RITES OF PLACE

Public Commemoration in Russia and Eastern Europe

Edited and with an introduction by

Julie Buckler and Emily D. Johnson
Contents

List of Illustrations vii
Acknowledgments ix

Introduction
Julie Buckler and Emily D. Johnson 3

Part 1
Reconstituting Urban Space

Transferring Jerusalem: The Epiphany Ritual in Early St. Petersburg
Michael S. Flier 15

Prague Funerals: How Czech National Symbols Conquered and Defended Public Space
Marek Nekula 35

“A Monstrous Staircase”: Inscribing the 1905 Revolution on Odessa
Rebecca Stanton 59

Jubilation Deferred: The Belated Commemoration of the 250th Anniversary of St. Petersburg/Leningrad
Emily D. Johnson 81

Part 2
The Art and Culture of Commemoration

The Portrait Mode: Zhukovsky, Pushkin, and the Gallery of 1812
Luba Golburt 105

An Island of Antiquity: The Double Life of Talashkino in Russia and Beyond
Katia Dianina 133
Memory as the Anchor of Sovereignty: Katyn and the Charge of Genocide

James von Geldern

"Space" means an arena of freedom, without coercion or accountability, free of pressures and void of authority. . . But "place" is a very different matter. Place is space which has historical meanings, where some things have happened which are now remembered and which provide continuity and identity across generations.

—WALTER BRÜGEMANN, The Land (1977)

Katyn Cemetery, 2000

Katyn, 1940. Such was the simple inscription in the Polish War Cemetery at Katyn (Russian Federation) at its official opening on July 28, 2000. Similar sites were opened that summer in the Russian town of Mednoe, and Kharkov in Ukraine, other places where Polish officers were slaughtered by Soviet NKVD (People's Commissariat of Internal Affairs) troops in 1940, following their capture in the wake of the Soviet-German partition of Poland. Katyn, though, is the singular name by which the massacre is known to Poles, and it was the name they remembered through the long years from 1945 to 1989 when public mention of the massacre was forbidden, and the crimes were blamed on the Germans. The fraternal ties between socialist Poland and the Soviet Union forbade public remembrance of this act of national murder. Few Polish citizens were ever fooled by the official lie, and the inability to publicly observe the national tragedy rankled deeply. Only in 1989, after Mikhail Gorbachev, under pressure from Polish President Wojciech Jaruzelski, appointed a commission to investigate this "blank
spot" in history, were documents published showing conclusively that the
crime was committed by Soviet troops.3

Construction of a Polish cemetery in Katyn took years of negotiation
and struggle. Although a Polish-Russian agreement was signed in 1994
that gave Polish authorities the right to maintain memorials to Polish vic-
tims in Katyn and Mednoe—and the duty to maintain Russian war graves
in Poland—progress was slow. Only in 1999 did work on the memorial
complex begin. That year the site was host to ceremonies marking the six-
tieth anniversary of the crossing of Soviet troops into Polish territory. Pol-
ish President Aleksander Kwasniewski remained silent through much of the
ceremony, during which he laid a wreath in the Polish national colors of red
and white. In his speech, the focal point of the ceremony, he spoke of the
“martyrs of Polish history.”

The cemeteries in Katyn, Mednoe, and Kharkov were opened by official
ceremonies in the summer of 2000. The Katyn Memorial Complex, set in
the forest outside Smolensk, is a tasteful construction of quiet paths, muted
graves, and low walls.4 It commemorates victims murdered at Katyn, in-
cluding both Soviet citizens killed by the Soviet secret police between 1937
and 1953 and the Polish officers killed in 1940. The site offers several simple
platforms for ritual commemorations: one with a Russian Orthodox cross,
one with a Catholic cross, and one without a cross for civil ceremonies.
Paths lead from the first ritual platform to the separate Russian and Polish
burial sites. Visitors can also walk a Common Path of Memory, which leads
between the two burial sites to the main ritual platform. The Polish grave
site, which was designed by the Poles, is entered through a solemn gate
that leads to a memorial wall on which the names of the Polish victims are
written. The graves themselves are low mounds framed in reddish cast iron,
on which large crosses lay silent. The pits into which the murdered Polish
officers were thrown are now covered by large cast-iron plates of the same
clayish red, and across from the memorial wall are gravestone
planks with the symbols of the four faiths that suffered losses at Katyn: a Catholic
cross, an Orthodox cross, a Star of David, and the red star of the Soviet
Union. The Polish site also features the graves of two generals killed in the
massacre and a simple altar that is frequently draped with wreaths of red
and white. However, as Karen Petrone shows in “Moscow’s First World War
Memorial” in this volume, creation of a public cemetery (in that case, a First
World War cemetery in Moscow) is no guarantee that public memory will
invest itself in such a commemorative site over time.

The opening ceremony was celebrated on the main ritual platform, un-
marked with religious or national symbols, and separate from both grave
sites. As Polish Prime Minister Jerzy Buzek observed, the public commem-
oration offered Poles and Russians a “great chance to make history together
without hatred and without lies.”5 Yet Russian President Boris Yeltsin only
sent one low-ranking representative, Deputy Prime Minister Viktor Khris-
tenko.6 Buzek and Khristenko spoke together, but they might have been
speaking of different places. For Buzek, Katyn signified “genocide and a
war crime.” Speaking “in the name of the Polish Nation,” he demanded to
“know the names of all citizens of the Republic murdered by Soviet authori-
ties and find their burial sites.” More provocatively, he spoke of coupling the
crime with punishment. “The Katyn crime must be fully explained. There
must also be a full accounting.”7 Khristenko seemed to be looking at a dif-
erent place as he spoke: the entire Katyn complex, encompassing the graves
of over ten thousand Soviet citizens victimized by Stalinist repression. He
evoked the memory of the “Soviet and Polish citizens who were victims of
totalitarian repression,” and noted that “it was the peoples of the former
Soviet Union who became the first and principal victims of the inhuman
Soviet machine.”8 He expressed the hope that this common tragedy could
become a source of reconciliation for Russians and Poles. This was not to be.
There have been no further joint commemorations of the Katyn massacre
at the memorial site; and now, as before, when Poles gather to remember
the victims and name the perpetrators of the crime, they usually do so on
Polish territory.

The rites of place examined in this volume and elsewhere provide a
community, often identified as a national community, a site to contest the
underlying meanings and values that structure its social and cultural life.
Claiming the right to name a place and its historical associations is a claim
to power, or a share of power. Claiming ownership of place and the event
represents a claim to power over the community that engendered it. What
happens to a place, and the rites observed there, when they do not belong
to the celebrant? Can the gravity of that place be shifted elsewhere; is the
stain of the place erased, to remain a historical “blank spot”; or does the
moral gravity of the crime so stain the place that none can remove it? What
is the power of law, which unearths the memories of victims and partici-
pants, reconstructs the event, assigns blame, and metes out punishment, to
reanimate the blank spot in the memory, and to bring moral gravity to bear
on the geographic site of the crime? Is that power magnified or diminished
when the relevant law belongs to the international community, bringing
greater attention to the memory, and sharing the victims’ tragedy with the
whole of humanity; but in that sharing, refusing victims the power to define
their tragedy as they wish?

This paper will not be devoted to what occurred at Katyn. Although still
a source of controversy between the Russian and Polish governments and
people, it seems clear that on March 5, 1940, the Soviet government ordered the execution of over twenty thousand Polish prisoners in several sites across the western Soviet Union, many of them near the village of Katyn. It will instead investigate the consequences of investing ritual meanings in a place that the commemorating nation does not own and of assigning meanings through words that the victim nation cannot define for itself.

Why Is Katyn the Site of Memory?

Katyn. In Polish the name stands alone, a focal point for national outrage and woe. The name of the place is the name of the event. In Russian, the event can be named in several ways, and the place name does not stand alone as a reference to the event. Russians sympathetic to Polish grievances will refer to the “Katyn tragedy” (Katyn’skaia tragediia); others simply speak of “Katyn’skoe delo,” literally the thing that happened at Katyn. The place and its name evoke for Poles not only the death of their compatriots but also the subsequent decades wasted under an alien socialist order. For Russians it can elicit compassion, solidarity arising from shared suffering under totalitarian rule, or even indifference and denial.

One need not provide a modifier for Auschwitz; the name itself speaks of the acts and suffering that it witnessed. For many Poles, Katyn carries a similar weight. It is a singular source of gravity attached to a complex of grievances that go beyond the events that occurred there and define a particular national consciousness. Evocation of the place acts as a symbol for the national tragedy that occurred there and elsewhere, and for the years of sovereignty lost in its wake. As Buzek told the Polish Sejm later in the year 2008, Katyn was emblematic of a greater attempt to destroy Poland’s existence. “These were not only Polish officers, Poland’s elite, who were buried in the Katyn graves. For many years, Polish sovereignty was buried there as well.”

Still, one might ask why the Polish government and so many Polish citizens have chosen Katyn, which is not on their territory, to be what Pierre Nora has called a lieu de mémoire, a site of memory. Speaking at the Polish military cemetery in Kharkov on June 27, 1998, Polish President Aleksander Kwasniewski explained, “The crime of Katyn . . . occupies a special place in the collective memory of Poles. It is a great sore, which we have to talk about ceaselessly—just so that it can be healed.” Why has this become the tragedy that defines the Polish nation?

One answer might be found in the fact that this act of willful remembering is accompanied by an act of forgetting. The painful truth is that while present-day Poland struggles for the right to commemorate its national tragedy where it occurred, and on the terms it chooses, there are many sites of genocide on Polish territory where many Polish citizens perished. These are of course the infamous death camps: Auschwitz–Birkenau, Belzec, Chelmno, Majdanek, Sobibór, Treblinka, designed to exterminate whole races, primarily the Jews. Operation Reinhard, the campaign to murder the Polish Jews in 1942, was so effective that it virtually eliminated the Jewish community in their own villages or at the camps in Treblinka, Belzec, and Sobibór.14 These are incontestably sites of genocide against Poles, and against many others, yet they do not provide places in which rites of Polish national identity are observed. Surely the most painful obstacle is the shadow of Polish complicity in the killing of the Jews, an accusation brought home in the Claude Lanzmann film Shoah and in Jan T. Gross’s book Neighbors. When in 2001 Polish authorities finally recognized and commemorated the pogrom and murder of the Jews of Jedwabne by their Polish neighbors, their pointed parallels to the massacre at Katyn did not sit well with all Poles.15 Polish-Jewish intellectual Adam Michnik expressed the mixture of confusion, guilt, and hostility felt by many Poles when the issue of complicity arises when he wrote, “I feel a specific schizophrenia: I am a Pole, and my shame about the Jedwabne murder is a Polish shame. At the same time, I know that if I had been there in Jedwabne, I would have been killed as a Jew.”

Katyn gives Poles a national tragedy of their own that they can claim to be a genocide, and to insert into their narrative of national identity. Their choice points to an unfortunate feature of genocide memory: genocide belongs to a victim people, and its memory is difficult to share. To call Katyn a crime against humanity—a terrible criminal charge in itself—and one that would in fact simplify prosecution of the perpetrators—would be for many a denial of Poles specific ownership as the victim people. The crimes against humanity at Katyn included many Russian victims. The power of the word genocide is in identifying Poles as the unique victims of Katyn. That the word provokes profound emotions, opens deep wounds, and instigates displays of national and ethnic identity, might show that few have learned the lessons that the crime should teach about national and ethnic enmity.

“Where is Katyn?” is still somewhat an open question. Though this might seem silly, since Katyn is both a real place locatable on the map as well as a historical event, for decades Poles wishing to honor the dead and lay memorial wreaths had reason to ask the question. They could find no such place in their homeland, nor could they find a place that gave testament to the event in the neighboring Soviet Union.

Thus it remained for Poles beyond the reach of the political authorities controlling the original site to erect ersatz Katy whole the lands settled by the Polish diaspora. There are, for instance, a large Katyn memorial outside of Johannesburg, South Africa; a smaller monument in Can-
nock Chase, Staffordshire (U.K.); a memorial stone outside the Church of Johannes in Stockholm; a dramatic statue in downtown Jersey City, New Jersey. There is a magnificent memorial found on Baltimore Harbor, a spiraling golden flame with the heroic figures of three Polish officers (one a woman) at its base, and the figures of such national heroes as Boleslaw the Brave, Kazimierz Pulaski, Jan III Sobieski, and Tadeusz Kosciuszko, none of whom can be connected to Katyn in any way. "Virtual" Katyns have appeared on the Internet, preserving the memory of the massacre but rendering the site fully disembodied. Although these monuments preserve the memory of the event, none could satisfy the need to memorialize Katyn at Katyn, to suture the event to the place.

Until the year 2000, opportunities were rare for Poles to venture to Katyn in any but a private capacity; to find a memorial to the events that had occurred in 1940; or find Russians to share the commemoration with them. Such moments were, on occasion, possible in other places. The most striking occurred on August 26, 1993, when Boris Yeltsin visited Powązki Cemetery in Warsaw. The post-Soviet Polish government had built a Katyn monument there, aligning itself with the popular commemorations that the socialist government had resisted, and it is still the most important reminder of the event on Polish soil. Yeltsin's visit marked a high point in Polish-Russian relations, and demonstrated how Katyn serves as a litmus test for those relations. During his visit Yeltsin and his counterpart Lech Wałęsa seemed able to reach agreement on a number of outstanding issues. The Russian leadership withdrew its objections to Polish membership in NATO; promised early withdrawal of Russian troops from Poland; and delivered Soviet files on the Solidarity movement from 1980 that discussed the possibility of invasion. The most striking moment of the sojourn was Yeltsin's visit to Powązki, where he laid at the Katyn monument, laid a wreath, and spoke aloud the words "Forgive us." Following this remarkable event, the two presidents issued a joint declaration that the perpetrators of the massacre would be punished and that efforts would be made to compensate victims of Stalinist crimes. The ambiguity of that last phrase would be the source of tensions in the future. The victims of Stalinist crimes included Russians as well as Poles, and the compensation would join the two peoples in condemning a dark period of the past. It would also make Russians fellow victims to the Poles, rather than the perpetrators of the crimes of Katyn. For Yeltsin and his fellow Russians, his apology was to have "closed the page" of Katyn; but for the Poles, it simply opened the book and began the long process of redress.

Contrition is an act of internal reckoning and external expression of remorse. It can be followed by forgiveness. In 1993, Yeltsin was presented with an Act of Forgiveness by the Federation of Katyn Families, the Polish organization representing the surviving family members of the Katyn victims. Contrition, however, is also an admission; when it crosses from the spiritual sphere into the legal world, it begs for prosecution, not forgiveness. Yeltsin and his government had assumed that his act of contrition was the closing chapter to the sad affair. But in September of that same year they were shocked to discover that Polish Justice Minister Jan Piatkowski had initiated an independent investigation into the Katyn massacre and had requested extradition of four former NKVD officers suspected of commanding the operation. To the new investigators, it mattered little that Wałęsa himself objected to the investigation; that the Russian Military Procurator's Office was already conducting an investigation; that the identification of the NKVD officers had arisen from the Russian investigation; and that under international and domestic law, there was not likely to be a legal basis for the extradition request.

Six years of mounting tension over Katyn ensued, as the Russian government grew increasingly uncomfortable with the extradition demand. The discomfort arose from profoundly different interpretations of the crime. To Yeltsin and his compatriots, Katyn was a Soviet crime. Its victims had, like millions of Russian-Soviet citizens, suffered at the hands of the Stalinist regime, whose successors had been removed from power. The chain of guilt and responsibility had been broken by the dissolution of the Soviet Union, an event that Yeltsin himself had precipitated. That Russians, who had been the primary victims of Stalinist repression, should accept the responsibility for such acts as the successors of the Soviet state, would seem absurd from this point of view. For Poles, it was obvious that the most culpable party was Russia. The breakup of the Soviet Union in 1991 made little difference, other than allowing greater access to the sites and documents of Katyn. The instigators of the massacre had been Russians; and now the Russians were dragging their feet.

Defining the Nation Through Memory

Political power often carries with it the power to create memories and to erase them. Memorial rites speak to both the past and present; and as Katharine Hodgkin and Susannah Radstone note in their introduction to Contested Pasts, the memories invoked in such observances can communicate "political agendas which serve particular ideas about the virtues of the nation, the family, or the current government." Public rites of commemoration summon forth images from the "collective memory," to use Maurice Halbwachs's phrase; but the celebrator of the rite claims the right to speak for that collective and identifies celebrants with that community. The celebrator who gives shape to the memory defines the collective by inclusion in the celebration— and also excludes others from that collective by
implication. Or as John R. Gillis has written, “The parallel lives of [memory and identity] alert us to the fact that the notion of identity depends on the idea of memory, and vice versa. The core meaning of any individual or group identity, namely a sense of sameness over time and space, is sustained by remembering; and what is remembered is defined by the assumed identity.”

Commemoration is thus an act of power, a “rite of power” as first coined by Sean Wilentz in his groundbreaking collection of essays on the subject. But that is not its only possible purpose. Scholars have brought attention to the role of commemoration as a counter-memory, a form of resistance to hegemonic discourses, drawing on the work of Michel Foucault. Counter-commemorations unearth the biographies of a site that have been buried by hegemonic regimes. They seek to piece together a “legitimate” past to counter the official histories that legitimized those regimes, and to reconstruct a national community based on different values, and with different constituencies.

Thus official commemorations of Katyn by the Polish government in the postsocialist years have functioned as both memories and counter-memories. Their explicit object is to exhum the silenced history of the Katyn, which was a foundation of the postwar socialist alliance between socialist Poland and the Soviet Union. Implicitly, though, they seek to identify the Polish nation as an ethnic group that shared certain values destroyed by the Soviet atrocity, and to marginalize those who would advocate other values. By identifying the victims of the Katyn massacre with the entire Polish nation, the commemorations erase the differences between those individuals and the Polish nation, and underscore the oneness, the homogeneity of Poles arising from their shared historical experience.

Katyn was erased from the national discourse of identity by the hegemonic socialist state; and citizens who stubbornly refused to forget were committing inescapably political acts. The subtext of the recovered memory is that it is tied to the recovery of civil society and national independence that began with the Solidarity movement in 1980, and culminated with official recognition of the massacre after 1989. This narrative of national rebirth was reinforced throughout the 1980s, first when Solidarity erected a memorial with the simple inscription “Katyn—1940” that was torn down by the socialist government. Subsequently, a yearly symbolic struggle took place in Powązki Cemetery and elsewhere in Poland, when on All Souls Day (Zaduszy) similar crosses would be raised by citizens and then removed overnight by police.

The connection between Solidarity and Katyn would not seem obvious, yet both are important elements of a narrative of erasure and recovery (of memory and of sovereignty). The connection between memory and the state is embodied by the Institute of National Remembrance—Commission for the Prosecution of Crimes against the Polish Nation (IPN, or Instytut Pamięci Narodowej—Komisja Ścigania Zbrodni Przeciwko Narodowi Polskiemu), created by the legislature in 1998 and operational since 2000. The IPN performs a number of tasks related to erasures of the national memory between 1940 and 1989, some tasks historical, others prosecutorial. It is responsible for the process of lustration, under which former Communist functionaries and collaborators are investigated and removed from positions of power; for historical research and the publication and preservation of documents; and for public education on the lost pages of history. The IPN charter also vests it with the power to prosecute crimes against humanity—among them genocide.

That national memory can be delegated to a governmental body suggests that statehood and memory are intimately linked. Resurrection of the memory of Katyn has been an important component of the recovery of full sovereignty for the Polish state since the fall of socialism in 1989. Poland has suffered several catastrophic erasures of sovereignty through its history, and has survived as a national and political entity by preserving its memories. These memories have been embodied by its culture, its language, its traditions and religious practices; and they are identified with the Polish nation. Thus Poles are deeply wedded to the traditional alliance of nation and state in an era when the nation-state and absolute sovereignty are becoming outdated. Thus it is emblematic that the Polish government, speaking for the whole of the Polish nation, calls for charges of genocide—the murder of a nation—rather than crimes against humanity.

Memory, as embodied by the commission, is associated with prosecution; it becomes a subject of law, and thus a monopoly of the state. Yet it is the national memory, not the memory of the state for present government, that the IPN represents. This creates potential conflicts of interest in a number of places. Perhaps the most painful source is its lustration powers, which make it responsible for the investigation of many Polish citizens who worked within the socialist state. So we must ask what happens to the national memory when it is usurped by the state? What happens when acts of sovereign memory carry legal consequences?

Genocide and Nationhood

Most incendiary in Buzek's Katyn speech in 2000 was his use of the word genocide. To label Katyn a genocide is to say that the crime was committed by one people against another, not by a totalitarian state against many individuals.
Just as Katyn is many things—a place, a sequence of events, and a national tragedy—so too is genocide more than one thing. Genocide is the ultimate act of collective criminality; it is not just mass murder, but killing that implicates the killers as a collective, implicating members of the killer nation who did not actually kill, and identifies the victims as a collective. It elevates the moral onus above all other crimes, including so-called crimes against humanity, which are large-scale atrocities against a population committed during time of war. Genocide, if not by definition then by common understanding, implicates an entire national group. Turks refute the charge of genocide against the Armenians because it stains their national legacy; and Russians resist the claim of genocide that would implicate them as a people. To label Katyn an act of Stalinist repression—a crime against humanity—identifies the criminals as Soviet authorities, lifting responsibility from Russia in its present form. As for the victims, the victims of Stalinist repression would be the Polish officers captured in 1940; the heirs empowered to speak for them would be the Federation of Katyn Families. If the crime was genocide, then all Poland is heir to the victims and can speak for them.

Genocide is both a crime and a narrative of nationhood, and carries very different meanings and implications in its two natures. As a crime, genocide has a brief and modern history; the act had not in fact been named or identified as a crime when the killings at Katyn took place. Yet to say that genocide did not exist in 1940 requires a great deal of qualification. The intentional extermination of peoples was not new when the Third Reich began to murder its Jews in the 1930s. Hitler himself cited the extermination of Armenians as evidence that the world would ignore such a crime. At the Nuremberg War Crimes Tribunal, which used the term genocide in the charges against the Nazi leadership, prosecutor James McHaney cited the massacres committed by Genghis Khan and by Tamerlane as precedents. Ironically, perhaps Yahweh committed the first recorded genocide, when he slaughtered the firstborn children of the Egyptians and compelled the pharaoh to let the Hebrews return to Israel. That act, mythic or real, fully fits the definition of genocide in Article 2 of the Genocide Convention of 1948 as an act "committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such."35

Dzuzek’s accusation of genocide and demand for justice and punishment also creates a conundrum. For a crime to be punished, there must have been a law that defined it as a crime when it was committed. The cold-blooded shooting of the Polish officers unquestionably qualifies as one of the acts listed in the Genocide Convention (killing members of the group, as specified in Article 2a); less clear is whether the Katyn massacres were committed with the intent to destroy the Polish nation as such; and whether they approach the scale where slaughter becomes a killing of the Polish nation in part.36 On the other hand, the category of crimes against humanity did exist in 1940, as the Nuremberg Tribunal concluded.

The accusation of genocide points to the peculiar barriers confronting Poles as they seek to celebrate a rite of place in its essential location. When Poles mourn their losses at Katyn, and fix it as a focal point of national identity, they are doing so on foreign land owned by the sovereign state that they accuse of perpetrating the crime. Their accusations rest on a word, genocide, of such moral gravity that it does not belong to them. Although coined by the Polish Jew Raphael Lemkin, the word is almost uniquely international, owned by all and by none. Its definition is fixed by international law and parsed by international courts assessing different conflicts and atrocities. While any people or individual can use the phrase to describe their national tragedy, they cannot use their own definition of it to prosecute the perpetrators in court.

The charge of genocide, which has increasing resonance throughout Polish society, rests on a subtle link of claims. Essentially the case would be that the victims were not just Poles, but they were the core elite capable of maintaining Polish sovereign nationhood. Thus the massacre was an attack on the entire nation; as one recent report would have it, "Stalin was seeking to liquidate Poland’s elite to prevent the rebirth of a sovereign Polish state."37 The claim is most fervently advocated by the Katyn Committee; its head, Stefan Melak, in calling on Russian authorities to recognize the genocide, claims that "Katyn will always remain a symbol of a death sentence passed on Poland."38 In his film Katyn (2007), Andrzej Wajda subtly underpins this contention when he identifies the perpetrator of the act as "Soviet Russia," and interweaves the otherwise unconnected story of the extermination of the professoriate of Jagiellonian University with the killings at Katyn. In the film, the unnamed general who leads the prisoners gives his fellow captives a Christmas message, explaining to the intellectuals in their midst, "You must endure, because there won’t be a free Poland without you. The aim for us, ordinary soldiers, is to put Poland again on the map of Europe. Yet you’ll have to make that Poland come true in Europe."39

Offenses against sovereignty, however, are not acts of genocide, traumatic though they are.40 More problematic for the prosecution would be that genocide had not been classified as an international crime before the war. It is a cardinal principle of international criminal law and human rights law that no criminal prosecution can be brought for an act that was not classified as a crime before its commission. Thus although the indictment at the Nuremberg Tribunal included the word genocide, it was used as a descriptive term under the heading of crimes against humanity, not as a charge.41 One
of the most chilling paragraphs of the Judgment at Nuremberg, in fact, is that in which the court found that it could not render judgment on Nazi officials for the systematic extermination of Jews before the 1939 outbreak of war, the threshold beyond which the court had no jurisdiction. The massacre at Katyn was a war crime and could well be considered a crime against humanity. The distinction rests on whether the Polish officers at Katyn were prisoners of war in an ongoing conflict or whether they were civilians who had resided on lands now incorporated into other states, citizens of a country that no longer existed. War crimes would have been committed against prisoner officers; crimes against humanity against civilians during a time of war. The Charter of the Nuremberg Tribunal established that both charges carried force of law throughout the period of the German-Russian partition of Poland; and both crimes carried heavy penalties, including the death sentence.

Thus, as the charges leveled by Polish authorities and the public cascade toward genocide, the likelihood of a case being brought and justice served diminishes. Regardless of the feasibility of a case for genocide being brought in any court, the legal maneuvering has only exacerbated the deep-seated tensions between the two states and nations. Criminality and prosecution have entered the public debate, where they escalate in exchanges of accusation and denial. Tensions heightened in 2004 when "Russian authorities announced that they were discontinuing their own investigation into the Katyn murders because none of the decision-makers from that time are still alive." This same statement also claimed that the crimes at Katyn were neither genocide, nor crimes against humanity, nor war crimes, but simple murders, for which the fifty-year statute of limitations had run out.

This was a long way from the spirit of reconciliation of 1993, and even from the concessions that led to construction of the Katyn Memorial. The outrage felt by Poles offered a window of opportunity for Polish authorities. On December 1, 2004, the Institute of National Remembrance opened its own investigation, using powers given to it by the Polish Sejm. The acts to be investigated by the Departmental Commission for the Prosecution of Crimes Against the Polish Nation were described as "the mass execution by shooting, of not less than 21,768 Polish citizens, carried out for the purpose of liquidating part of the Polish ethnic population." Among the terms used by the commission to describe the massacre at Katyn were "war crime and a crime against humanity." But the primary accusation of the commission was that Katyn was an act of genocide:

The selection of persons for extermination was also characterized by the fact that they formed part of the intellectual elite of the Polish nation that, under the appropriate conditions, could assume leadership. The physical elimination of these people was meant to prevent the rebirth of Polish statehood based on their intellectual potential. Therefore the decision of elimination was taken with the intention of destroying the strength of the Polish nation and liquidating its elites. Therefore one can conclude that the murder of Polish prisoners of war and Polish civilians by the NKVD was dictated by a desire to liquidate part of the Polish national group. Hence, this action assumed the status of genocide as described in Article 2 of the Genocide Convention.

The accusation treads on the equivocal territory of the Genocide Convention's definition of the crime as the intent to destroy a particular group "in whole or in part." That the crimes of Katyn were directed against Polish citizens is undoubted; that this was part of a plan to destroy the Polish nation is not substantiated. Although Russian cooperation in the extradition of the perpetrators was already unlikely, this accusation eliminated any chance that the Russian Federation would violate its own constitution to extradite any living perpetrators of the crimes.

The legal complications that arise from the accusations of genocide speak less to the sustainability of the charge than to the role of memory in securing sovereignty for a nation-state in an era of globalization and internationalism. Why does the Polish government, speaking for the whole of the Polish nation, wish to classify the crimes of Katyn as genocide? Herbert Hirsch notes: "Nation-states in particular use, create, or respond to myths about themselves that they wish to perpetuate, and, in turn, the myths are used to justify or rationalize policies that the leadership of the state wishes to pursue. National self-image is enhanced by memory—in particular, memory about how the state responded to a crisis situation." One of the anchors of sovereignty is law, while nation-statehood is founded in memories, sometimes historically factual, sometimes legendary. Thus by seeking to control the memory of Katyn as an element of nation-statehood, and to define Katyn by law as an act of genocide, the Polish government has created an irresolvable dilemma. The primary purpose of the charge seems to be less justice than to frame the events of Katyn as a crime against the entire Polish nation, and the proper naming of the act to represent the final and full recovery of the national memory. Thus Katyn must be genocide, an act against the nation, rather than a crime against humanity as a collective of human beings.

The insertion of legal solutions into the matters of national identity that are more properly addressed by rites of commemoration has led to a series of increasingly absurd acts, namings, and accusations associated with
lieux de mémoire. The Polish Sejm stepped into the fray following closure of the Russian investigation and opening of the IPN case. In March 2005, it passed a resolution demanding that the Russian government recognize the killings at Katyn as genocide. The resolution had no legal force, nor could it have, but it became another irritant in a relationship already damaged by Polish accession to the European Union, the Orange Revolution in Ukraine, and the Chechen conflict. The pomp and pride displayed by the Russians during the sixtieth anniversary of the victory over the Nazis, in which the annexation of the Baltic states and partition of Poland went unmentioned, were further irritants. An unofficial boycott of a touring Russian ballet troupe, which canceled its tour after facing a series of empty theaters, was a popular response to the Russian war commemoration. The tussle was ended by a duel of rites of place, when Poland announced in 2005 that “it planned to name a square in Warsaw after the slain Chechen separatist leader Dzhokhar Dudayev. Moscow responded by threatening to rename the street in which the Polish Embassy has its seat in Moscow after Mikhail Muravyov, a Russian army general nicknamed the ‘hangman’ for his ruthless suppression of the Polish uprising of 1863.” Thus each sovereign state used its rights of sovereignty and rites of commemoration to antagonize the other, and made the mutual and common remembrance of Katyn and its tragic massacre impossible. The Poles are left to remember their dead and their national tragedy at home, and to build new memorials to Katyn, as they have done at Katowice, and yet again in Warsaw, atop Święty Krzyż (Holy Cross), the high mound that houses the national television tower.

Conclusion: A Refugee Rite

To understand rites to be an appendage of power, à la Foucault, an act by which a state or power subjects a place and the memories attached to it to its disciplines, enforcing meanings that are unambiguous and become instruments of discipline, is to remove the individual from the process of collective memory. States of the socialist era, by erasing the memory; the present Russian government, by denying essential features of the memory; and the present Polish government, by placing the memory under the control of a state institution: all would seemingly agree on the binding relationship between historical memory, power, and sovereignty.

The charge of genocide assigns victimhood and guilt to collectives. In the debate over Katyn, these collectives have been nations. Genocide elevates the crime, but the power of the word can also erase the individual tragedies of the murdered victims and their families. So too the word genocide empowers states to mobilize law to define and exact punishment for the acts, which thereby enter the realm of state control. The individual is excluded as a site of autonomous memory and can only participate in the rites of place as they are defined by the sovereign.

In Homo Sacer, Giorgio Agamben opposes the sovereign, who lives completely within law, in the sense that his acts are empowered and regulated by legal regimes, and outside law, in that he can suspend law through a state of emergency, to Homo sacer, the person whose crimes have excluded him from law and its protections, and yet whose exile is defined by the laws that exclude him from society. Agamben argues that the modern state, with its vast powers of exclusion and exception, has constricted the space between the political being (the citizen) and “bare life,” the being born into the world to be absorbed by the political order, which cannot however be fully subsumed by the state. Thus ironically, Homo sacer, excluded by the sovereign and unprotected by law, lives closer to bare life than the citizen or sovereign. Elsewhere, following Hannah Arendt, Agamben argues that the modern figure of the refugee, excluded from one society, living in another place but having no country, has an existence analogous to Homo sacer. Agamben argues that in an era where the nation-state is threatened by global forces, refugees and their status of exclusion should not be seen as exceptions, but as the model of the human being.

Given the by now unstoppable decline of the nation-state and the general corrosion of traditional political-juridical categories, the refugee is perhaps the only thinkable figure for the people of our time and the only category in which one may see today—at least until the process of dissolution of the nation-state and of its sovereignty has achieved full completion. Inasmuch as the refugee, an apparently marginal figure, unhinges the old trinity of state-nation-territory, it deserves instead to be regarded as the central figure of our political history.

Perhaps similarly we should consider Katyn to be a fugitive or refugee site, situated in a place that denies the event a national identity. Katyn and the crimes committed there will continue to live outside the law; the acts will escape criminal definition, jurisdiction, prosecution, or any act of justice. The heirs of the victims, be they the families of the slain officers or the entire Polish nation, will continue to celebrate their rites of Katyn as they wish in the memorial sites of their own country, or in uneasy community with Russians mourning all victims of the Stalinist state. Those who choose to celebrate the rites provided by their states in the sites provided by their states will be enmeshed in the conflict of sovereigns. The voices of those
who enter these places as refugees, commemorating the massacres as a human rather than a national tragedy, will for the time being be muted.

That Katyn, the place will remain a site of contestation seems beyond doubt. The meanings of the acts of Katyn seem destined for a similar fate. Poland will not gain sovereignty over the land on which Katyn and its victims rest; its government cannot force the Russian government to name Katyn a place of genocide or to prosecute its perpetrators. Individuals can, if they choose to mourn as members of a nation, recognize the place as a site of lost sovereignty and contemplate the continuing absence of sovereignty over this memory. Perhaps this is an apt if unwelcome commemoration for a people whose history has been marked by long periods of lost sovereignty and who have lived for many years as refugees and exiles. Or perhaps they can recognize their own humanity beyond their inclusion in a nation-state, their “bare lives” so like those snuffed out in 1940, the lives of Poles but also of individual human beings. And then the mourners can recognize that genocide and crimes against humanity are not antithetical, but that genocide is just a species of crimes against humanity, the most terrible. Then they can commemorate their rites of place in Katyn both as Poles and as human beings, allowing them to share their rites with others.

The above words were, needless to say, written before the tragic events of April 10, 2010. An airplane carrying Polish President Lech Kaczyński, his wife, and eighty-seven other high-ranking officials crashed in Smolensk, en route to a memorial service at Katyn to mark the seventieth anniversary of the massacre. Kaczyński was to deliver an address to honor the victims, note the role that the massacre had played in postwar Polish-Soviet relations, and then emphasize the need for reconciliation between Russia and Poland. This would follow upon another ceremony that had taken place on April 7, when prime ministers Donald Tusk and Vladimir Putin stood together to commemorate and condemn the massacre.

The plane crash would seem to have revived the cycle of the Katyn tragedy just when it seemed that the two societies had found the strength to both remember and reconcile. The incident offered all the elements for a conspiracy theory. The Polish officials had been flying on a Russian-made plane, landing in a Russian airport. Immediate reactions reflected the sense that Katyn would forever stand as an open wound, a site that would never receive its proper commemoration. Former President Aleksander Kwasniewski called Katyn a “damned place. It sends shivers down my spine.” Surely he spoke for many when he added, “This is a wound which will be very difficult to heal.”

Lech Wałęsa called the crash “the second disaster after Katyn,” and noted, echoing a phrase from Andrzej Wajda’s film, “They wanted to cut off our head there, and here the flower of our nation has also perished.”

At this juncture, a surprising thing happened. The two nations stepped back and resolved that Katyn and its history would not dictate their actions. Poland mourned the loss of its leadership with dignity, not anger, and with a trace of pride in its ability to function as a democratic nation after such a shattering event. Putin and Russian President Dmitry Medvedev offered deep and sincere sympathy to all Poles, a sympathy that resonated with the Polish public because it was substantiated by actions. The Russian leadership launched a full and thorough investigation of the crash, which exonerated Russian personnel involved in the incident, yet managed to satisfy a skeptical international public that remembered all too well the investigation that had concealed Soviet guilt for years. The Wajda film on Katyn, which had been shown on Russian television prior to Donald Tusk’s visit, was shown again, making it difficult for Russian deniers of the massacre to continue to do so. Finally, on May 8, the Russians handed over the evidence collected during the thorough investigation of the 1990s, comprising over sixteen thousand pages of materials. This would be the step that would place indelible proof of the tragedy and its perpetrators in Polish hands. While this was not the same thing as a permanent memorial under Polish control, it did anchor the memory of the tragedy in a permanent repository of facts.

Notes


2. The crimes of Katyn have been well documented, although many of the investigative materials come with a heavy bias. A striking collection of photographs of the disinterred corpses can be found in the German publicationAmtliches Material zum Massenmord am Katyn (Berlin: Central Verlag der NSDAP, 1943). The U.S. Government published investigative materials at the height of the Red Scare: The Katyn Forest Massacre: Final Report of the Select Committees to Conduct an Investigation of the Facts, Evidence and Circumstances of the Katyn Forest Massacre Pursuant to H. Res. 390 and H. Res. 539, Eighty-Second Congress, a Resolution to Authorize the Investigation of the Mass Murder of Polish Officers in the Katyn Forest near Smolensk, Russia (Washington, D.C.: U.S. Government Printing Office, 1952). A great deal of secondary literature on the subject has been produced; only recently have some, but not all, of the necessary primary materials been published. Notable here are Katyn: Flenniski roebiawdenny, woiny.


13. See also Dominick LaCapra, "Revisiting the Historians' Debate: Mourning and Genocide," History and Memory 9, nos. 1–2 (Spring 1997); Adam Katz, The Closure of Auschwitz but Not Its End: Alterity, Testimony and (Post)Modernity, History and Memory 10, no. 1 (Spring 1998).

14. Timothy Snyder notes that the campaign against Eastern European Jews was so effective that virtually none survived the war to bear witness. This is much different from the Western European Jews who were shipped primarily to Auschwitz, some of whom survived and left vivid testimony. Timothy Snyder, "Holocaust: The Ignored Reality," New York Review of Books 56, no. 12 (July 16, 2009).


17. Links to websites with photographs of these and other Katyn memorials can be found at "Katyn Forest Massacre," http://www.katyn.org.au/memorials.html.


27. The Russian military prosecutor ultimately sought charges of genocide against former NKVD officers for the Katyn massacres but was rejected by the military court. See Katynski sindrom v sovetsko-polskikh i Rossiisko-polskikh otnosheniiakh (Moscow: ROSSPEN, 2001), 487–94.


34. Gil Eyal, "Identity and Trauma: Two Forms of the Will to Memory," History and Memory 16, no. 1 (Spring/Summer 2004): 7, notes that "two different types of 'will to memory' now operative in Eastern Europe, each of which specifies the goal of collective memory quite differently. In fact, they correspond to two different understandings of the functioning of memory in the individual psyche, that is, of what memory is supposed to do for individuals: in one version, memory is the guarantor of identity and maintains it through time—it is the mechanism of retention responsible for the experience of being a selfsame individual moving through time; in the other version, however, memory plays a role in overcoming psychic trauma and the processes of dissociation it sets in motion."
36. Ibid.
38. Ibid.
40. Robert M. Hayden, "Genocidal Denial" as Secular Heresy: A Critical Analysis with Reference to Bosnia," Slavic Review 67 , no. 2 (Summer 2008): 387, notes that "the word genocide . . . connotes exceptional evil, more than other war crimes and mass killings. To those who firmly believe that genocide has occurred, questioning that belief is immoral, perhaps even a "vicious" act." He notes elsewhere (419) in reference to another such reinterpretation of the meaning of genocide, that "paraphrasing is normal in history and anthropology but is simply not acceptable in law, where every word is important."
43. The definitions relevant to Katyn would be those of the Nuremberg Tribunal in Article 6 of its charter. This can be easily accessed at the Avalon Project: avlon.law.yale.edu/imt/imtconst.asp.
48. Ibid.