

Law and Public History: The Legal History of Memory Regulation in Twentieth-Century Europe

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Nikolay Koposov, [Memory Laws, Memory Wars: The Politics of the Past in Europe and Russia](#) (2018).

The United States is in the midst of a memory war. Every month brings a new political and legal dispute over how our nation should portray its past in its public spaces. At the center of this struggle are the myriad of Confederate war memorials that dot the South. Southern localities and educational institutions have tried to remove these memorials. State legislatures have fought back, passing “heritage protection laws” that prohibit their removal or alteration. As the horrific events that took place in Charlottesville in 2017 demonstrated, the notion that this conflict over interpreting our nation’s past as a “war” is not always metaphorical. Nor are these fights over Confederate statuary the only battles in this war. From the content of high school textbooks to the identity of college mascots, we are constantly engaged in skirmishes in memory wars, as activists, policy-makers, and politicians deploy law and political advocacy to shape how we understand contentious events in our nation’s past, be they the Civil War, westward expansion, or the decision to drop the atomic bomb.

Nikolay Koposov’s compelling, encyclopedic history of the regulation of historical memory in Europe, [Memory Laws, Memory Wars: The Politics of the Past in Europe and Russia](#), is a must read for anyone determined to think deeply about these battles over how the past should be remembered. At its center is a fascinating story about the relationship among law, history, and public memory. *Memory Laws, Memory Wars* recounts the emergence of the regulation of historical memory in Europe. This story starts in Western Europe in the early 1980s when West Germany and France considered legislation criminalizing Holocaust denial. These attempts came to fruition in 1990, when France enacted the Gassyot Act. That law imposed a one year prison term and a 45,000 Euro fine on people who publically disputed the existence or dimensions of the Holocaust – the crimes against humanity that were defined by the Nuremberg Tribunal at the end of World War II.

During the 1990s, this sort of law spread throughout the European Union. This spread was marked by two changes. First, the number of historical events that fell within the ambit of these laws expanded. Historical assessments of the Armenian genocide, fascist repression in Spain, the violent legacy of European colonialism, and Europe’s role in the slave trade were all made subject to state regulation. Second, the administrative mechanisms deployed to regulate memory became more diverse. Though most Western European countries maintained criminal sanctions for Holocaust denial, as the palate of problematic histories expanded, different countries regulated them differently, often in a less punitive manner: curricular requirements in schools, or simple acknowledgements and apologies by culpable nations.

The collapse of the Soviet Union and the eastward expansion of the European Union generated another dramatic change in memory regulation. As Eastern European countries gained autonomy, they brought the evils of Soviet domination into the ambit of memory regulations. Denial of Stalinist atrocities was placed on a par with Holocaust denial and thus subjected to criminal sanction in Eastern Europe. More significantly, the expansion of memory laws to Eastern Europe saw a frightening shift in their emphasis. The original wave of memory laws that sprang from Western Europe’s encounter with the Holocaust were premised on the idea of repentance: our nation did something horrible and only by preserving the memory of that horror can we ensure that we don’t err again. Memory regulation in the East, however, focused on the denial of responsibility for evil acts. These laws were designed to “promote nationalist mythology” by shifting “the blame for historical injustices entirely to others” (Pp. 308-309). Thus, Turkey criminalized references to the Armenian Genocide, Russia criminalized criticism of Soviet acts during the Second World War, Poland prohibited assertions that “the Polish nation” was complicit in the Holocaust, and Hungary

whitewashed the fascist antecedents of its current regime by criminalizing claims that Hungarian anti-Soviet fascists were anything other than heroic freedom fighters. The confessions of national culpability that defined the initial set of memory laws had been replaced by laws that criminalized “the denial of other nations’ misdeeds” in order to promote reactionary nationalism based on “self-victimization” (P. 305).

This thumbnail description of Kaposov’s narrative doesn’t do justice to the complexity of this story and subtlety with which he tells it. He effortlessly takes the reader through the fiendishly complex political history of post-Cold War Eastern Europe, demonstrating how different attempts at nation-building yielded different types of memory regulation. He details the changing sentiments of Western European intellectuals, who initially supported the criminalization of Holocaust denial, but then adopted a considerably more libertarian approach to speech regulation as the utility of memory regulation to illiberal regimes in Eastern Europe became apparent. Finally, he recounts the relationship between the lost possibility of a liberal, democratic post-Soviet Russia and the profoundly sinister turn that memory law and politics took as Vladimir Putin consolidated power in the first decade of the twenty-first century.

Kaposov also places his narrative within a compelling analytical framework. He demonstrates how emergent nationalism and the need for state-building in Eastern Europe transformed memory laws into tools for would-be totalitarians. Even more fascinating is his analysis of why memory regulation emerged in the first place. The causes, Kaposov demonstrates, are numerous: the emergence of the Holocaust as the central feature of Western European historical consciousness in the 1970s; the end of the Cold War and the flourishing of Eastern European nationalism; the rise of humanistic attitudes towards oppressed groups and the concomitant flourishing of identity politics; the historical profession’s turn towards social history; the emergence of human rights protection as a political and legal goal; the rise of both neoconservative politics with its emphasis on recapturing a national heroic past, and of neoliberal politics, with its tendency to “annihilate history as a dimension of human experience” by suggesting that societies are shaped solely by universal, timeless, economic “laws” (P. 59). Other historians, such as Peter Novick and Daniel Rodgers, have told pieces of this story, but Kaposov weaves all the strands together in the specific context of memory regulation. He shows how admirable political and cultural innovations – the increasing salience of human rights, the desire to tell the histories of subaltern groups, the collapse of Soviet totalitarianism – combined with less praiseworthy features of late twentieth-century politics. This mixture generated the Orwellian regulation of historical memory that currently characterizes the increasingly authoritarian regimes in Eastern Europe and, though Kaposov doesn’t say it, the forces of illiberalism here in the United States.

Indeed, it is the obvious parallels with American memory politics that make *Memory Laws, Memory Wars* such a compelling read. Kaposov’s description of the purposes of Russian memory regulation are no different from the purposes of the heritage protection acts that have sprung up throughout the American south in recent years: creating a heroic, mythic past; suppressing evidence of morally repugnant behavior; perpetuating a narrative in which the perpetrators of crimes against humanity become the victims of outside aggression. Thus, *Memory Laws, Memory Wars* should remind us of the stakes at issue in our own memory wars. It suggests that professional historians and others who are committed to a public history that teaches critical thinking rather than myth-making must assert the values of our profession in the public sphere. The politics of memory too often ignore the importance of these values: free inquiry, fidelity to sources, a commitment to using sound historical methods, and truth-seeking in the context of multiple perspectives. Historical memory, Kaposov shows us, is too important to be left to the politicians.

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