of superficiality and fails the test of serious, rigorous factually based scholarship. Compare Polizzi's approach with that of *A Scholars' Initiative*: '[the] quest for an objective narrative through honest dialogue that lies at the heart of the process in which we have been engaged

³⁷ From Jacques Merlino, *Les Vérités Yugoslaves ne sont pas toutes bonnes à dire* (Albin Michel, 1993); English translation available at <http://www.nationalism.org/sf/Articles/a122.html> (last accessed 12 March 2013).

over the past decade.’ Honesty is the first step towards serious scholarship, methodology notwithstanding.

2. The Narrative about Srebrenica Massacre

Continuing his historical narrative Polizzi avers: ‘However, peacekeeping forces had little effect on the continued violence and were unable to prevent the infamous killings in Srebrenica in 1995, which claimed the lives of approximately 8000 unarmed men and boys killed over several days in what was portrayed as an act of vengeance for Serbian deaths at the hands of Muslims; a historic animosity that dates back to the Ottoman Empire’.³⁸ The last point, often repeated in the West, about ‘ancient ethnic hatred’ as somehow accounting for the eruption of violence in 1990s Bosnia can be quickly dispelled. The simple, well known facts undermine Polizzi’s scholarship: paying attention to the geography of violence we see that the most brutal episodes during the process of destruction of Yugoslavia occurred almost entirely within regions that were the most ‘mixed’—in particular Bosnia-Herzegovina in which the various nations of Yugoslavia were most intermingled. While from 1953 to 1981 most of the territories of Yugoslavia became increasingly heterogeneous,³⁹ which was shown in an increase in the rates of intermarriage between members of the different national groups, ‘but were particularly common between Serbs and Croats, and between Serbs and Muslims in Bosnia-Herzegovina’.⁴⁰ And, not surprisingly, ‘Bosnia-Herzegovina had the highest percentage of ‘mixed’ children—15.9 per cent overall—also concentrated in the most mixed areas’.⁴¹ Who were these people, then, who both hated each other and intermarried to such a degree, and had children together? Before turning to answer that question, there is something more important behind the myth about ‘ancient ethnic hatred’ to consider, and it has to do with the approved Western answer to the question ‘How did Yugoslavia cease to exist?’ In my ‘Introduction’ to the special issue of the *International Journal for the Semiotics of Law* on ‘Yugoslavia Dismantled and International Law’ I rendered it in the following way:

...on the question of ‘What happened to Yugoslavia?’ we can discern two broad categories of answers. In the ever growing, generally unanimous, and quite repetitive literature (including endlessly recurring pronouncements by politicians or activists) on this question, the dominant view in the West, without a doubt, is that Yugoslavia fell apart once various internal contradictions could no longer be kept under control. Call this ‘the self-destruction of Yugoslavia’ account of how it all played out. The competing account which offers to explain how the state of Yugoslavia ceased to exist focuses on the emergence, in the post Cold War period, of the agency of a single, unchallenged superpower: the United States of America. Call this ‘the Hegemon did it’ account of how Yugoslavia was dismantled.⁴²

³⁸ David Polizzi, ‘Just War, Genocide, or Necessity: A Critical Response to Jokic’ (n 2) 115, 117.

³⁹ Ruža Petrović, *Migracije u Jugoslaviji i Etnicki Aspekt* (Belgrade, SSO Srbije 1987) 48.

⁴⁰ Robert M. Hayden, ‘Imagined Communities and Real Victims: Self-Determination and Ethnic Cleansing in Yugoslavia’ (1996) *American Ethnologist* 23(4) 783, 788. Hayden shows, using the statistics provided by the leading Yugoslav sociologist, Ruža Petrović, that ethnic intermingling in terms of coresidence and intermarriage was substantial before 1990 and was increasing, and he contests, rightly in my mind, the contrary conclusions of Nikolai Botev and Richard Wagner, ‘Seeing Past the Barricades: Ethnic Intermarriage in Yugoslavia During the Last Three Decades’ (1983) *Anthropology of East Europe Review* 11, 27. (This point was also recognized in E.A. Hammel, ‘Lessons from the Yugoslav Labyrinth’ in Joel M. Halpern and David A. Kideckel, *Neighbors at War: Anthropological Perspectives on Yugoslav Ethnicity, Culture, and history* (The Pennsylvania State University 2000), 24.)

⁴¹ *Ibid.* 789.

⁴² Aleksandar Jokic, ‘Yugoslavia Dismantled and International Law’ (2006) 19 *International Journal for the Semiotics of Law* 339, 339-40.

Yugoslavia did not self-destruct.⁴³ Reliable sources indicate that Yugoslavia was dismantled by decisive influences from the outside world, in particular the US. Crucial in this process was the 1991 Foreign Operations Appropriations Law 101-513 that Congress passed on November 5, 1990 a year before the break up of Yugoslavia. Citing particularly lethal provisions of this law, a CIA report, described three weeks later in the 28 November 1990 *New York Times*,⁴⁴ predicted it would lead to a bloody civil war in Yugoslavia. The law cut off all aid, trade, credits and loans from the US to Yugoslavia within six months. It demanded separate elections in each of the six republics that made up Yugoslavia, requiring State Department approval of election procedures and results before aid to the separate republics would be resumed. It also required US personnel in all international financial institutions like the World Bank and the International Monetary Fund to enforce this cut-off policy for all credits and loans. Additionally, it allowed only for forces that the US State Department defined as ‘democratic forces’ to receive funding. This meant that only small right-wing nationalist parties were funded in the midst of a sudden financial crisis engineered as the consequence of this bill. The impact was, as expected, completely devastating.⁴⁵

Thus the political ideologies—extreme nationalism, particularly in secessionist republics—that won the free elections of 1990 were a *result* of these combined external influences. However, those newly constituted nationalist ideologies aiming to construct homogenous nation-states, and invoking allegedly ‘primordial’ communities, stood in sharp contrast to the actual, living cultures in the existing heterogeneous communities, as shown two paragraphs above. Hence, the wars of the Yugoslav secessions and successions were not a result of ‘ancient ethnic hatred’,⁴⁶ but, exactly to the contrary, merely a necessary tool—conceived outside the country—for un-mixing the well integrated communities. In less heterogeneous areas this un-mixing often could be achieved without violence, using bureaucratic means. Resorting to physical violence, however, occurs where cultural geography is most heterogeneous, thus the carnage in Bosnia-Herzegovina. We may even contemplate to postulate the following anthropological principle: The more an area is mixed, the more drastic a measure is necessary to bring about homogenization of the community (in

⁴³ Jasna Dragović-Soso distinguishes five categories of explanation of why Yugoslavia disintegrated, but her first four are just versions of my first category, which I reject:

1. Explanations focused on the *longue durée*, emphasizing ‘ancient hatreds’, a ‘clash of civilizations’, or the legacy of imperial rule in the Balkans
2. Explanations focused on the historical legacy of the nineteenth-century South Slav national ideologies and the first Yugoslavia state-building experiment from 1918 to 1941
3. Explanations focused on the legacy of Yugoslavia’s socialist system, its constitutional development and federal structure, its ideological delegitimation, and its economic failure
4. Explanations focused on the period of Yugoslavia’s breakdown in the second half of the 1980s and the role of political and intellectual agency
5. Explanations focused on the impact of external factors.

Jasna Dragović-Soso, ‘Why did Yugoslavia Disintegrate? An Overview of Contending Explanations’ in Leonard J. Cohen and Jasna Dragović-Soso, *State Collapse in South-Eastern Europe: New Perspectives on Yugoslavia’s Disintegration* (Purdue UP 2008) 2.

⁴⁴ David Binder, ‘Yugoslavia Seen Breaking up Soon: C.I.A. Paper Predicts Action in 18 Months and Adds Civil War Likely’ *New York Times* (New York, 28 November 1990) 7.

⁴⁵ See the paragraph on Yugoslavia in *The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, Public Law 101-513, appropriated funds for the fiscal year ending September 30, 1991*. (<<http://thomas.loc.gov/cgi-bin/query/F?c101:1:/temp/~c101yOzOZS:e274712>> last accessed 3 April 2013).

⁴⁶ Robert Hayden writes correctly that ‘the idea that the Yugoslav peoples could not live peacefully together was empirical nonsense’. Robert M. Hayden, ‘Imagined Communities and Real Victims: Self-Determination and Ethnic Cleansing in Yugoslavia’ (1996) *American Ethnologist* 23(4) 783, 790.

the form of political sovereignty of a given group enjoying overwhelming majority in the area).

To return to the narrative about Srebrenica massacre, it has played a special role in the politics of West's restructuring of the former Yugoslavia and in Western interventionism more broadly. Edward Herman captures this eloquently:

There are three matters that should have raised serious questions about the Srebrenica massacre itself at the time and since, but didn't and haven't. One was that the massacre was extremely convenient to the political needs of the Clinton administration, the Bosnian Muslims, and the Croats. A second was that there had been (and were after Srebrenica) a series of claimed Serb atrocities, that were regularly brought forth at strategic moments when forcible intervention by the United States and NATO bloc was in the offing but needed some solid public relations support, but which were later shown to be fraudulent. A third is that the evidence for a massacre, certainly of one in which 8000 men and boys were executed, has always been problematic, to say the least.⁴⁷

Indeed, the formulation '8000 unarmed men and boys killed' is extremely problematic and less frequent lately. It is more common to say '8000 unarmed men and boys killed or missing'. The problem is that men were certainly armed while women, children, and elderly were evacuated from the danger zone that Srebrenica was after the fall to Serbian forces to the Bosnian Muslim held territory. In contrast to Polizzi, the ICTY indictment of General Ratko Mladić, who is primarily blamed for Srebrenica killings, speaks of 'Over 7,000 Bosnian Muslim prisoners captured in the area around Srebrenica [who] were summarily executed'.⁴⁸ However, what Polizzi's formulation obscures is the fact that Srebrenica was not a demilitarized 'safe haven' but an enclave under control of the brutal warlord Naser Orić, commander of the 28th Division of the Bosnian Army, whose well armed men (an entire army corps with artillery) committed numerous massacres in nearby Serb villages, and this according to the sworn testimony at the ICTY of the French general Philip Morillion who was even held hostage in Srebrenica by Orić at the orders from Sarajevo. Hence, those killed 'in the woods around Srebrenica' were not 'unarmed Bosnian Muslim men and boys' as Polizzi and others (following conventional wisdom) write, but members of the Bosnian Army who received the order from Sarajevo to abandon Srebrenica and try to make it (with their arms) to the Muslim held territory. It is another matter that the ICTY, stretching the definition to absurdity, and relying to a novel legal concept, in *Krstić* case, called Joint Criminal Enterprise (JCE), discussed in detail by Dickson and Jokic,⁴⁹ declared the deaths of those Muslim combatants that didn't survive the trek (though many did) to be 'genocide'. All the while Mladić supervised an orderly evacuation of Muslim civilians from Srebrenica. Thus, the usual lament about the shame of Dutch UN troops who were allegedly outnumbered and outgunned by Mladić's forces surrendered Srebrenica to its fate also misses the point. What were the Dutch supposed to do: offer personal escort to each armed Muslim combatant who instead of defending Srebrenica, which would have been very easy because of its geographical position, followed the order to make a break from the town? And what were the

⁴⁷ Edward Herman, 'The Approved Narrative of the Srebrenica Massacre' (2006) 19 *International Journal for the Semiotics of Law* 409, 411.

⁴⁸ *Prosecutor v Mladić* (Amended Indictment) ICTY IT-95-5/18-I (10 October 2002).

⁴⁹ The main point being that JCE 'as it is presently framed by the ICTY, is both a very recent and unique legal concept. As such, it is contrary to the principle of legality and is without legal authority. Its purpose is to facilitate convictions before the institution, as it significantly reduces the prosecutorial burden of proof, and permits the conviction of the morally—and objectively—innocent. JCE is only necessary for cases where there is, in fact, no evidence – or insufficient evidence, from the standpoint of the criminal burden of proof—of genocidal intent. In other words, its purpose can be said to be to convict the innocent'. Tiphaine Dickson and Aleksandar Jokic, 'Hear No Evil, See No Evil, Speak No Evil: The Unsightly Milosevic Case' (2006) 19 *International Journal for the Semiotics of Law* 355, 370-72.

Bosnian Serb forces supposed to do about armed Muslim combatants running out of Srebrenica: let those Muslim soldiers reinforce the troops on the Muslim held territory to fight them again, even though many of them could be presumed responsible for killing thousands of Serb civilians in the villages around Srebrenica?

This last point is denied by Polizzi's historical source on the lead up to NATO's military involvement in Yugoslavia. Glaurdić in his criticism of *A Scholars' Initiative* objected that the authors and editors failed to mention the appeal judgment in favour of Naser Orić in July 2008, and asserts that the judgment demonstrates that crimes against Serbs in the area of Srebrenica never happened. In response Ingrao and Emmert show Glaurdić's selective use of the evidence presented at ICTY to push his agenda (or what they call 'his friends in high places') pointing out that 'in its concluding remarks the Appeals Chamber noted that it:

would like to underscore that, like the Trial Chamber, it has no doubt that grave crimes were committed against Serbs detained in Srebrenica at the Srebrenica Police Station and the Building between September 1992 and March 1993. Also the Defense did not challenge that crimes were committed against Serb detainees. However, proof that crimes have occurred is not sufficient to sustain a conviction of an individual for these crimes.⁵⁰

Yet again, now considering Polizzi's second claim, we come to the issue of ethics and methodology in scholarship. Proper scholarly practice in the case of something as complex and (geo)politically loaded as the approved Western narrative about Srebrenica would at the minimum require that attention be also given to the fact that controversies exist and that meticulously researched scholarship, such as Edward Herman who argued that 'The "Srebrenica massacre" is the greatest triumph of propaganda to emerge from the Balkan wars'⁵¹, is available substantiating claims quite different from the emerged conventional wisdom.

That there is something wrong regarding conventional wisdom about 'Srebrenica', in particular the claim that '8000 men and boys were executed' can be further corroborated by looking at the curious way the ICTY has handled the forensic evidence. Specifically, we find surprisingly speculative claims about what the material evidence in fact shows and a total refusal to disclose the DNA evidence to the defence in order to have it examined by independent experts. As we shall see, these actions suggest that in all likelihood the probative value of the actual DNA evidence regarding 'Srebrenica' is not as argued: individual matches with surviving family members may have been definitively disproven, as in at least one ICTR case,⁵² or it may be that we are dealing with a smaller sample than expected. Either reason is deeply troubling. It is hard to imagine a better explanatory hypothesis of this peculiar practice at the ICTY.

We can start our story of 'the number of Srebrenica deaths' at the ICTY by looking at the 'Judgment' in *Prosecutor v Krstić* where with respect to the forensic evidence we can read the following statement: 'It is impossible to determine with precision the number of Bosnian Muslim men killed by Bosnian Serb forces following the take-over of Srebrenica in July 1995.'⁵³ If this is impossible why was Krstić then found guilty of no less than genocide, and sentenced to 45 years of imprisonment? The text of the 'Judgment' gives a curiously aspirational character to the absence of forensic evidence in this case, which became evidence from the future, so to speak:

⁵⁰ Ingrao and Emmert 'Response to Josip Glaurdić's Review' (n 18) 313. The authors give as their reference <<http://www.icty.org/sid/9941>>.

⁵¹ Edward Herman, 'The Approved Narrative of the Srebrenica Massacre' (n 39) 409, 431.

⁵² *Prosecutor v Rutaganda* (Judgment) ICTR 96-3-T (6 December 1999).

⁵³ *Prosecutor v Krstić* (Judgment) ICTY IT-98-33-T (2 August 2001) para 80.

During the course of the exhumations conducted by the OTP, the process of identifying the number of bodies was complicated by the fact that, in the course of being removed from primary gravesites to secondary gravesites, the corpses were broken up and body parts became intermingled. However, as already noted, experts were able to conservatively determine that the minimum number of bodies in the graves exhumed was 2028. Although the Trial Chamber cannot dismiss the possibility that some of the exhumed bodies were killed in combat, it accepts that the majority of the victims were executed. Eighteen additional graves linked with Srebrenica have been located but not yet exhumed. Based on preliminary examinations conducted by the OTP, all of these sites contain human remains and it is expected that the total number of bodies found and linked with Srebrenica will significantly increase as these sites are exhumed.⁵⁴

Careful reading of this text tells us that (i) the material evidence was mishandled; (ii) the minimum number of exhumed bodies is merely an estimate (2028); (iii) how many among them were killed in combat rather than executed cannot be known; but (iv) the future forensic examinations 'is expected' to increase the number of bodies; which (v) again cannot be distinguished with respect to the cause of death (killed in combat or executed).

This was the situation as described in *Krstić*, but perhaps some progress was made at the ICTY since. Was the enthusiasm about 'future' exhumations justified? Instead of 8,000 bodies with wounds indicating that execution was the cause of death, as mandated by the key element of 'conventional wisdom', the forensic team of the Office of the Prosecutor (OTP) managed to assemble autopsy reports in only 3,568 'cases'. Practically half of those 'cases' fail to represent specific executed individuals, but consist of a few bones of persons whose cause of death was impossible to ascertain.⁵⁵ However, analysing the number of femora present in all mass graves it was established that: the total number of the exhumed persons stood at 1,920; that the patterns of the wounds they had suffered were quite diverse; and that in several hundred cases those wound patterns were consistent with injuries received in combat, thus incompatible with the assumed (and accepted in advance) hypothesis of execution as the cause of death in all these cases (and more to come). What to do then about the claim of 7000 to 8000 executed victims, since in the absence of evidence for this claim the narrative about 'Srebrenica genocide' loses substantial credibility?

In 2001 the OTP forensic experts abandoned their investigations in Bosnia. Their place was taken by two organizations: the Missing Persons Institute of Bosnia-Herzegovina (MPI BiH) and the quasi-NGO⁵⁶ International Commission on Missing Persons (ICMP) with its main laboratory in Tuzla. The ICMP was established at the initiative of the US President Clinton and is funded primarily by the US and UK governments (as well as some private foundations), and is always chaired by an American official appointed by the US Department of State.⁵⁷ The new approach to forensic investigation regarding the Srebrenica deaths, *under*

⁵⁴ Ibid.

⁵⁵ See 'Summary' in Stefan Karaganović and Ljubisa Simić, *Srebrenica: The Deconstruction of Virtual Genocide* (NGO Srebrenica, The Netherlands 2011) 148. Available online at: http://www.srebrenica-project.com/DOWNLOAD/books/Dekonstrukcija_2_izdanje.pdf (accessed 5 May 2013).

⁵⁶ The term 'quasi non-governmental organization' or 'Quango' indicates a government created and funded organization, thus held accountable to the government, but outside the civil service and thus said to enjoy operational independence.

⁵⁷ The press statement announcing Secretary Powell's appointment of Jim Kimsey as the new chairperson of the ICMP is available in the archives of the US Department of State available online (11 May 2001) <<http://www.theage.com.au/news/world/un-shut-down-rwanda-probe/2007/02/09/1170524298428.html>> (accessed 28 March 2013). The announcement of the appointment of the current chairperson of the ICMP, Ambassador Thomas Miller, is available on its web site. While this announcement is written in the form of Secretary of State Hillary Rodham Clinton welcoming this appointment no account is given of who made this appointment: <<http://www.ic-mp.org/press-releases/ambassador-thomas-miller-appointed-new-chairman-of-the-international-commission-on-missing-personsambasador-thomas-miller-imenovan-za-novog-predsjedavajuceg-medunarodne-komisije-za-nestale-osobe-icmp/>> (accessed 28 March 2013).

exclusive control of these two organizations, has been an effort to find DNA matches between still unexamined human remains, exhumed predominately within the line of extraction of the 28th division of the Army of Bosnia-Herzegovina (ARBiH) from Srebrenica towards Tuzla in July 1995, and DNA samples submitted by relatives of the persons declared missing immediately after 11 July 1995. This strategy, it ought to be clear, cannot be useful for establishing the main tenet of the Srebrenica narrative that some 7000 to 8000 individuals were summarily executed in an act of genocide, since even if matches are established in these cases, and this is done in the most impeccable scientific way, this does not tell us anything about *the time and manner* of death of those individuals.⁵⁸ Additionally, given the role the US has played in dismantling Yugoslavia, one can be forgiven for harbouring some suspicion with respect to the claimed independence and neutrality of an organization like the ICMP, always chaired by an official of the US Department of State. Such a body is vulnerable to accusations of political agendas and so needs its operations to be as transparent and open as possible. This operational practice, however, has not been the case.

No defendant at ICTY, not even in such a high profile case as *Prosecutor v Karadžić*, has been able to insist that defence forensic experts, carry out an independent verification of the said DNA identification results. For the last three years the defence team of Radovan Karadžić has been unsuccessful in obtaining from the OTP the biological samples in order for them to be examined in an independent laboratory. This procedural failure has occurred despite the fact that the ICTY does contain ‘a somewhat sophisticated disclosure regime’,⁵⁹ and, for example, the Rule 66 (B) mandates that the Prosecutor ‘shall, on request, permit the defence to inspect any books, documents, photographs and tangible objects’ that ‘are intended for use by the Prosecutor as evidence at trial’.⁶⁰ The defence team, however, does not even contemplate attempting to rely on this rule—no matter how painfully obvious this path might seem—in its effort to obtain disclosure of the DNA evidence in this case. For, already in 2008 the defence team in the case *Prosecutor v Popović* had tried this and was soundly rejected. The reason is utterly fascinating. Namely, ‘the Material’, which refers to the ‘raw data’ that would permit an independent verification or counter-expertise of the DNA identification results performed by ICMP, ‘is not in the Prosecution’s “custody or control”’ but ‘a third party independent from the Prosecution’ has the data (which is the ICMP).⁶¹ Thus we learn the curious fact that the DNA material—the biological samples that the ICMP allegedly successfully matched in its laboratory in Tuzla—the Prosecution adduces in presenting its case is not in the Prosecution’s custody or control (but it is located in ICMP headquarters in Tuzla). All of this then means that in place of verifiable DNA samples the Prosecution is offering to the Trial Chamber and defence only the electropherograms of the alleged results. Obviously those pieces of paper can be of little or no value to the defence and its experts and can only be properly considered secondary sources.

At this point readers familiar with the conception of fair trials in terms of the well-known international principle of the ‘equality of arms’ and its corollary disclosure rules—which aim at allowing the defence the same level of access to information as the

⁵⁸ To remind the court, among other things, of this sort of limitation of DNA evidence is the task of the defence experts. But more generally: ‘Even, when the probative value of DNA evidence seems to be very high, it is still necessary to have it examined by a DNA expert who may be able to identify weak points or even faults in methodology or statistical approaches used by prosecution scientists for evaluation of DNA evidence’. Andrei Semikhodskii, *Dealing With DNA Evidence: A Legal Guide* (Routledge-Cavendish 2007) 128.

⁵⁹ See Christoph Safferling, *International Criminal Procedure* (OUP 2012) 351.

⁶⁰ ICTY Rules of Procedures and Evidence <http://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032Rev45_en.pdf> (accessed 1 April, 2013).

⁶¹ *Prosecutor v Popović* (Decision On Popovic's Motion For Disclosure Pursuant To Rule 66 (B) And Request To File An Addendum To Professor Stojkovic's Expert Report) IT-05-88-T (6 October 2008) para 11

Prosecutor—may wonder if any defendant at the *ad hoc* tribunals can in fact have a fair trial. Normally, given the right of the accused to a fair trial the prosecutor should disclose to the accused in advance of the trial the nature of the allegation against him (or her) and all the evidence on which the prosecution is to rely to secure conviction. This evidence includes DNA evidence. However, people interested in international criminal law should not expect this kind of fairness from international tribunals in general. Indeed, many scholars and practitioners, especially the German defence lawyers, heavily criticized the IMT in Nuremberg, as a mockery regarding equality of arms, as disclosure was woefully inadequate.

Yet, the Nuremberg trials could be assessed positively in an important way. The best characterization we owe, I think, to Tiphaine Dickson's interpretation of Judith Shklar who saw Nuremberg as a 'law-like political institution'⁶² which

should be seen as the *political* conclusion of a kind of politics (Nazism and fascism) and of a kind of war (World War II). Viewed in that light, Nuremberg could never stand as a precedent (legal or otherwise) but as a *sui generis* resolution of an ideological war of elimination—on both sides—which demanded the corresponding elimination (albeit by legal, or at least legalistic means) of its defeated leadership.⁶³

Clearly, however, while we can, following Shklar and Dickson, interpret the nature of ICTY and ICTR as 'law-like political institutions', we cannot see what is going on there as (political *sui generis*) ways to end indecent politics (such as were the eliminationist Nazism and fascism) as the states of Yugoslavia and Rwanda (at the time of their destruction) were developing, self-sustainable, socialist states organized on the principles of equality and humanity.

Whatever the final judgment regarding the issue of fairness at current *ad hoc* tribunals, my reason for addressing the practice at the ICTY regarding disclosure of DNA evidence was different: to show that the probative value of this evidence regarding the key question about the number of Srebrenica deaths is non-existent since it cannot be challenged in an adversary proceeding. The main tenet of the 'Srebrenica narrative' then persists not because of the factual evidence but on the basis of the Prosecutor's inability or unwillingness to cause a third party to make the key evidence available to independent examination by any defence experts.

Finally, I must emphasize that nothing that was said here about these events is intended to be understood as disputing all the facts of the event referred to as the 'Srebrenica massacre'. Instead, the preceding argumentation is offered as a way of putting into question or inviting scrutiny on, the legal characterization based on the findings of the ICTY. In addition I am arguing that elements of the 'conventional wisdom' on Bosnia (including Srebrenica) that have been put in question by some, including American scholars and North American lawyers, such as the numbers of victims, and the presence in Srebrenica of the armed Muslim forces who had committed massive killings in the surrounding areas, and who ran away rather than defend the town can and should be put into question. My point here is that once various elements of the 'official' view have been questioned on the basis of facts, it becomes methodologically and morally objectionable to engage in polemics on the basis of the disproved conventional wisdom, and particularly so without any mention that other views and arguments exist. The corollary argument is that the judicial forum is an imperfect vehicle, even in the best domestic circumstances, to build historical knowledge.

3. The Genocide Discourse about Kosovo

⁶²Judith N. Shklar, *Legalism*, (Harvard University Press 1964) 156.

⁶³ Tiphaine Dickson, 'Shklar's Legalism and the Liberal Paradox' (unpublished manuscript) presented at the ISA Annual Conference, San Francisco (3 April 2013).

As a transition to his discourse about genocide in Kosovo, Polizzi makes the following casual assertion about casualties in Bosnia: ‘By the time of the US led military intervention against Serbia and its Bosnian allies, well over a 100, 000 Bosnian Muslims and Croats had already lost their lives to the Serbian campaign of ethnic cleansing’.⁶⁴ No reference is offered for this number and no indication is given in order to help us estimate what could be the number that the phrase ‘well over’ stands for while the implication is that either there were no Serb casualties at all or perhaps Serb deaths do not matter in Polizzi’s framework. In fact, the latest ICTY estimate of war related deaths *on all sides* (including Serb casualties) in Bosnia stands at 102,662 according to the tribunal’s own experts, Ewa Tabeau and Jakub Bijak.⁶⁵ Of these 102,622 deaths that include casualties from all three warring sides some 55,261 were civilians and 47,360 military at the time of death.⁶⁶

Polizzi introduces his genocide discourse about Kosovo thus:

The image of those buildings destroyed by NATO aerial attacks, to which the author eludes (sic) becomes for him proof of Serbian victimization; but they also become the image for those who see those same buildings as a type of vindication and as a symbol of defiance to an act of genocide.⁶⁷

What act of genocide would that be? Apparently a genocide the Yugoslav forces would have committed in the province of Kosovo is being referred to here. However, no description is attempted of this ‘act of genocide’, but instead reference is made to the previous times and events in Bosnia and Croatia, and Serbian civilian and military leaders are blamed for everything including the fact that NATO had to intervene, which leads Polizzi to put the following question directly to me:

It is also somewhat puzzling that Jokic is more determined in his condemnation of Walzer and his application of just war theory as it related to the Balkans than he is of Serbian leader Slobodan Milosević, and his Bosnian-Serb allies Radovan Karadzic, and Ratko Mladić for the course of events that led to NATO’s military involvement in the former Yugoslavia. ... It is equally, true, however, that the Serbian people no doubt also directly suffered due to the realities of this war in both Kosovo and Croatia; but again, is this Walzer’s fault, is it NATO’s fault or is it the fault of those Serbian leaders who helped make the conditions for the broadening of this war possible?⁶⁸

It seems to me that by posing this question Polizzi’s scholarship declines even further. The portrayal of NATO as some sort of natural force governed by laws of nature given the events on the ground (leaving it no option but to intervene) rather than an institution with agency, and hence with responsibility for its actions, while perhaps widespread, wholly lacks credibility and is cheaply exculpatory.

It would be a rather long discussion to address what actually happened in Kosovo in the run up to the US-led NATO aggression against Yugoslavia in 1999, but Polizzi’s claims can be dismissed rather easily by following the methodology (implicitly endorsed by Polizzi)

⁶⁴ David Polizzi, ‘Just War, Genocide, or Necessity: A Critical Response to Jokic’ (n 2) 115, 117-18. However, if bombed out buildings in the centre of Belgrade are to be taken as vindication and a symbol of defiance to an act of genocide, should Jewish survivors see the firebombing of Dresden as vindication and as a symbol of defiance to the Holocaust? Few people would see this as anything but outrageous. Though we may witness just such a claim in the Yiddish precursor, a book titled *Un di velthot geshvign* (And the World Kept Silent), to Elie Wiesel’s *Night*. On this, see a very important content analysis of the relationship between the two versions of the book by Naomi Seidman, ‘Elie Wiesel and the Scandal of Jewish Rage’ (1996) 3 *Jewish Social Studies* 1.

⁶⁵ Ewa Tabeau and Jakub Bijak, ‘War-related Death in the 1992-1995 Armed Conflicts in Bosnia-Herzegovina: A Critique of Previous Estimates and Recent Results’ (2005) 21 *European Journal of Population* 187.

⁶⁶ *Ibid.* 209.

⁶⁷ David Polizzi, ‘Just War, Genocide, or Necessity: A Critical Response to Jokic’ (n 2) 115, 119.

⁶⁸ *Ibid* 118-19.

championed by his own source, Glaurdić, who takes the evidence used at ICTY as legitimate material to built a historical narrative about these events. Namely, no member of Yugoslav political or military leadership has ever been charged (not even using JCE, the legal novelty at this tribunal) for genocide. Not even Slobodan Milosević (though one finds newspaper and magazine articles where the contrary is asserted), who died *invictus* while in custody (as discussed in detail by Dickson and Jokic)⁶⁹ was charged with this crime. The ICTY's 'Second Amended Indictment'⁷⁰ expanded the charges against Milosević regarding Kosovo, but did not include charges of genocide.

Most of Polizzi's criticism I have responded to so far have to do with just the first paragraph of my Article on just war theory. Fortunately, Polizzi agrees with my criticism of this 'theory', particularly of the way Walzer has instrumentalized it in order to pronounce, which wars are just and which are not. Polizzi then appears to further develop my criticism by introducing additional references to Kant on necessity and an inspired use of the work by Agamben on sovereignty. I am not in the position to assess the value of his contribution, but I see the necessity to briefly reiterate the point of my referring to Kant in the context of criticizing Walzer's use of the just war theory.

My invocation of Kant's view on the morality of war as 'necessary evil' served the purpose of showing the absurdity of Walzer's reintroduction of the normative questions about war into the moral normative sphere. As I pointed out in my Article, the just war theory originated in the Catholic theological context, from where it quickly entered into the moral domain. Over a period of several centuries it underwent the process of secularization (taking it out of the theological and moral spheres) and by the end of the nineteenth century it was incorporated into the (international) legal order, a process that was finalized with the UN Charter after WWII. Kant had already pointed out, as Judith Shklar reminded us, that we better keep war completely within the legal normative order (and in particular out of the moral normative sphere) as any attempt to talk about the morality of war, or consider any war (morally) just, would only serve to encourage 'people to enter upon wars recklessly and then baptizing his own side with the holy water of justice. Every enemy can easily be made to look the aggressor.' But this is exactly what Walzer is doing by reintroducing just war theory into the moral normative order, and thus making it possible that situations arise when the choice could be made by well armed predatory countries in favour of the 'illegal but good' course of action; like in the case of the illegal aggression against Yugoslavia in 1999, which was successfully spun in the Western media (and intelligence psychological operations) as somehow moral, for it (supposedly) served to allegedly prevent a genocide. That this is morally wrong and that it legally amounts to a war crime in both on the count of incitement by agitating in favour of aggression (an *ad bellum* crime) and in Walzer's readiness to *ex post facto* redefine the rules of *in bello* laws, in case they are violated by the (good) US troops, in order to make those actions (supposedly) consistent with law (as redefined by him), should be entirely obvious to everyone. But there is nothing new to this argument and my objections. Richard Falk had identified these issues in his early review of Walzer's *Just and Unjust Wars*, aptly titled 'The Moral Argument as Apologia', concluding that 'Those who most deeply imperil the human prospect will be pleased to discover their moral vindication in Walzer's book'.⁷¹ My Article simply developed further this very early insight by Falk.

A similar example, to which we next turn, can be seen in the case of the conventional wisdom on Rwanda.

⁶⁹ Tiphaine Dickson and Aleksandar Jokic, 'Hear No Evil, See No Evil, Speak No Evil: The Unsightly Milosevic Case' (2006) 19 *International Journal for the Semiotics of Law* 355, 384-87.

⁷⁰ *Prosecutor v Milosević* (Amended Indictment) ICTY IT-99-37-PT (29 October, 2001).

⁷¹ Richard Falk, 'The Moral Argument as Apologia' *The Nation* (New York City, 25 March 1978) 343.

CONVENTIONAL WISDOM ON RWANDA

An essential part of my criticism of Walzer's utilization of the just war theory had to do with the following dictum: do not mix scholarship with activism (especially if the latter involves urging the initiation of wars of choice—aggressions—and violating customs of war). The example that illustrated the problem with this approach is, as we have seen, that of the Rwanda expert, Alison Des Forges, testifying in a Canadian court of law, in the case of Léon Mugesera, and asserting that *as a human rights activist, she could not claim objectivity*. This introduced the subject of Rwanda in 1994 into the discussion and gave the opportunity to Polizzi to weigh in on it:

Regardless its relationship to just war theory, the genocide in Bosnia and Kosovo needed to be stopped for all in the violent cross-fire of that conflict. Does this action also make itself vulnerable to charges of hypocrisy, particularly when a similar type of genocide was taking place in Africa at approximately the same time and the Clinton administration and European countries stood shamelessly by while hundreds of thousands of civilians were butchered? Of course it does! Former President Clinton has admitted as much, calling the lack of US involvement in Rwanda one of the greatest failures of his presidency. Perhaps, even more shameful is the fact that he forbade his UN representatives from even using the word genocide in their official correspondences when describing the events in Rwanda, for fear that such a designation would require that the United States immediately respond to that situation. They did not and hundreds of thousands of Africans lost their lives. Hypocrisy? Of course!⁷²

What this passage from Polizzi does, in few words, is load into the discussion all elements of the 'conventional wisdom' on Rwanda. However, it is a scholarly mistake to accept conventional wisdom on Rwanda as factual while discussing just war theory—or for that matter anything else, which rests on factual accuracy. I would like to demonstrate this error in the remaining part of this Article.

While we cannot fault Polizzi for something that almost everyone in the West who discusses Rwanda does (be they scholars or not), it is nevertheless a serious failure of scholarship to simply assume the conventional wisdom. This failure can be seen by focusing on an example of a genocide narrative, almost randomly selected, that in a very few words, just like Polizzi, presupposes the entire incorrect story of Rwanda, pushed for in the West. The example I shall use is an article by John K. Roth on genocide and philosophers of religion.

In his article Roth makes very few remarks about Rwanda, yet it is clear even on the basis of this meagre content that he presupposes all elements of what passes for conventional wisdom on Rwanda of 1994, just like Polizzi did. This dominant or received rendition of the 100 days of killing in Rwanda was presented in non-academic narratives by Alison des Forges,⁷³ Samantha Power,⁷⁴ and Philip Gourevich⁷⁵; it was then widely transmitted by a copy-paste industry of sorts that continues to this day, despite some opposing and compelling evidence amassed by capable and credible researchers.⁷⁶

⁷² David Polizzi, 'Just War, Genocide, or Necessity: A Critical Response to Jokic' (n 2) 115, 124.

⁷³ Alison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (Human Rights Watch 1999).

⁷⁴ Samantha Power, *A Problem from Hell: America and the Age of Genocide* (Basic Books 2002).

⁷⁵ Philip Gourevich, *We Wish to Inform You that Tomorrow we will be Killed with our Families: Stories from Rwanda* (Farrar, Straus and Giroux 1998).

⁷⁶ See earlier works such as Robin Philpot, *Ça ne s'est pas passé comme ça à Kigali* (Les Éditions des Intouchables 2003); Tiphaine Dickson 'De l'invisible attentat aux faux experts: le combat des avocats de la défense au Tribunal Pénal International pour le Rwanda' in Charles Onana (ed), *Silence sur un attentat: Le scandale du génocide rwandais* (Editions Duboiris 2005); and the on-going project by Professors Christian Davenport and Allan C. Stam called 'Genodynamics', current results of which are available at <www.GenoDynamics.com> (accessed 5 November 2012). Also important is the forthcoming volume by Davenport and Stam *What Really Happened in Rwanda?*

Roth makes exactly four brief remarks about Rwanda from which it is evident that he presupposes the conventional wisdom on Rwanda. When referring to General Roméo Dallaire, Roth touts ‘his heroic efforts to stop genocide were thwarted by international inaction that included reluctance even to use the G word to identify the genocide that engulfed Rwanda in 1994’.⁷⁷ This claim is remarkably similar to the one Polizzi makes. From this simple comment and attitude towards Dallaire we can reconstruct no less than five tenets of conventional wisdom on Rwanda in 1994:

- (G) The tremendous violence that erupted in Rwanda in 1994 can primarily be characterized as genocide.
- (UN) The UN role was heroic in a way it attempted to stop the genocide rather than being in any way complicit in the fact that violence happened.
- (I) Intervention was possible but there was no will in the West to do so, particularly in the US that suffered from the so-called ‘Somalia Syndrome’ or because the West had failed to classify expeditiously the relevant events as genocide.
- (PV) The only form of political violence that took place in 1994 Rwanda was genocide.
- (A) The genocidal killings occurred all over Rwanda.⁷⁸

Next Roth quotes the entire list of violent episodes classified as genocides from a book where at spot number (15) we have ‘the Hutu campaign against Tutsi in Rwanda’.⁷⁹ This suggests tenet (G) again, and

- (H) The perpetrators were Hutu as the dominant, ruling ethnic group and the victims were the ethnic minority Tutsi.

Talking about the ‘logic’ of circumstances in which genocide can happen Roth offers this example: ‘“civil war” (Rwanda)’.⁸⁰ This suggests the next tenet of the conventional wisdom:

- (CW) The violence that engulfed Rwanda in 1994 was a civil war.

Finally, writing about the effects of genocide Roth ponders: ‘How extensive was the damage to Tutsi existence as Hutu machetes did their worst?’⁸¹, which gives us the following element of the conventional wisdom:

- (M) Killings that occurred during the episode of violence in Rwanda in 1994 were for the most part committed using machetes.

In order to complete the list of claims that comprise conventional wisdom on Rwanda we can add just one more:

⁷⁷ John K Roth, ‘Easy to Remember? Genocide and the Philosophy of Religion’ (2010) 68 *International Journal for Philosophy of Religion* 31, 32.

⁷⁸ See a very instructive lecture by Christian Davenport with a similar and related categorization of the conventional wisdom on Rwanda, ‘Rethinking Rwanda 1994’ at the Kroc institute, University of Notre Dame (8 April 2010) < <http://www.youtube.com/watch?v=vug3OxbpsFA> > (accessed 19 May 2013).

⁷⁹ Ibid 34.

⁸⁰ Ibid 37.

⁸¹ Ibid 35-36.

- (R) The Rwandan Patriotic Front (RPF), then rebels but now the ruling party in Rwanda, had stopped the genocide by ending the civil war and taking control of the country (away from the Armed Forces of Rwanda or FAR).

The nine claims enumerated above represent quite accurately the conventional wisdom on Rwanda in 1994 as it emerged from the key writings and repeated often enough that it resulted in a unified narrative both in the public and academic domains. We have seen that Roth (just as Polizzi does) relies uncritically on the conventional wisdom in the case of this violent episode. But are the claims on which conventional wisdom rests true? Can they survive proper scholarly scrutiny?

It is not easy to question conventional wisdom, and doing so can be quite uncomfortable as those who ventured using appropriate methodology to research what actually happened in Rwanda during the hundred days of violence that later justified continued war and misery in the Democratic Republic of Congo causing the deaths of several more millions of people could testify. However, we can start by making a point with which all could agree. The proximate cause that triggered the large-scale massacres that followed was the shooting down of the Presidential plane. On the evening of April 6, 1994 at 20:25 the plane carrying Presidents Juvenal Habyarimana of Rwanda and Cyprien Ntaryamira of Burundi was shot down by two surface-to-air missiles as it approached the international airport in Kigali. The plane operated by a French crew was returning the two Presidents and the Chief of Staff of the Rwandan Armed Forces (FAR), General Deogratias Nsabimana, from a summit held in Dar es Salaam. One could hardly expect that this would become the most under-investigated presidential assassination and terrorist act in history. Still more deplorably, this event would soon become known simply as a 'plane crash'. Thus, even the 1999 'Report of the Independent Inquiry Into UN Actions During the 1994 Genocide in Rwanda' commissioned by Kofi Annan contains a section titled 'The Crash of the Presidential Plane: Genocide Begins' though it is stated there that 'at approximately 20:30 the plane was shot down as it was coming in to land in Kigali'.⁸² Similarly, Samantha Power starts her chapter on Rwanda describing how the news of the Presidential plane having 'been shot down'⁸³ was received by General Dallaire, only to become a 'plane crash' on the very next page and in all later references to this event.⁸⁴ So have done countless others (journalists and scholars) in their writings about Rwanda of 1994.

A major clarification regarding the shooting down of the Presidential plane specifically, and a decisive setback for the conventional wisdom on Rwanda in general occurred in November 2006, when the French anti-terrorist judge Jean-Louis Bruguière issued a report and an international arrest warrant against current Rwandan President and leader of RPF Paul Kagame, for the deliberate assassination of President Habyarimana. Bruguière was of the view that Kagame knew full well that large scale massacres would ensue after the downing of the plane enabling him and the RPF to take complete power in Rwanda by force. Judge Bruguière's rigorous six-year investigation, along with more or less concurrent revelations about the elements from another investigation carried out by Michael Hourigan, an Australian lawyer and one of the lead investigators at the ICTR office of the Prosecutor, whose inquiry into the shooting down of the plane was personally shut down by

⁸² 'Report of the Independent Inquiry into UN Actions During the 1994 Genocide in Rwanda' (1999) 15, available at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/395/47/IMG/N9939547.pdf?OpenElement>> (accessed 6 March 2013).

⁸³ Power (n 64) 329.

⁸⁴ Ibid 330, 354.

the ICTR's Prosecutor Louise Arbour,⁸⁵ and above all the testimony of Abdul Ruzibiza, a former RPF officer, before the ICTR provide decisive evidence that a 'network commando' of the RPF had shot down President Habyarimana's plane. Ruzibiza testified publicly at the ICTR that:

The missiles came from Uganda in the month of January and they were transported to Mulindi; and, from Mulindi, the missiles were taken to Kigali in the month of February—if my memory is good... Sometimes I don't remember dates very well. And from within the Parliament building (CND) the missiles were brought to Masaka. And the missiles were transported in a UNAMIR military convoy.⁸⁶

Masaka is in the outskirts of Kigali near the airport, the area from which the missiles were fired. The evidence indicates that the Presidential plane was shot using missiles that were the property of the Ugandan Army purchased from the Soviet Union in 1987. The combination of judge Bruguière's report, Hourigan's investigation, and Ruzibiza's testimony is damning for the tenet of conventional wisdom labelled (UN) and in particular the former UN mission commander, General Roméo Dallaire: he was in charge of the so-called Kigali weapons secure area from where the missiles were shot, and if the missiles arrived to their tactical destination in a UNAMIR military convoy, then general Dallaire—far from being a hero who tried to stop the genocide as Roth and others claim—appears at best an incompetent military cadre and at worst an accomplice in the operation of putting the missiles in place for carrying out the presidential assassinations and unleashing massacres that the RPF would use to grab power in Rwanda. This evidence is also damning for the tenet (R), since if the RPF shot down President Habyarimana's plane, Kagame can no longer be deemed a heroic military genius who stopped a genocide. As we shall soon see there is another reason why (R) is false.

That all tenets that make up conventional wisdom on Rwanda in 1994 are incorrect is shown in the research undertaken over the last fifteen years by Christian Davenport and Allan Stam,⁸⁷ supported by the U.S. Agency for International Development. The team led by these two prolific and well-regarded political scientists has accumulated a huge body of data from many sources including the following: a wide variety of nongovernmental organizations that had compiled information about the killings; interviews with Rwandan government elites and a household survey of the Butare province during their study visit to the country; detailed maps that contained information on the location of the FAR military bases at the beginning of hostilities obtained with considerable difficulties from the ICTR; a preliminary database that ICTR prosecutors had compiled from thousands of eyewitness statements associated with the 1994 violence, based on some 12,000 different people that this UN body had deposed that the research team compared with information found in CIA documents, other witness statements, academic studies of the violence; and the U.S. Defense Intelligence Agency information that documents approximate positions of the RPF units over the course of the war, which the research team updated using CIA national intelligence estimates obtained through the Freedom of Information Act and then updated again based on interviews with former RPF members, whose recollections the team corroborated with information from the FAR.

⁸⁵ On this incident see Nick McKenzie, 'UN 'shut down' UN Probe' *The Age* (10 February 2010) available at <<http://www.theage.com.au/news/world/un-shut-down-rwanda-probe/2007/02/09/1170524298428.html>> (accessed 6 November 2012).

⁸⁶ *Prosecutor v Bagosora et al*, (Transcript) ICTR-98-41-T (March 10 2006) 44, lines 14-18 (my translation from French).

⁸⁷ The essential aspects of their work on Rwanda is presented and explained in detail in Christian Davenport and Allen C. Stam, "Genodynamics", National Science funded data collection effort and analysis of 1994 Rwandan genocide <http://www.genodynamics.com> (accessed 6 May 2013). See also Davenport and Allen C. Stam, "What Really Happened in Rwanda?" (6 October 2009) 2 *Miller-McCune*, available at <<http://www.psmag.com/politics/what-really-happened-in-rwanda-3432/>> (accessed 6 May 2013).

Using the data compiled from all these sources the research team of Davenport and Stam was able to code events during the 100 days of violence by times, places, perpetrators, victims, weapon type and actions enabling us to better understand *what really happened* in Rwanda in 1994. Having documented where killings took place and using the maps that showed the relative positions of the FAR and the RPF over time, Davenport and Stam were able to relate these deaths to the changes of the battlefronts and conflict zones presenting all this as an animation using sophisticated computer software. Particularly useful is the animation of violent deaths and troop overlays showing troop movements and zones of control with median estimates of daily killings during the 100 days of massacres. The data accumulated and their visual presentations by this team of researchers suggest a number of conclusions about what went on in Rwanda conflict with respect to all tenets of the conventional wisdom.

Anyone who was to consult the material described above would quickly realize that claims (A) and (CW) are incorrect. The data clearly show that not all of Rwanda was engulfed in violence at the same time. Rather, the violence spread from one locale to another, and the movements of the RPF dictated the direction and pace of killings. This is what Davenport and Stam judge as their *most shocking finding*: The killings in the zone controlled by the FAR would escalate as the RPF moved into the country and acquired more territory. When the RPF advanced, large-scale killings escalated in the areas directly across the moving frontline. When the RPF stopped, large-scale killings also mostly stopped. This is another reason why the tenet (R) of conventional wisdom is false as the data show that much of the killing would *not* have taken place if the RPF had simply called a halt to its invasion.

The much-neglected aspect of Rwanda in 1994 is the international character of the conflict, which meant that this was not simply a civil war. The moment the President was assassinated the RPF moved into action not just from its bases in the north of the country and the centre of Kigali that the RPF controlled as a result of the Arusha Accords, but the RPF started a full blown military invasion, which constituted an aggression against Rwanda from Uganda by the RPF. It should be noted that many leading members of the RPF were officers in the Ugandan army, including Paul Kagame, and that the aggression was mounted using Ugandan military materiel. This was the second such aggression after the FAR repelled a similar attack on the country by the RPF in 1990, followed by a series of political agreements reached by the two parties, which should have seen the RPF and the FAR both partially demobilized and reintegrated into a national army. Contrary to what could have been reasonably expected after the signature of the Arusha Accords, the RPF failed to transform into a political party that would participate in the upcoming elections and even share the power.⁸⁸ Instead, as a result of the simultaneous attack on the presidential plane and invasion from Uganda violence that erupted must be given a character of both international (aggression) and civil war. The plausibility of the tenet (CW) is further diminished by the finding of Davenport and Stam according to which, contrary to the claims by the Tutsis outside the country to have invaded Rwanda from Uganda on behalf of the Tutsis inside, the invading force actually had a primary goal of conquest and little regard for the lives of Tutsis residing in Rwanda. In fact, the Tutsi diaspora who were largely English and Swahili speaking had very little awareness about the living conditions of, or contacts with, Tutsi Rwandans who spoke Kinyarwanda and French, and who were well integrated in the Rwandan society. It is hardly a stretch to think that invading Tutsi military must have appeared as proper foreigners even to Rwandan Tutsis, making the classification of this conflict as international aggression even more appropriate.

⁸⁸ For a more detailed account of the institutional framework in place at the time see the chapter entitled 'Antécédents' in Filip Reyjnens, *Rwanda: Trois jours qui ont fait basculer l'histoire* (L'Harmattan 1995) 15-19.

Much of the research by Davenport and Stam is concerned with the nature of killings that took place with a direct bearing on the claims (G), (H) and (PV) that are parts of conventional wisdom. The best available data allow us to reconstruct where the violence took place, the types of killing that occurred, as well as the identity of victims and perpetrators. While the violence did seem to begin in the FAR controlled area it must be underscored that it also took place in the RPF-captured territory, and along the (clockwise moving) front between the two warring parties. In order to understand the nature of the hundred day killings one must keep track of the events in these three shifting spatial segments (areas controlled by the FAR, areas controlled by the RPF, and the frontline). The data show that multiple processes of violence took place simultaneously: many of the killings were spontaneous or opportunistic killings to settle political, economic and personal scores with Hutus and Tutsis playing the roles of both attackers and victims; in the territory controlled by the government's FAR Hutu victims significantly outnumber the killed Tutsis, which suggests that a government's attempts to exterminate an ethnic group—that is, genocide—was hardly the only motive for the killing in the FAR controlled territory; and in the RPF controlled areas large-scale killings happened in refugee camps, and in individual households where the RPF targeted among others the Hutu elites. Hence, the killings were perpetrated by government forces, by the RPF rebels, and by citizens engaged in opportunistic killings.

The complex picture of the violence that emerges from this study suggests that genocide was just one of many forms of violence that took place simultaneously. Furthermore, when Davenport and Stam compared reported deaths from all different sources that were consulted they quickly concluded that there were not enough Tutsis in Rwanda to account for all the killed. Consulting the census of 1991 we obtain the number of approximately 600,000 Tutsis in Rwanda at that time and if we subtract from this number the 300,000 who, according to Ibuka, the Tutsi survivors organization,⁸⁹ lived through the violence, we get the actual number of killed Tutsi. Depending on the estimate of the total number of victims we take into consideration we can conclude that the number of Hutus killed is either comparable to or vastly greater than the number of killed Tutsis. If we take the usually cited numbers suggesting that 800,000 to 1 million had been killed, then the killed Hutus outnumber the killed Tutsis by a 3 to 1 ratio, or more. All of this goes to show that claims (G), (H) and (PV) are false. Also contrary to the conventional wisdom, and tenet (M), the research shows that most deaths were caused by military weaponry.

The complex picture of Rwandan violence portrayed by this research found instant critics, and provoked not only anger by the regime in Rwanda but also accusations of genocide denial. This has been the most curious outcome since Davenport and Stam had never denied that a genocide took place—in fact, their estimate is that there were some 100,000 genocidal killings—but have concluded in their research that genocide was only one—and not the principal—form of violence that occurred in 1994. The complaints against these researchers appear to be based on a specific and widespread attitude regarding Rwandan killings. We have already encountered the 'genocide or nothing' attitude and the corrosive effect it has on scholarship (when it exhibits what I called 'activism *in* scholarship'), but here we see a similar attitude we may call 'nothing but genocide' that prevents one from actually grasping (or even wanting to) what really happened in Rwanda. However, claims (G) and (H) cannot be sustained by sheer insistence and stubbornness, particularly if they clash with our best data.

⁸⁹ It must be noted, however, that this is an extremely partisan organization and that this estimate of theirs must be taken as very conservative, and thus indicative of the very real possibility that in fact many more Tutsis survived, which only means that if the number of total victims is kept steady that many more Hutus were among the victims.

It remains to consider the tenet (I) of the conventional wisdom. Davenport and Stam did not see intervention of any sort as a possibility in Rwanda. Their main reason is the fact that almost the entire population of Rwanda was on the move. Everyone tried to either leave the country or at least avoid finding themselves right in front of the point of contact between the FAR and the RPF, where most of the killings took place. In my judgment, the most significant finding of Davenport and Stam is that in Rwanda *people got killed not because of who they were but because of who they were not*. With almost everybody on the move and the fact that the Hutus and the Tutsis are physically indistinct from one another, people got killed because they were perceived as *non-locals* who as such were seen as presenting a threat (as fifth column infiltrators or criminally minded opportunists). Rwandans tragically found themselves in a situation when one could not meaningfully assert who he or she was, but it could be fairly clear who one was not, in the sense of being a non-local person, not from here, not one of us; therefore presenting danger that must be removed. This is of huge conceptual importance as the nature of killings appears as an exact mirror image of genocide. Perhaps we should give it a separate label. I would propose *aliundecide*, from Latin words ‘aliunde’ meaning ‘those from another place’ and ‘cide’ for ‘killing’. Even if somehow justified or desired, a foreign military intervention with any chance of success in such a context seems unlikely to say the least.

CONCLUSION

In this Article, using examples of Yugoslavia and Rwanda, I have engaged the question about the proper place for conventional wisdom within scholarship or academic debates. While the practice of identifying the main tenets of conventional wisdom regarding violent historical episodes, such as the dismantling of Yugoslavia or the hundred-day killing in Rwanda, and seeking evidence that supports or counters those claims can be entirely legitimate and methodologically justified; the opposite practice, however, is objectionable both on the moral and methodological grounds. Namely, simply presupposing conventional wisdom within a work of scholarly research or an academic polemic must be seen as a particularly grave mistake: the Appeal to Conventional Wisdom fallacy. The mistake is that much more serious if it can be demonstrated, as I attempted show here with respect to Rwanda, that all tenets of conventional wisdom about a case are false. In a situation like that it, then, becomes egregiously obvious that it is methodologically and morally objectionable to espouse conventional wisdom in light of the fact that contrary and compelling evidence is readily available.

I have argued that the appeals to conventional wisdom, in the academic context, are in most cases associated with the phenomenon of ‘activism *in* scholarship’. As theorized by Pierre Bourdieu, the proper engagement for a scholar must be outside academia but relying on the tools of her specialization to accomplish politically meaningful interventions. He rejects, however, ‘activism *in* scholarship’ as a threat to autonomy of the field within which it were to be manifest, for its presence in any field signals dependence with respect to external economic, political or religious powers, which erodes any symbolic authority necessary for proper civic engagement. Thus, scholars who promote various tenets of conventional wisdom about any (geo)politically important (violent) episode, such as cases discussed here regarding Yugoslavia and Rwanda, within their academic work, not only exhibit a kind of methodological incompetence, but through this practice they open up the spectrum of potentially weakening the autonomous character of their discipline and hence draining the symbolic power of scholarship, which is necessary in the first place for the possibility of making an *intellectuel engagé* out of any scholar. Thus, activist scholars are a danger to their own disciplines. I think, however, one would be justified in arguing for a broader point. The

instrumentalization of this kind of one's own research discipline is morally impermissible, which was one of my original objections to Walzer.

Consequently, once recognized that conventional wisdom (be it on Yugoslavia or Rwanda or anything else) is incorrect on significant counts, it becomes imperative that it is methodologically and morally objectionable to espouse conventional wisdom in one's scholarship given that contrary and compelling evidence is readily available.