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***Democratic Backsliding:
Memory Laws and Nation-Building in a Post-National World***

Controversies over historical interpretation have become a key component of contemporary politics, evident across regions as diverse as East Asia, Latin America and Europe. However, they have proven especially salient in the latter, where this phenomenon is strikingly evinced by the burgeoning of legal controls on how the past may be publicly recalled. Such “memory laws” are today encountered across a variety of European regimes, including the consolidated democracies of Spain and France, the fragile democracy of Poland, the “defective” democracy of Ukraine, and an increasingly authoritarian Russia. Critically, most legislation concerning how the past is to be remembered enacted over the course of the last two plus decades is intended to shape, rather than to reflect, societal norms about what the past means and what can be said about it. For example, the 2005 Mekachera Act attempted to enshrine a more positive view of France’s colonial involvement in Africa, Russia’s 2014 amendment to the penal code made it illegal to denigrate the actions of the Soviet Union during WWII, and a 2018 Polish statute attempted to protect the “good name” of the Polish state and people, including against charges that they bore any responsibility for collaborating or victimizing Jews during the Third Reich.

These recent memory laws may be understood as *prescriptive*, their purpose being to enforce an officially sanctioned way of relating to the past in order to strengthen national identities. Such laws reflect concerns about the ability to maintain national unity and cultural coherence, frequently seen as incompatible with European integration efforts. Their rapid expansion—both in thematic scope as well as geographic scale—may also be viewed as a response to Europe’s growing crisis of post-nationalism. Indeed, attempts to reconfigure identities through simplified historical narratives so as to “re-nationalize” politics are central to the rise of nativism and populism. But while scholars have started to consider the probity of memory laws from a free-speech perspective, we still lack an understanding of the mechanisms by which these laws affect Europe’s liberal commitments and supranational aspirations.

The stimuli for, and consequences of, memory laws manifest in both domestic and international affairs. Regardless of their exact origin, today’s laws share a common feature in promoting an uncompromising style of political confrontation. This is because their exclusivist interpretations of the past take on a zero-sum nature, ignoring or denying the legitimacy of dissenting voices. This binary reasoning over how the past should be recalled and the moralizing rhetoric that accompanies it makes it difficult to arrive at the sort of political settlements that are more readily achievable when arguing over socio-economic issues, the latter policy fields not encoding for wider societal identities or possessing the same emotional valence.

Consequently, this new generation of memory laws stands in stark contrast to the principles of liberalism, as they threaten free speech and the pluralistic recall that is a hallmark of liberal societies.

Their existence, however, is frequently justified with reference to 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 present-day memory laws they are often invoked to justify. Unlike the earlier laws, which reflected largely established societal norms and aimed at fostering reconciliation, today's laws contribute to political tensions within and between states instead of fostering international dialogue and providing a potential safeguard for the protection of minority rights.

1. Memory Laws: Where, When and How

Highlighting the emerging centrality of memory laws within the polarizing politics of history, our investigation has identified well over 200 pieces of such legislation, the overwhelming majority of them from Europe. In analyzing these laws, we see that differences in their thematic content largely map onto a division between East and West. A key point is that most memory laws in the Western European context—particularly those implemented early on—exist to protect the dignity of the individual victims of state-sponsored crimes (although as the controversies around the French or Spanish laws illustrate, the situation in Western Europe is far from clear-cut). Overall, however, Western European laws sharply contrast with the memory laws in the post-communist states of Eastern Europe, which came later and where the intent is typically to protect the memory of the state or nation.¹

Meanwhile, in Eastern Europe the temporal epicenter of what Jürgen Habermas has termed the “juridification” of history took place during the mid-to-late 2000s. We contend this uptick occurred as political discourses concerning the past in Russia and among the former Warsaw Pact states began to diverge around 2004. There were two principle causes for this. The first concerned the accession of eight post-communist countries to the EU in May of that year. While they were candidates for membership, the EU had required these states to explicitly acknowledge the Holocaust as a distinct event but did not provide them with a forum for voicing their national grievances regarding the past, which had been suppressed for decades under communist rule. But once they were firmly ensconced in the institutional architecture of Europe, they began to use its supranational forums to demand recognition of their own, previously localized, narratives. Chief among these was the idea that the Soviet Union may have brought about the end of WWII, but it did not bring them liberation. The second cause concerned Vladimir Putin embarking upon a concerted effort to selectively rehabilitate aspects of the Soviet past to strengthen his position domestically. This re-interpretation of the past marked a significant departure from the Yeltsin years, when the Soviet experiment was generally viewed as a tragic rupture in the socio-political continuity of Tsarist Russia. This appeal to a more nationalistic history to re-legitimize his government, one that blurred the line between the Russian and Soviet pasts, should also be seen as a sign of Putin's growing conviction that the West would not accept Russia as an equal given its current status in the international order.

The triggers for the initiation and implementation of these laws are likewise noteworthy. Anniversaries frequently serve as the driving force behind the proposal of legislation, pointing up its event-driven and temporally sensitive nature. Beyond this, as already noted in the case of the 2014 Russian law, there is also an important transnational dimension to this phenomenon, with cross-border discourses having a significant impact on national dynamics. Similarly, in addition to these bilateral and regional dynamics, the 2008 EU Framework Decision on Racism and Xenophobia encouraged a cascade of Holocaust denial legislation as it linked negationism to racism and actively promoted the adoption of such laws (as indeed happened in Malta in 2009, Montenegro in 2010 and Italy in 2016). However, it also provided an impetus for the creation of new laws dealing with different events but modeled after, and justified by, the recommendations of the Framework Decision.

2. *Memory Laws: Domestic and Foreign Implications*

The domestic effects of today's norm-shaping legislation illustrate why it furthers the retreat of liberalism across Europe. Spain's 2007 memory law exemplifies this potential for discord in a country where conflicts over how to view the Francoist past continue to promote societal divides that hinder political and public discourse. The law was introduced by the Socialist government of José Luis Rodríguez Zapatero with the intent to recognize the authoritarian past, condemn Franco's dictatorship, and honor its victims. However, it was rejected by the conservatives, who claimed that it undermined the stability of the transition to democracy which was based on the amnesty negotiated in 1977. The 2007 law attempted to impose a particular reading of the past on a society still deeply divided over the Francoist past—to this day, fresh flowers continue to decorate the grave of Francisco Franco in the Valley of the Fallen just outside of Madrid, the huge necropolis was built during the lifetime of the dictator with the intent to reconcile the different factions after the Spanish Civil War—but it provoked illiberal outcomes from the side of its opponents as well. Among these were the imposition of limitations on judicial freedom: Baltasar Garzón, an activist judge who breached the “pact of forgetting” in 2008 by opening an inquiry into the crimes against humanity committed by the Francoist government during the Civil War, was relieved of his duties and accused of judicial overreach following legal actions initiated by a rightist pro-Franco trade union. Moreover, rekindling controversy over how to interpret Spain's 20th century legacies, in 2018 the Socialist government of Pedro Sánchez amended the 2007 legislation. The revised law now mandates that a census be made of the Spanish Civil War's victims, the claim being 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, has the highest number of disappeared in the world after Cambodia.ⁱⁱ It also contains provisions for Franco's exhumation, which remains a deeply divisive issue.

But while they may contribute to societal polarization and the retreat of liberalism, memory laws can simultaneously strengthen national identities. The Russian case illustrates how the mechanisms of memory can play a decisive role in spreading a conservative and statist national vision. In Russia, attempts to control the historical narrative have been especially apparent since the commemoration of the 60th anniversary of WWII's end in 2005, which brought about a new identity narrative, one that made the Red Army's role in defeating Hitler central to the legitimation of the post-Soviet Russian state. As a result, a growing percentage of the population simultaneously believes that the Soviet Union bears no responsibility for the outbreak or conduct of the War and assigns positive leadership attributes to Stalin.ⁱⁱⁱ Institutionalizing this interpretation, in 2014 Russian legislators adopted law No. 197582-5, which added Article 354.1 (Against the “Rehabilitation of Nazism”) to Russia's penal code, making it a criminal offense to, among other things, deny the findings of the Nuremberg Tribunal and “intentionally spread false information about the Soviet Union's activities during the Second World War.”^{iv}

Prescriptive memory laws, however, do not only have domestic implications. Unintended or not, they may likewise contribute to tensions between governments and their respective peoples. For example, through the 2014 law, Russian politicians were also reacting to developments taking place in East-Central Europe, where post-communist politicians were increasingly conflating the crimes of Hitler and Stalin and implying that the Red Army's defeat of Nazi Germany in WWII did not constitute liberation so much as the replacement of one occupier by another. While this narrative proved profoundly dissonant within Russia, it led Russian political leaders to propagate their own nationalizing narrative stressing the Red Army's heroic role in the fight against Nazism beyond the country's borders. As the Russian ambassador in Warsaw recently made clear, “until in Poland they recognize, without any reservations, their debt of gratitude to those Soviet soldiers who died here, until today's disgrace—

when liberators are called occupiers—ends, there is officially nothing for us to talk about regarding history.”^v

Cross-border tensions over the past, as well as questions over the equivalence of historical crimes, even manifest in contexts devoid of any direct connection to the event in question. For example, in 2007 a Swiss court convicted Doğu Perinçek, the leader of the Turkish Worker’s Party, for comments he made during a 2005 speech in Lausanne in which he denied what the Armenians suffered at the hands of the Ottoman Turks during WWI constituted genocide (the Swiss penal code contains a provision against “racial discrimination” which makes it illegal to deny genocides such as the Armenian and protects the memory of their victims). Perinçek’s conviction was overturned on appeal to the European Court of Human Rights (ECtHR), but the adjudication of the case forced the justices to distinguish why restrictions on denying the Holocaust should be different from those pertaining to the denial of the Armenian genocide. The linkage to the Holocaust was highly significant in the rather convoluted logic the Court applied in rendering its decision, as was the fact that the case, which was tried in a supranational forum based in Strasbourg, France, was brought for an instance of denial that occurred in Switzerland and not Armenia.

Finally, as the above suggests, supranational and international bodies may also impact the realm of mnemonic legislation. In particular, the EU and OSCE have added a further layer of historical interpretation through resolutions and declarations, the closest such bodies get to enacting actual memory laws. An example of this is the April 2008 resolution by the European Parliament (then under the Slovenian presidency of the Council) declaring August 23rd—the day the Molotov-Ribbentrop Pact was signed—as a Day of Remembrance for Victims of Stalinism *and* Nazism. Indicative of the deep divides such actions are capable of engendering, nationalizing politicians from the post-communist states of East-Central Europe championed the effort, but the equivalency it implied between what Hannah Arendt termed the “totalitarian twins” was unsettling for many in Russia (as well as in Western Europe and Israel), who were not prepared to admit their commensurability. Much the same reaction greeted the OSCE’s adoption of a contentious resolution spearheaded by Lithuania and Slovenian politicians effectively equating the crimes of Hitler and Stalin. Specifically, the 2009 Vilnius Declaration 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 advocates that the OSCE member states adopt a “united stand against all totalitarian rule from whatever ideological background.”^{vi}

However, the legitimacy of such organizations to speak on issues concerning the past is increasingly questioned in states that are promoting historically grounded national identities. The transfer of interpreting history from the national to the international or supranational realm has further disconnected the two levels, contributing to the strong linkage we see in today’s Europe between illiberalism and nationalism.^{vii} Consider how the idea of Europe is being re-appropriated by Hungarian and Polish leaders, who repeatedly emphasize their defense of Europe, understood by them as being “Christian” or “white.”^{viii} Viktor Orbán, for instance, vehemently rejects the arrival of people not rooted in Christian culture out of fear that this will lastingly change the Continent.^{ix} Unsurprisingly, the nationalized historical narrative that accompanies this rhetoric is disconnected from the pro-integration one crafted by the EU.

Moreover, the supranational institutionalization of historical narratives that once seemed so promising for creating a shared European identity actually risks being incompatible with established norms of remembering in different nation-states. Not only might supranational interpretations have no traction in the countries they purportedly affect but, even worse, they may further contribute to societal

fragmentation by providing a convenient scapegoat against which to juxtapose interpretations valorizing the nation. Nationalized interpretations of the past may even transfer and become alternative transnational narratives. Vladimir Putin, for example, has repeatedly criticized what he perceives as the hedonistic enervation of those “Euro-Atlantic countries [that] have moved away from their roots, including Christian values.”^x This rhetoric not only increasingly finds acceptance beyond Russia’s borders, but is amplified by right-wing figures in the West who endorse Putin’s view of history to Western audiences.

3. *Legislating the Memory of the Shoah: The Emergence of Memory Laws*

Laws that seek to mythologize the nation-state are not the only type of legislation about how to publicly speak about the past. As mentioned previously, earlier memory statutes specifically sought to *de-mythologize* national histories and protect the memory of victims, the hope being to integrate diverse societies and overcome previous cycles of violence. It was during the 1980s that the memory of the Holocaust initially began to be legally enshrined, a point in time by which the dead of the Shoah had come to embody the universal victim, serving as the ultimate example of civilian suffering and dehumanizing violence. In this respect, the Shoah represents a de-temporalized and abstract symbol of evil in modern societies, a yardstick against which other tragedies and crimes against humanity are assessed. But the durability and prevalence of this paradigm has also given rise to a victim-centered memory that is temporally and contextually unbounded. The ensuing disappearance of national heroes and attendant sacrificial memories is particularly prominent in Germany, where a radical equivalency of victims is propagated. Illustrating this, at the country’s chief memorial for the victims of war and dictatorship in Berlin (“Neue Wache”), one finds today the remains of a nameless Nazi concentration camp victim *and* an unknown soldier alongside a pieta-style sculpture by Käthe Kolwitz signifying national mourning.

The first explicit Holocaust denial law was passed in West Germany in 1985 (it was a modification of the penal code), with subsequent laws appearing in Israel in 1986 (Law 5746-1986) and France in 1990 (Gayssot Act). It was the political Left that advocated for these early laws, their aim being to curtail re-emerging anti-Semitism and to “civilize” public discourse in states directly linked to this tragedy. The establishment of societal parameters relative to how the Holocaust was to be publicly discussed took some twenty years in West Germany, developing between the 1960s and the 1980s. It involved not only such judicial aspects as the Eichmann and Auschwitz trials of the 1960s, but also cultural aspects (for instance, the airing of the influential 1978 American miniseries *Holocaust*), extensive scholarly treatment of the topic, and wide-ranging public debate as exemplified by the *Historikerstreit* (“Historians’ quarrel”) of the 1980s. The latter can be seen as a momentary endpoint to a controversy that pitted intellectuals who emphasized West Germany’s post-1945 democratic transition and were broadly sympathetic to the leadership of Helmut Kohl (Ernst Nolte, Michael Stürmer, Klaus Hildebrand) against those leading the left-liberal critique (most notably Jürgen Habermas), which emphasized the unique significance of the Third Reich. Critically, however, both camps agreed on the need to make negationism a crime. As such, they did not differ in their interpretation of the historical events per se, but the emphasis to be placed on them going forward.^{xi}

The Holocaust denial legislation of the 1980s and 1990s, therefore, was *proscriptive*, in that it enshrined into law an already established taboo. One might still disagree over whether implementing such laws represents the correct way to protect societal cohesion (how they are viewed depends, to a significant extent, on the respective legal culture). However, a practical result of the 1985 West German law and the changes it ushered in regarding how to commemorate the Holocaust was that it helped Germany reintegrate into the ideological fold of the Western world. Memory laws, therefore, have at least the

theoretical potential to bring about positive outcomes supportive of, rather than threatening to, the liberal democratic order. Additionally, they may also provide a “safety valve” in case of gross violation of societal norms and beliefs, regulating what Jeremy Waldron terms the “harm in hate speech.”^{xii}

Today there is an apparently unanimous global agreement over how to commemorate the victims of the Shoah, attesting to the hegemony of the Western European mnemonic narrative (which, in reality, reflects the interpretive consensus that was achieved by Germany and France late in the last century). Highlighting this, the United Nations introduced Holocaust Remembrance Day in 2005. But 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. However, in a testament to the broadening salience of the Shoah paradigm, this latter day does not just commemorate those who saved the lives of Jews during the Holocaust, but instead 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.”

4. Transnational Memory Entrepreneurs: Amplifying National Mythologies Abroad

The transnational dynamics that characterize today’s memory laws are complemented by a cross-border dynamic of narratives about national history more broadly. Through those living abroad, the narratives contained in prescriptive memory laws travel and amplify the heroic narratives propagated by nationalist politicians back home. The actors in this regard are not state elites, but various influence groups concerned with promoting specific interpretations of the past. Diasporas are particularly significant, as their growing ability to move about the world and communicate in real-time makes them ever more a force to be reckoned with in both their places of origin and residence.^{xiii} In particular, diasporas located in more affluent liberal democracies can use their free-speech rights to shift the tenor of historical discourse in their favor at home as well as abroad if they gain societal prominence.^{xiv} This can even happen if the state in question has no direct ties to the event being discussed. Diaspora communities are also influential because they can mark historic narratives with an authenticity that only personal contact can generate. For example, the concerted lobbying of the Armenian diaspora in the United States is why, as of 2018, 48 states have formally recognized what happened to Armenians around the time of WWI in Ottoman Turkey as constituting genocide.^{xv} This community has also been a force to be reckoned with in France, where it is particularly well organized and politically influential.

Given the advent of social media and the unfettered ability to publish digitally, where news cycles are never-ending and editorial controls ever-diminishing, mnemonic entrepreneurs working at the behest of states or on their own initiative can now spread historical claims far and wide more cheaply and efficiently than ever before. This combined impact of online and offline social networks operating transnationally was apparent in May 2017, when Russian activists in Syria passed out the black and orange St. George’s Ribbon, which since 2005 has become the symbol most associated with the official state narrative of the Red Army’s victory in WWII institutionalized in the 2014 law, to passersby in Aleppo (along with a write-up of its meaning in Arabic). Through this act, the significance of the ribbon transferred temporally and spatially to now also represent Russia’s defeat of rebel forces in the Syrian crisis.^{xvi} 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.”

5. Universalized Victim: The Consequences of the Diffusing Shoah Paradigm

What are the mechanisms that have given rise to prescriptive memory laws in comparison to the older memory laws of the 1980s? The first generation of memory legislation set a precedent and provided the impetus for today's laws, which are nevertheless very different in their political motivations. Indeed, one of the most striking inadvertent implications of acknowledging the Shoah as the quintessential example of human suffering has been its temporal and geographical de-contextualization. Illustrative of this, the Shoah paradigm as it now stands enables wider connections to be made to a host of atrocities, including the Armenian genocide, the African slave trade, the United States' atomic bombing of Hiroshima and Nagasaki, and more recent events in places like Cambodia, Rwanda and Syria.

The effects of this simultaneous universalization and de-contextualization have perpetuated three mechanisms leading to prescriptive memory laws: 1) competitive victimhood; 2) amplification effects and 3) concept norming. Critically, the motivations for such policies can be instrumental, forming a useful "politics of distraction," but they can also reflect profound concerns about establishing the historical truth and seeing justice done.

First, there are attempts to establish competing hierarchies of victimhood, as when Ukrainian President Viktor Yushchenko emphasized that the number of Ukrainian victims of the 1932-33 famine, or Holodomor (literally: "death by hunger"), was seven million, as opposed to the six million Jews that perished in the Shoah. Exemplifying attempts to benchmark other tragedies against the Holocaust, Yushchenko's claim that "no nation has suffered as much as we have" and his successful push for a law making it illegal to not recognize the famine as a deliberate act of ethnic genocide in 2006, 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 put it, on the moral-ethical. Now, it's necessary to write *holodomor* with a capital letter—like the Holocaust.^{xvii}

Second, given that the Holocaust functions as a comprehensive symbol of suffering, the Shoah paradigm has been utilized in national-level attempts to amplify interpretations of less-well-known crimes. This has allowed even localized events unrelated to it to follow a parallel process of universal victimization, although often expressing along nationalizing lines. For example, on April 9, 2015 the Ukrainian parliament passed a quartet of so-called "decommunization laws," one of which, Law 2538-1, recognizes all partisan groups and irregular military formations that strove for Ukraine's independence in the 20th century as national freedom fighters, making it illegal to "publicly denigrate" their memory or their veterans' reputations.^{xviii} A diverse array of groups fall under this blanket definition, ranging from clandestine terror cells that sought to overthrow the Russian Tsar, to peasants who fought both the Whites and the Bolsheviks during the Russian Revolution, to Ukrainian nationalists who temporarily aligned themselves with Nazi Germany. However, all of these various groups and movements are now portrayed as fighting for the same cause: national liberation. Through this compression of time—the law is agnostic as to when and under what specific conditions these movements were active—they all become part of a de-contextualized mnemonic paradigm focused on reinforcing transcendent principles: never again for the Holocaust, and self-determination in the case of Ukraine.

Third, the conceptual norm of the Shoah paradigm has spread to encompass even countries that do not have laws against negationism. In the UK, for instance, where a strong tradition of free speech has prevented the overt emergence of such legislation, just this past June a woman by the name of Alison Chabloz was given a two-year suspended sentence and forced to undertake 180 hours of community service following her arrest for having posted satirical songs insulting Jewish people on the Internet.

Although she was not found guilty of Holocaust denial per se, but rather convicted on three charges related to the dissemination of an “offensive, indecent or menacing message or material,” the comments of Gideon Falter, chair of the British-based Campaign Against Antisemitism, reflect a wide-spread 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.^{xix}

6. *Rejecting the Supranational Order: The Rise of Nationalist Politics*

Clearly, the advent of the supranational memory order, which is integral to the EU’s integration efforts, has not gone unchallenged. It is increasingly contested through the nationalization of the politics surrounding historical narratives, a phenomenon which extends beyond memory laws themselves. Rejecting the universal applicability of these norms is precisely what has allowed populist leaders to contest the legitimacy and hegemony of the supranational liberal-democratic political establishment. But supranational attempts to harmonize historical narratives are being virulently rejected by re-nationalizing political elites and populist movements not only in places like Hungary or Poland. “Take back control,” a slogan popularized during the Brexit debates, was never only about economic and legislative issues, but also about the capacity to (re)create a positive national vision of Britain independent of the project of European integration.^{xx} In this context, the growing success of populism and its reliance on particularistic historical narratives represents a disavowal of the post-WWII rise of universalistic values and their expansionary impulses, which ushered in an increasingly post-national era that privileged the suffering global victim over the national hero. As Hungary’s Orbán recently put it: “We think our history and traditions are exceptional. We celebrate our heroes, and above all else, we love our country. We do not want to, and we will not, give it up for the sake of any kind of empire or global governance.”^{xxi}

Consequently, even among established democracies, interpreting the past may create divisions and oppose liberal and supranational norms. In February 2005 the French National Assembly, for example, ratified the previously mentioned Mekachera Act, a bill concerning the country’s colonial heritage (Law No. 2005-158) that rejected the post-colonial critique associated with the transnational Left. Whereas the supranational dynamics of academic historical criticism have contributed to an increasingly self-reflective assessment of national legacies, this law rejected those interpretations. It was adopted during Jacques Chirac’s second presidential term, which saw him return to the Élysée Palace in 2002 after a second-round victory over Jean-Marie Le Pen of the Front National (FN). The far-right FN enthusiastically endorsed the proposed legislation, though viewing the country’s colonial legacies in an affirmative light was not just confined to reactionary ideologues, but echoed wider Republican traditions. Consequently, the passage of this and similar laws—France currently has six *lois mémorielles*—has allowed previously marginalized positions to gain broader visibility, not only providing rhetorical ammunition to the political extremes but reifying societal divisions more generally. The ensuing domestic turmoil was clearly exhibited during the debates that took place over abrogating the Act’s most divisive provision, contained in article 4, which referenced the salutary consequences of colonialism and mandated that these be recognized in educational curricula. In a hugely controversial decision, French parliamentarians chose to not amend this article when presented with the opportunity to do so in November 2005. While the provision was eventually repealed by presidential decree, it took Prime Minister Dominique de Villepin referring the matter to the Constitutional Council in early 2006

before this could be accomplished. Among its other implications, the rancorous societal debates and essentializing rhetoric facilitated by this law dramatically polarized domestic politics, particularly around the issue of immigration (the majority of migrants to France come from its former colonies in the Magreb, connecting this issue to assessments of the colonial past and debates about how to rectify past injustices). The passage of the law also noticeably strained relations between France and Algeria.^{xxii}

But the phenomenon is not confined to France. Similar laws have activated those voices that vehemently defend a pro-national version of history, with politicians, intellectuals and civil society groups throughout Europe and beyond rejecting the geographically and temporally unbounded narratives that supranational institutions craft and the increasing visibility of the complex and entangled memories that result. It is exactly due to their efforts to bound identities that re-nationalizing politicians resist the aspirational pan-European narratives being promulgated by the EU; for many nationalizing states such as those in East-Central Europe, these universalizing narratives are often perceived as foreign impositions to be rejected simply because of where they come from. What is more, the top-down nature of their promotion permits negative analogies to be drawn to how communist ideologies were imposed.

Additionally, while this rejection of Europe's integrative efforts is amply displayed among political elites, it also affects ordinary citizens who struggle to think about their respective histories in the terms developed in Brussels. Instead, civil society movements often re-appropriate the idea of Europe and change its meaning when they claim to defend it. For example, the xenophobic German PEGIDA (*Patriotische Europäer gegen die Islamisierung des Abendlandes*, or "Patriotic Europeans Against the Islamization of the Occident") draws heavily on exclusivist historical interpretations of such events and claims to defend Europe today as others did during the 1683 Battle of Vienna, which stopped the advancing troops of the Ottoman Sultan. The memory of this event is utilized to justify the group's opposition to the immigration of Muslims to the West. Obviously, populism has additional elements to it, including the socio-economic, but the de-universalization and nationalization of historical narratives is at the core of its appeals.

7. Because It Can Work: Memory Laws, Nation-Building and Democratic Backsliding

The politics of memory is a particularly salient issue in democracies, which do not control news and information flows as readily as non-democratic regimes. In this situation, contentious politics regarding the past can be extremely destabilizing. But how the past is recalled, especially this recall is institutionalized in punitive memory laws that criminalize deviation from officially prescribed narratives, is salient regardless of regime type, as it harbors the potential to upset not just the political equilibria at home, but also beyond a state's borders. Domestically, manifestations of the politics of memory, in particular through legislating how the past may be remembered, raise critical questions about both the quality and durability of liberal commitments. Internationally, the risk is that such potentially antagonistic laws will preclude cross-societal dialogue and encourage animosity between nations. In both instances, however, antipathies based on historical recall provide rhetorical ammunition to populists and nationalist hardliners eager to exploit the inherently didactic nature of how the past is remembered.

The results of this contestation over memory and its legislative institutionalization have significant implications for liberalism generally, and liberal democracies specifically, as they tie-in with the crisis of post-nationalism that is occurring throughout much of the Western world today. Supranational institutions are increasingly perceived as imposing de-contextualized and hegemonic historical narratives on states whose leaders and peoples are emphatically rejecting them. Quite often, this rejection takes place through recourse to populism, the latter typically stressing competing or alternative

interpretations of the past. But while this process may play out in multiple ways, its various manifestations all augur a similar outcome: the furious return of the national to the center of the political stage.

It must be acknowledged that these efforts can be successful—memory is a powerful tool, and capable of fostering unity. This is indeed what politicians in Western Europe expected from the victim-centered Shoah memory. However, it is now evident that this integrative mnemonic force, to the extent to which it has worked in a country such as Germany, has been contingent on a very specific domestic and international consensus, one that was both liberal and post-national. Conversely, memory today frequently creates or reinforces exclusive identities, which leads to defining national belongingness in terms that stress distinctions. This results in one's identity being meaningful only when it is juxtaposed to that of another, allowing neighbors, as well as ethnic minorities living within a state's borders, to be relegated to the role of existential enemies. It may also inadvertently produce broader transnational consequences, as evinced by states engaging in competitive victimhood, amplifying their national narratives, or applying supranational norms in domestically specific ways.

In conclusion, the sheer extent to which the past has intruded into the present, as attested by the rapid grow of prescriptive European memory laws, represents one of the most striking political phenomenon of our time. It is also one that bears close watching, given how interconnected memory politics are with the dual crises of liberalism and post-nationalism presently unfolding in Europe.

ⁱ Nikolay Koposov. *Memory Laws, Memory Wars: The Politics of the Past in Europe and Russia*, New York: Cambridge University Press, 2017.

ⁱⁱ Spain launches truth commission to probe Franco-era crimes, *The Guardian*, July 12, 2018,

<https://www.theguardian.com/world/2018/jul/12/spain-to-establish-truth-commission-for-franco-era-crimes>.

ⁱⁱⁱ In 2017, for example, 38% of respondents ranked Stalin as the greatest figure in Russian history, up from 12% in 1989, see <https://www.golos-ameriki.ru/a/stalin-putin-pushkin-levada-center/3916752.html>.

^{iv} The choice of language is significant. Most Russians still refer to WWII as the “Great Patriotic War” and date its start from June 22, 1941, when Nazi Germany invaded the USSR. By using the term “Second World War,” the statute criminalizes any condemnation of the Soviet Union’s annexation of eastern Poland in September 1939 under the terms of the Molotov-Ribbentrop Pact.

^v Galina Dudina interview with Sergei Andreev, “Ne zabudem, ne prostim,” *Kommersant*, October 8, 2018.

^{vi} http://www.oscepa.org/images/stories/documents/activities/I.AnnualSession/2009_Vilnius/Final_Vilnius_Declaration_EN_G.pdf.

^{vii} We are not arguing nationalism invariably gives rise to illiberalism (see G. O. Nodia, “Nationalism and Democracy,” *Journal of Democracy* 3.4 [Oct. 1992]: 3-22).

^{viii} How democracy became the enemy, *The New York Times*, April 6, 2018,

<https://www.nytimes.com/2018/04/06/opinion/sunday/orban-hungary-kaczynski-poland.html>.

^{ix} The man who thinks Europe has been Invaded, *BBC*, April 6, 2018, https://www.bbc.co.uk/news/resources/idx-sh/Viktor_Orban.

^x Presidential Address to the Federal Assembly, December 12, 2013,

<http://en.kremlin.ru/events/president/news/19825/videos>.

^{xi} Charles S. Maier. *The Unmasterable Past: History, Holocaust, and German National Identity*. Cambridge, MA: Harvard University Press, 1998; Klaus Grosse Kracht. *Die zankende Zunft: Historische Kontroversen in Deutschland nach 1945*. Göttingen: Vandenhoeck & Ruprecht, 2005; and Lawrence Douglas. *The Memory of Judgement*. New Haven: Yale University Press, 2005.

^{xii} *The Harm in Hate Speech*. Cambridge, MA: Harvard University Press, 2012.

^{xiii} See Gabriel Scheffer. *Diaspora Politics. At Home Abroad*. New York: Cambridge University Press, 2009.

^{xiv} Political Remittances and Political Transnationalism: Practices, Narratives of Belonging and the Role of the State, Special Issue in *Journal of Ethnic and Migration Studies*, Félix Krawatzek and Lea Müller-Funk (eds.), forthcoming.

^{xv} <https://anca.org/armenian-genocide/recognition/united-states/>.

^{xvi} “V Aleppo razdali georgievskie lentochki,” *RIA Novosti*, May 8, 2017, <http://ria.ru/gl/20170508/1493888406.html>.

^{xvii} Ianina Sokolovskaia, Golodomor mozhet rassorit' Ianukovicha s kommunistami, *Izvestiia*, November 30, 2006.

^{xviii} The bill was sponsored by Rada deputy Yuriy Shukhevych of the Radical Party, whose father, Roman Shukhevych, headed the Ukrainian Insurgent Army (UPA).

^{xix} Woman who posted Holocaust denial songs to YouTube convicted, *The Guardian*, May 25, 2018.

^{xx} Boris Johnson: The rest of the world believes in Britain. It's time that we did too, *The Telegraph*, July 15, 2018.

^{xxi} Speech on the anniversary of the 1956 Hungarian Revolution, October 23, 2018, <https://www.youtube.com/watch?v=y9r7C7RBZas>.

^{xxii} Not only did the Algerian parliament condemn article 4, but the law's passage delayed the signing of a friendship treaty between the two countries that had been scheduled to take place in the spring of 2005 (Entre l' Algérie et la France, un traité d'amitié en trompe-l'œil, *Le Figaro*, October 19, 2005; L' Algérie s'insurge contre le vote français sur la colonisation, *Le Figaro*, December 1, 2005).