

NATIONALISM, DEMOCRACY, AND MEMORY LAWS

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Controversies over historical interpretation have become a key focus of contemporary politics in countries across the world. Recently, these issues have taken on particular prominence in Europe, where a burgeoning array of laws governing how the past may be publicly recalled has sparked heated debates. Such “memory laws” have been enacted over the past several decades across a variety of regimes including the consolidated democracies of Spain and France, the backsliding democracy of Poland, the “defective” democracy of Ukraine, and an increasingly authoritarian Russia. Critically, most of these laws are intended to shape, rather than simply to reflect, social norms about how the past should be understood and discussed. For example, France’s 2005 Mekachera Act attempted to enshrine a more positive view of that country’s colonial involvement in Africa; a 2014 amendment to Russia’s penal code made it illegal to denigrate the actions of the Soviet Union during the Second World War; and a 2018 Polish statute attempted to protect the “good name” of the Polish state and people against any charges of complicity in Nazi atrocities, among other potential slights.

Most of these recent memory laws may be understood as *prescriptive*: Their purpose is to enforce an officially sanctioned way of relating to the past, viewed by their proponents as a means of strengthening national identity. The passage of these laws reflects, in part, anxieties about preserving the national unity and cultural coherence of states against the backdrop of European integration efforts. In Eastern and

Western Europe alike, growing nationalist and anti-EU sentiment has called into question the arrival of the “postnational age” once touted by commentators. One manifestation of this growing crisis of postnationalism has been a rapid expansion of the roster of countries that have adopted memory laws, as well as of the thematic terrain that these laws cover. Simplified historical narratives geared toward reshaping identities so as to “renationalize” politics have been central to the rise of nativism and populism. But while scholars have begun weighing the admissibility of memory laws from a free-speech perspective, we still lack an understanding of how these laws affect Europe’s liberal commitments and supranational aspirations.

Both the roots and the consequences of memory legislation span the domestic and international realms. Regardless of their exact origins, recent memory laws have in common the tendency to promote an uncompromising style of political confrontation. Often, they rest on exclusivist interpretations of the past that ignore or deny the legitimacy of dissenting voices. This zero-sum approach comes accompanied by moralizing rhetoric, all of which makes it difficult to reach the sort of political settlements more readily achieved in debates over socioeconomic policies. In comparison to other issue areas, disputes over historical memory are particularly prone to evoke strong emotions and a sense that wider social identities are at stake.

As a result, the new generation of memory laws threatens free speech and the pluralistic approach to historical memory that is a hallmark of liberal societies. Defenders of this legislation frequently invoke an older set of laws banning Holocaust denial that emerged in the 1980s and early 1990s in Germany and France. But important differences exist between these precursors and the more recent crop of European memory laws. The earlier legislation largely reflected established social norms and was aimed at fostering reconciliation, encouraging international dialogue, and providing a safeguard for minority rights. Today’s laws instead frequently contribute to political tensions within and between states.

Legislating the Memory of the Shoah

Laws aimed at mythologizing the nation-state are not the only type of legislative directives on how to speak publicly about the past. The initial generation of European memory statutes specifically sought to *demythologize* national histories and protect the memory of victims, with the goal of helping to integrate diverse societies and overcome previous cycles of violence.

The 1980s saw the passage of the first laws enshrining the memory of the Holocaust. By this point, the dead of the Shoah had come to represent the universal victim, serving as the ultimate example of

civilian suffering and dehumanizing violence. In this respect, the Shoah has become a detemporalized and abstract symbol of evil in modern societies, a yardstick against which other tragedies and crimes against humanity are measured. But from this paradigm there has grown up a broader model of political remembering, applied to historical events in many different times and places, that also puts victims at the center. Where such approaches have become prevalent, national heroes recede from view and memories of loss, suffering, and sacrifice instead take center stage. These trends are particularly evident in the German case, where certain commemorative practices suggest a radical equivalency of victims. At the country's chief memorial for the victims of war and dictatorship in Berlin ("Neue Wache"), for instance, one finds today the remains of a nameless Nazi concentration-camp victim *and* an unknown soldier alongside a Pietà-style sculpture by Käthe Kollwitz signifying national mourning.

The first law explicitly against Holocaust denial was passed in West Germany in 1985, with similar legislation appearing in Israel in 1986 and France in 1990. In Europe it was the political left that advocated these laws, which supporters hoped would work to curtail reemerging anti-Semitism and "civilize" public discourse in states directly linked to this historical tragedy. In West Germany, the legal ban on denial was enacted in the final stages of a long process that shaped social parameters for discussion of the Holocaust. This process, which began in the 1960s, involved not only judicial proceedings, such as the trials of Nazi officials, but also cultural events (for instance, the airing of the influential 1978 American miniseries *Holocaust*), extensive scholarly reflection on the topic, and wide-ranging public debate, as exemplified by the *Historikerstreit* ("historians' quarrel") of the 1980s. The latter exchange marked the culmination of a controversy involving two groups of intellectuals: on the one side, those who downplayed historical guilt by emphasizing West Germany's post-1945 democratic transition, and who were broadly sympathetic to the leadership of center-right chancellor Helmut Kohl (Ernst Nolte, Michael Stürmer, Klaus Hildebrand); and on the other, proponents (most notably Jürgen Habermas) of a left-liberal critique that stressed the unique significance of the Third Reich and the particular responsibility borne by Germany. Critically, however, both camps agreed on the need to make negationism (denial of the Holocaust) a crime.¹

The Holocaust-related legislation of the 1980s and 1990s, therefore, was *proscriptive*, as it codified an already existing societal taboo. Views about whether such laws are an appropriate tool for safeguarding social cohesion may differ, particularly in light of the different understandings of free speech in various national legal cultures. As a practical matter, however, the 1985 West German law and the changes it ushered in regarding commemoration of the Holocaust helped Germany to rein-

tegrate into the ideological fold of the Western world. Memory laws, therefore, have at least the theoretical potential to bring about outcomes supportive of the liberal-democratic order. Additionally, they may provide a “safety valve” in cases of gross violation of societal norms and beliefs, thereby guarding against what Jeremy Waldron terms the “harm in hate speech.”²

Today there is wide global agreement over how to commemorate the victims of the Shoah, a development that reflects the spread and now dominance of the interpretive consensus achieved by Germany and France in the late twentieth century. Highlighting this, the United Nations introduced Holocaust Remembrance Day in 2005. This memorial date (January 27) is not the only one; it exists, for instance, alongside the European Day of the Righteous (observed on March 6), which the European Parliament introduced in 2012. Yet in a turn indicative of the Shoah paradigm’s growing use as a lens through which to view other historical events, this latter day does not honor only those who saved the lives of Jews during the Holocaust. Instead, the declaration establishing the Day of the Righteous mentions all those who “saved lives during all genocides and mass murders (such as the Armenian, Bosnian, Cambodian and Rwandan ones) and the other crimes against humanity perpetrated in the 20th and 21st centuries.”

Another development that reflects the prevalence of such perspectives is the emergence of truth-and-reconciliation commissions around the globe. The first widely recognized commission of this kind was established in Argentina in 1983.³ Tasked with serving as instruments of transitional justice in former conflict areas, these commissions spread rapidly, propelled not only by changing norms regarding the acknowledgement of victimhood, but also by a growing recognition, reinforced by international courts and intergovernmental organizations such as the United Nations, that individuals have a fundamental right to know the truth about difficult past events. A closely related trend—one that is especially apparent in Europe—has been the rise of state-sanctioned historical commissions. These range from such entities as Poland’s Institute of National Remembrance, which began functioning in 2000, to the numerous bilateral bodies tasked with explicating the past that “are now a fixture in Europe, especially, but not exclusively, in cases concerning Germany’s relations with its neighbors after World War II.”⁴

Victimhood Universalized

The first generation of memory legislation set a precedent for today’s laws. Nevertheless, the more recent laws tend to be very different in their political motivations, reflecting new transnational patterns that have emerged in the last several decades to shape debates over public memory. One of the most striking inadvertent effects of acknowledging

the Shoah as the quintessential example of human suffering has been a transformation of its rhetorical significance. In public discourse, the Holocaust now functions not just as a concrete event but as a universal symbol for victimhood, untethered from its original temporal and geographic context. This paradigm lends itself to the drawing of connections between the Shoah-as-symbol and a host of atrocities, including the Armenian genocide, the African slave trade, the United States' atomic bombing of Hiroshima and Nagasaki, and more recent acts of violence in places such as Cambodia, Rwanda, and Syria.

These developments have foregrounded three mechanisms that are in turn creating an environment ripe for the adoption of prescriptive memory laws: 1) competitive victimhood; 2) the amplification of particular events; and 3) the spread of informal norms that govern discussion of the past. Politicians may engage in these practices for instrumental reasons—they form a useful “politics of distraction”—but they can also reflect profound concerns about establishing the historical truth and seeing justice done.

First, competing attempts to construct hierarchies of victimhood have become a hallmark of contemporary memory politics. In particular, since the Holocaust now functions as a comprehensive symbol of suffering, various actors have invoked the Shoah in order to highlight the severity of lesser-known crimes. Ukrainian president Viktor Yushchenko, for instance, sought to underscore the horrors of the 1932–33 famine known as the Holodomor (“death by hunger”) by emphasizing his claim that the number of Ukrainian victims of this event was seven million or more, as opposed to the six-million Jews who perished in the Shoah. Yushchenko also successfully pushed for a law recognizing the Holodomor as a deliberate act of genocide and outlawing its public denial. Passed in 2006, this legislation led a columnist for the Russian daily *Izvestiia* to comment:

What the recognition of the Holodomor as genocide will bring those who managed to survive the hungry thirties is, so far, unclear. The financial implications of the law were not discussed. They focused, as the president had urged, on the moral-ethical. Now, one must write holodomor with a capital letter—like the Holocaust.⁵

These remarks illustrate both the rhetorical impact of attempts to benchmark other tragedies against the Holocaust, and the transnational clamor that often ensues.

Second, the universalization of victimhood can entail more than making explicit comparisons to the Holocaust. The same logic may manifest within nationalist historical narratives. For instance, on 9 April 2015 the Ukrainian parliament passed a quartet of so-called decommunization laws. One of these (Law 2538-1) recognizes all partisan groups and irregular military formations that strove for Ukraine's independence in

the twentieth century as national freedom fighters and makes it illegal to publicly denigrate their memory or their veterans' reputations. This blanket description ostensibly covers a diverse array of groups, ranging from clandestine organizations that sought to overthrow the Russian czar, to peasants who fought both the Bolsheviks and their White opponents during the Russian Revolution, to Ukrainian nationalists of the 1940s who temporarily aligned themselves with Nazi Germany. The new law is indifferent as to when and under what specific conditions the protected fighters for Ukrainian independence were active. Effectively, it removes these groups and movements from their particular contexts by uncritically depicting all of them as fighters for the same cause: national liberation. This mnemonic paradigm amplifies the transcendent principle of self-determination for Ukraine, just as the Shoah paradigm reinforces a transcendent principle of "never again."

Third, the norms associated with the Shoah paradigm have spread to encompass even countries that do not have laws against negationism. In the United Kingdom, for instance, a strong tradition of free speech has prevented the adoption of such legislation. Nonetheless, in June 2018, a woman named Alison Chabloz was given a two-year suspended sentence and ordered to undertake 180 hours of community service following her arrest for posting on the internet satirical songs that insulted Jewish people. While the songs did mention the Holocaust, Chabloz was not found guilty of Holocaust denial *per se*; rather, she was convicted on three charges related to the dissemination of an "offensive, indecent or menacing message or material." Yet the comments of Gideon Falter, chair of the U.K.-based Campaign Against Antisemitism, reflect a widespread understanding of this verdict (they also mirror the language employed by the sentencing judge):

Alison Chabloz has dedicated herself over the course of years to inciting others to hate Jews, principally by claiming that the Holocaust was a hoax perpetrated by Jews to defraud the world. She is now a convicted criminal. This verdict sends a strong message that in Britain Holocaust denial and antisemitic conspiracy theories will not be tolerated.⁶

Memory Laws: Where, When, and How

Against this backdrop, the last two decades in particular have seen the adoption of mnemonic legislation whose purview extends well beyond discussion of the Shoah. Our investigation has identified well over two-hundred punitive laws, resolutions, and declarations governing historical memory, the overwhelming majority of them from Europe. The effects of these official acts run the gamut from criminalizing "incorrect" depictions of the past—which may result in hefty fines and jail sentences—to serving as declarative statements of official positions. What they all have in common is that they mobilize the might of the

state behind an approved narrative concerning the past. Among them, there are notable differences in thematic orientation that largely map onto an East-West division. For example, most West European memory laws—particularly those implemented early on—were designed to protect the dignity of the individual victims of state-sponsored crimes. Of course, not all West European laws clearly fit this model, but on the whole, they sharply contrast with their counterparts in the postcommunist states of Eastern Europe, which came later and which are typically focused on protecting the memory of the state or nation.⁷

In Eastern Europe, the “juridification” (to use Jürgen Habermas’s language) of history began in earnest in the mid-to-late 2000s. We contend that this uptick occurred as sharply diverging political discourses about the past took off in Russia on the one hand and the former Warsaw Pact states on the other. There were two main causes for this. First, eight postcommunist countries acceded to the EU in May 2004. During the period when these states were candidates for membership, the EU made it clear that they needed to more overtly acknowledge the Holocaust. It did not, however, provide them with a venue for voicing their national grievances over the past, which had been suppressed for decades under communist rule. But once these states were firmly ensconced in the institutional architecture of Europe, they began to push for wider recognition of their own narratives. A principal theme of these narratives was that the Soviet Union, while it may have brought about the end of the Second World War, did not bring liberation to Central and Eastern Europe.

Second, around the same time, Russian president Vladimir Putin embarked upon a concerted attempt to selectively rehabilitate aspects of the Soviet past. This effort marked a significant departure from the years of Boris Yeltsin’s presidency (1991–99), when the Soviet experiment was generally viewed as a tragic rupture in the sociopolitical continuity of the Russian state. The new nationalistic history adopted under Putin blurred the line between the Czarist and Soviet pasts. In addition to the narrative’s usefulness for strengthening Putin’s domestic position, its launch also reflected his growing conviction that the West was unprepared to accept post-Soviet Russia, with its reduced geopolitical heft, as an equal.

The triggers for the introduction of memory laws are revealing. Frequently, these laws are proposed in conjunction with major anniversaries of key historical events, pointing to their time-sensitive nature. Beyond this, there is also an important transnational dimension: Cross-border discourses and the actions of supranational bodies can provide an impetus for the introduction of new laws. For instance, the 2008 EU Framework Decision on Racism And Xenophobia, which linked negationism to racism and actively promoted the adoption of laws banning Holocaust denial, encouraged a cascade of legislation along these lines (with such

laws passed, for instance, in Malta in 2009, Montenegro in 2010, and Italy in 2016). Moreover, additional laws were adopted that concerned events other than the Holocaust but were nonetheless modeled after, and justified by, the recommendations of the Framework Decision.

Debates about memory laws also exist within a broader transnational ecosystem of competing historical narratives. Through individuals living abroad, the narratives affirmed by prescriptive mnemonic legislation travel and gain traction in other countries. The actors who carry these ideas across borders are not state elites, but rather influence groups. Of particular significance are diasporas, which are increasingly able to exert influence in their countries of origin as well as their countries of residence thanks to growing options for travel and communication.⁸ Socially prominent diaspora communities living in affluent liberal democracies can use their free-speech rights to shift the tenor of historical discourse both at home and abroad.⁹ Such communities are also influential because their personal connection lends an extra authenticity to the historical narratives that they promote. For example, due to the concerted lobbying of the Armenian diaspora in the United States, 48 U.S. states have formally recognized as genocide the mass deportations and violence against Armenians in Ottoman Turkey around the time of the First World War.¹⁰

Given the advent of social media and digital publishing, which have led to never-ending news cycles and ever-diminishing editorial controls, mnemonic entrepreneurs working at the behest of states or on their own initiative can now spread historical claims more cheaply and efficiently than ever before. Together, online and offline social networks can disseminate historical narratives and symbols in powerful and unexpected ways. In May 2017, for instance, activists from the community of Russian-speakers in Syria passed out the black and orange St. George's Ribbon, along with an Arabic-language explanation of its significance, to passersby in Aleppo. Since 2005, these ribbons have become a highly popular symbol of the Soviet Red Army's victory in the Second World War, and they are closely associated with the official narrative reflected in Russia's 2014 legislation. Through their distribution in Aleppo, the ribbons took on a new meaning, removed in space and time from their original connotation, as symbols of Russia's defeat of Syrian rebel forces. As one Syrian participant put it, "I know that this is a great holiday for our Russian friends, Victory Day over Fascism, over evil. Russia has always been a protector and helper to oppressed peoples. And now Russia is protecting us when other countries have united against us."¹¹

Implications at Home and Abroad

Through a range of domestic effects, today's norm-shaping memory laws are furthering the retreat of liberalism across Europe. In Spain, which adopted a controversial memory law in 2007, conflicts over how

to view the Francoist past continue to deepen rifts and impede dialogue among both politicians and the broader public. The law, introduced by the Socialist government of José Luis Rodríguez Zapatero, was intended to condemn the dictatorship of General Francisco Franco (1939–75) and to honor the victims of Franco’s regime. Conservatives rejected the measure on the grounds that it undermined the foundations of Spain’s democratic transition, and in particular the amnesty negotiated in 1977 for the perpetrators of “political” crimes. The 2007 law attempted to impose a specific reading of the Francoist past on a society still deeply divided over that part of its history—to this day, fresh flowers continue to decorate Franco’s grave in the huge necropolis just outside Madrid known as the Valley of the Fallen. Yet the legislation also provoked illiberal responses from its opponents. Among these were challenges to judicial freedom: After Judge Baltasar Garzón breached the “pact of forgetting” in 2008 by opening an inquiry into the crimes against humanity committed by the Francoist side during the Civil War, a rightist pro-Franco trade union initiated legal actions against him. Garzón was relieved of his duties and accused of judicial overreach.

In 2018, the Socialist government of Pedro Sánchez rekindled the controversy by amending the 2007 legislation. As revised, the law mandates that a census be made of the Spanish Civil War’s victims. Supporters argue that an opening of mass graves is needed in order to provide some measure of historical closure in a country that, according to Justice Minister Dolores Delgado, amassed the world’s second-highest number of disappeared persons.¹² The law also contains controversial provisions for Franco’s exhumation.

While they may contribute to social polarization and the retreat of liberalism, memory laws can also strengthen national identities. The Russian case illustrates how the mechanisms of memory can work to spread a conservative and statist national vision. Since 2005, when Russia commemorated the sixtieth anniversary of the Second World War’s end, authorities there have promoted a new identity narrative that makes the Red Army’s role in defeating Hitler central to the legitimacy of the Russian state. As a result, a growing percentage of the population ascribes positive leadership qualities to Josef Stalin, whom it credits with leading Soviet forces to victory over the Nazis, and believes that the USSR bears no responsibility for the war’s outbreak or guilt over its conduct.¹³ In 2014, Russian legislators institutionalized this interpretation by adding Article 354.1 (against the “Rehabilitation of Nazism”) to Russia’s penal code. This provision makes it a criminal offense to, among other things, deny the findings of the Nuremberg Tribunal or “intentionally spread false information about the Soviet Union’s activities during the Second World War.”

The historical controversies surrounding the adoption of prescriptive memory laws often reach beyond the borders of individual states.

Whether or not their authors were hoping for this outcome, these laws may also contribute to tensions between governments and between peoples. For example, the 2014 Russian legislation was in part a reaction to developments in Central and Eastern Europe, where postcommunist politicians were increasingly equating the crimes of Hitler and Stalin and depicting the Red Army's defeat of Nazi Germany in 1945 as less a form of liberation than a replacement of one occupier by another. This narrative, which was profoundly dissonant with views of the war widely accepted within Russia, prompted Russian political leaders to begin pushing a nationalist narrative of their own that stressed the Red Army's heroic role in the fight against Nazism beyond Soviet borders. As the Russian ambassador in Warsaw recently stated, "until in Poland they recognize, without any reservations, their eternal debt of gratitude to those Soviet soldiers who perished here, until today's disgrace—when liberators are called occupiers—ends, there is officially nothing for us to talk about regarding history."¹⁴

Transnational tensions over historical memory may spark controversy even in jurisdictions that lack a direct connection to the historical events in question. In this context, one particularly sensitive issue that may arise is the question of equivalence between various historical crimes. For example, the Swiss penal code contains a provision against "racial discrimination" that makes it illegal to deny genocides and protects the memory of their victims. In 2007, a Swiss court convicted Doğu Perinçek, leader of a Turkish political party, for comments he made during a 2005 visit to Lausanne denying that what Armenians suffered at the hands of the Ottoman Turks during the First World War constituted genocide. Perinçek's conviction was overturned on appeal to the European Court of Human Rights in Strasbourg, but the adjudication of the case forced the justices to clarify why Perinçek's case differed from convictions under Europe's widely accepted bans on Holocaust denial. In a rather convoluted explanation, the Court emphasized the historical significance of the Holocaust in those states that had banned its denial, as well as the fact that the Perinçek case was brought for an instance of denial that occurred in Switzerland and not in Armenia.

As this example demonstrates, supranational and international bodies also shape the environment in which mnemonic legislation is debated. The EU and the Organization for Security and Co-operation in Europe (OSCE), in particular, have added their own layer of official historical interpretation through resolutions and declarations, the closest such bodies get to enacting actual memory laws. For instance, an April 2008 declaration by members of the European Parliament and a resolution the following year established August 23—the date on which, in 1939, the Molotov-Ribbentrop Pact was signed—as a Day of Remembrance for Victims of Stalinism *and* Nazism. Much like national-level memory laws, these decisions proved politically contentious. Nationalist poli-

ticians from the postcommunist states of Central and Eastern Europe championed the effort, but many in Russia (as well as in Western Europe and Israel) were not prepared to see Stalin's Soviet Union placed on the same level as Nazi Germany. Much the same reaction greeted the OSCE's adoption of the 2009 Vilnius Declaration, spearheaded by Lithuanian and Slovenian politicians, which states that "in the twentieth century European countries experienced two major totalitarian regimes, Nazi and Stalinist, which brought about genocide, violations of human rights and freedoms, war crimes and crimes against humanity," and goes on to urge a "united stand against all totalitarian rule from whatever ideological background."¹⁵

Rejecting the Supranational Order

As governments increasingly seek to promote historically grounded national identities, the legitimacy of historical pronouncements issued at the supranational level has come under question. The efforts of supranational bodies to act as authoritative interpreters of history have widened the gulf between these bodies and nationalist politicians, thereby reinforcing the illiberal orientation of the latter. Consider how the idea of Europe is being reappropriated by the governing populists in Hungary and Poland, who claim to be defending a Europe that they define as "Christian" or "white." Viktor Orbán, for instance, vehemently rejects the arrival of people not rooted in Christian culture out of fear that this will bring lasting changes to the continent.¹⁶ Unsurprisingly, the nationalized historical narrative that accompanies this rhetoric differs starkly from the pro-integration narrative crafted by the EU.

Moreover, supranational historical narratives, once seen as a promising tool for cultivating a shared European identity, may prove incompatible with established norms of remembering in individual nation-states. Supranational interpretations of historical events often lack popular traction in the countries they concern. Even worse, they may exacerbate social fragmentation by supplying grist for the rhetorical mill of nationalist politicians, who can argue that the nation is being defamed and that there is a need for official counternarratives valorizing it. Nationalized interpretations of the past that emerge from one state may even cross borders and develop into alternative transnational narratives. Vladimir Putin, for example, has repeatedly criticized what he perceives as the hedonism and enervation of those "Euro-Atlantic countries [that] are actually rejecting their roots, including the Christian values that constitute the basis of Western civilisation."¹⁷ This rhetoric not only meets with increasing acceptance beyond Russia's borders, but is being amplified by right-wing figures in the West who commend Putin's view of history to Western audiences.

Increasingly, nationalist movements are transforming the politics of

memory, raising a serious challenge to the supranational approach that has been key to the EU's integration efforts. The ramifications extend well beyond the passage of new laws. By rejecting supranational attempts to har-

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monize historical narratives, nationalist political elites and populist movements are also challenging the legitimacy of the supranational liberal-democratic political establishment. It is not only in backsliding democracies such as Poland and Hungary that this rejection is taking place. Calls by Brexit supporters to "take back control" were never only about economic and legislative issues; they also

reflected the aspiration to (re)create a positive national vision of Britain independent of the project of European integration. After the Second World War, a shift toward universalistic values took place, ushering in an increasingly postnational era that privileged the suffering global victim over the national hero. The growing success of populist movements that trade on particularistic historical narratives represents a repudiation of this shift. As Hungary's Orbán recently put it: "We hold that our traditions and history are exceptional, we celebrate our heroes, and above all we love our country. We do not want to, and indeed we will not, surrender it for the sake of any empire or global governance."¹⁸

Even within long-established democracies, the problem of interpreting the past can divide societies and generate opposition to supranational liberal norms. Driven in part by the cross-border dynamics of contemporary scholarship, academic historians have taken an increasingly critical approach to national legacies. In February 2005, however, the French National Assembly ratified the Mekachera Act, a bill concerning the country's colonial heritage that rejected the postcolonial critique associated with the transnational left. It was adopted during the second presidential term of Jacques Chirac, who had won reelection in 2002 with a second-round victory over Jean-Marie Le Pen of the National Front (FN). Le Pen's progression to the second round had revealed a dramatic rise in support for the far-right FN, which enthusiastically endorsed the proposed legislation. Yet it would be misleading to chalk up the law's passage to far-right influence alone: A wider habit of viewing the country's colonial legacies in a positive light has also been part of France's Republican traditions.

The passage of the Mekachera Act and other similar laws—France currently has some six *lois mémorielles*—has given broader visibility to previously marginalized views about national history, deepening social divisions and providing rhetorical ammunition to the holders of extremist views. The ensuing turmoil was particularly evident during the debates over abrogating the Mekachera Act's most divisive provision

(contained in article 4), which spoke of the salutary consequences of colonialism and mandated that these be recognized in educational curricula. The provision was eventually repealed by presidential decree, but this was done only after Prime Minister Dominique de Villepin referred the matter to the Constitutional Council in early 2006. The rancorous societal debates and rhetoric that the law provoked dramatically polarized French politics, particularly around the issue of immigration. (The majority of migrants to France come from its former colonies in the Maghreb, meaning that positions on this issue are often linked to views about the colonial past and the need to rectify past injustices.) The law also strained relations between France and Algeria.¹⁹

Similar laws throughout Europe and beyond have energized those who defend a version of history glorifying the nation. Politicians, intellectuals, and civil society groups are rejecting the geographically and temporally unbounded narratives that supranational institutions craft and the complex memories that these narratives bring to the fore. Nationalist politicians seek to bound identities, and so they resist the aspirational pan-European narratives promulgated by the EU. Moreover, critics—particularly in Central and Eastern Europe—dismiss these narratives as foreign impositions, in some cases drawing analogies between the top-down promotion of European memory norms and the earlier imposition of communist ideologies.

The rejection of Europe's integrative memory politics also involves ordinary citizens who struggle to think about their respective histories in the terms devised in Brussels. Civil society movements often reappropriate the idea of Europe, which they purport to defend even while assigning it a very different meaning from the one imparted by supranational narratives. For example, the xenophobic German Pegida (Patriotic Europeans Against the Islamization of the Occident) claims to be defending Europe today as others did during the 1683 Battle of Vienna, which stopped the advancing troops of the Ottoman sultan. For Pegida, the memory of this event serves to justify opposition to the immigration of Muslims to the West. While populism of the type exemplified by Pegida includes other elements, the de-universalization and nationalization of historical narratives lies at the core of its appeal.

Memory and the Future of Liberalism

The emotionally charged politics of memory can be particularly destabilizing in democracies, which do not control news and information flows in the way that nondemocratic regimes do. But disputes over the past can inflame political passions regardless of regime type, especially when deviation from officially prescribed narratives is criminalized. In democracies and nondemocracies alike, debates over historical memory have the potential to upset political equilibria at both the domestic and

the international level. Domestically, attempts to legislate how the past may be discussed raise questions about the quality and durability of liberal commitments. Internationally, laws of this type threaten to preclude cross-societal dialogue and encourage animosity between nations. On both levels, antipathies rooted in historical recall provide rhetorical ammunition to populists and nationalist hard-liners eager to exploit these contentious issues for political gain.

This contestation over memory politics and memory laws is closely tied to the resurgence of nationalism that is sweeping much of the Western world today, and it has significant implications for the future of liberalism. Supranational institutions are increasingly seen as imposing decontextualized historical narratives on states whose leaders and peoples are vigorously rejecting them. This rejection often involves the rise of populist movements that stress competing interpretations of the past. While the backlash against supranational norms may play out in multiple ways, all augur a similar outcome: the furious return of the national to the center of the political stage.

Memory is a powerful tool, and it must be acknowledged that mnemonic politics have the potential to foster unity. This is indeed what politicians in Western Europe expected from the victim-centered Shoah paradigm. Yet it is now clear that to the extent that memory has been a successful force for integration in countries such as Germany, this has been contingent on a very specific domestic and international consensus, one that reflected liberal and universalist assumptions. Conversely, historical memory today frequently creates or reinforces exclusive identities—in other words, identities that define membership in a national community in terms that stress difference. One group's identity is brought into relief through juxtaposition with the identities of others; this often means that neighboring countries, as well as ethnic minorities living within a state's borders, are cast in the role of existential enemies. A memory politics that centers on exclusive identities may also have unintended cross-border effects, for instance by encouraging states to engage in spirals of recrimination focused on establishing hierarchies of victimhood.

The growing intrusion of the past into the present represents one of the most striking political phenomena of our time. Given the close connection of memory politics to the dual crises of liberalism and postnationalism presently unfolding in Europe, it is a development that bears close watching.

NOTES

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