

## MEMORY LAWS, MEMORY WARS

Laws against Holocaust denial are perhaps the best-known manifestation of the present-day politics of historical memory. In *Memory Laws, Memory Wars*, Nikolay Kaposov examines the phenomenon of memory laws in Western and Eastern Europe, Ukraine, and Russia and exposes their very different purposes in the East and West. In Western Europe, he shows how memory laws were designed to create a common European memory centered on the memory of the Holocaust as a means of integrating Europe, combating racism, and averting national and ethnic conflicts. In Russia and Eastern Europe, by contrast, legislation on the issues of the past is often used to give the force of law to narratives that serve the narrower interests of nation-states and protect the memory of perpetrators rather than victims. This will be essential reading for all those interested in ongoing conflicts over the legacy of World War II, Nazism, and communism.

NIKOLAY KOPOSOV is a Russian historian currently teaching at Emory University, having previously worked at the École des Hautes Études en Sciences Sociales and Johns Hopkins University. He was Founding Dean of Russia's first and only (to date) liberal arts college, Smolny College of Liberal Arts and Sciences, a joint venture of Saint Petersburg State University and Bard College (New York). His research deals with various aspects of modern historiography and historical memory, from Early Modern France to post-Soviet Russia. His book *How Historians Think* (2001) was translated into French by Éditions de l'École des Hautes Études en Sciences Sociales as *De l'imagination historique* (Paris, 2009). A vocal critic of Vladimir Putin's history politics, Professor Kaposov left Russia in 2009.

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# MEMORY LAWS, MEMORY WARS

*The Politics of the Past in Europe and Russia*

NIKOLAY KOPOSOV

*Emory University*



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*To the memory of  
Yuriy Markovich Shmidt and  
Leonid Mikhailovich Batkin*

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## *Preface and Acknowledgments*

I first heard of the Gayssot Act, which criminalized Holocaust denial in France, shortly after it was passed in 1990, and I remember the typically Parisian debates (I was then an invited professor at the École des Hautes Études en Sciences Sociales) on whether it is acceptable to penalize speech in a democratic society. At that time, most French historians were supportive of this legislation, and I also thought then that it would not be a bad thing to prohibit, in the same way, the denial of Stalin's repressions in Russia. Unsurprisingly, many Russian democrats were reasoning along similar lines, and I discuss in Chapter 5 their attempts to ban the denial of both fascist and communist crimes.

But as time passed and legal interventions in historical memory began expanding both thematically and geographically, historians became increasingly critical of those laws. I observed, on my occasional visits to France in the 2000s, Pierre Nora's persistent efforts to have this legislation repealed. My own turn to intervene in similar debates in Russia came in 2009, when United Russia, the party in power, decided to use criminal law to protect the Stalinist interpretation of World War II. I am grateful to my Russian colleagues and friends who co-signed one of the many petitions against the proposed legislation, and especially to Rafail Ganelin, Yakov Gordin, Aleksandr Daniel, Dmitriy Dubrovskiy, Boris Firsov, Lev Kleyn, Boris Pustynstev, Yuriy Shmidt, and Boris Vishnevskiy.<sup>1</sup>

Since then, I have researched the history of memory laws in Russia and Europe, as I felt that a historical perspective on them could help in assessing their legitimacy. I soon became convinced that the study of those laws provides an interesting entry into the problem of the present-day historical consciousness, which has always been central to my work. Indeed, while memory laws are a relatively new topic for me, my interest in modern historiography and historical memory harkens back to the late

<sup>1</sup> Boris Vishnevskiy, "Nasledniki Benkendorfa" [Benkendorf's Heirs], *Novaya Gazeta*, June 1, 2009.

1980s. In May 1990, Dina Khapaeva and I co-directed one of the first sociological surveys of collective representations of the past in Russia. Trained as a French historian but always interested in Soviet history, I could not but envisage post-Soviet historical memory in a broad comparative context.

All this largely explains my project in this book: to consider memory laws as a historical phenomenon, to discuss both their political functions and cultural meaning, and to compare their use in Russia and other European countries. Russia is too often viewed as a *sui generis* case, and integrating its history into that of Europe remains a largely unresolved problem.

It is a pleasure to acknowledge here my debt to those individuals and institutions on whose support I relied while working on this book. My understanding of the rise of memory and of the current history politics has been decisively influenced by the work of, and discussions with, Pierre Nora and Gabrielle M. Spiegel. In 2009, they both expressed, in the name of *Liberté pour l'Histoire* and the American Historical Association, respectively, full support for the aforementioned petition against the Russian memory law, and I remember with deep gratitude this manifestation of international solidarity among historians. Gabrielle M. Spiegel's comments on the first (much shorter) version of this book have, I hope, allowed me to find the right balance of various factors that have influenced the *fin-de-siècle* memory boom. Over several decades, personal friendship and professional dialogue with François Hartog and Laurent Thévenot have been crucial for my work, and they will find many confirmations of that on the pages that follow.

I owe a lot to the encouragement and invaluable advice of Korine Amacher, Wladimir Berelowitch, Alain Blum, Sophie Coeuré, Marc Ferro, Boris Gasparov, Claudio Sergio Ingerflom, Catriona Kelly, Tamara Kondratieva, Kevin F.M. Platt, William G. Rosenberg, and Ronald Grigor Suny. My particular thanks go to Timothy Snyder, both for his encouragement of this project and for his stimulating reflections on the Eastern European politics of memory. And I cannot thank enough my esteemed colleague and dear friend Jeffrey Brooks, whose advice has been most helpful on all stages of my work on this book (and on many other projects).

After I left Russia, several distinguished institutions – Helsinki Collegium, Johns Hopkins University, Georgia Institute of Technology, and Emory University – supported my work. I want to thank most cordially my friends and colleagues from Emory's Russian and Eastern European



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Studies program, Juliette Stapanian-Apkarian, Mikhail Epstein, Vera Proskurina, Oleg Proskurin, Matthew J. Payne, Thomas F. Remington, Hubert Tworzecki, James Steffen and, most especially, Elena Glazov-Corrigan, whose wisdom and friendship have been crucial for me in more ways than one. I may never be able to fully repay my debt to her and to Kevin Corrigan. At Emory, I have been also fortunate to benefit from friendship of, and exciting exchanges with, Walter L. Adamson, Kathryn E. Amdur, Matthew H. Berstein, Cynthia Blakeley, Julia Bullock, Rkia and Vince Cornell, Clifton Crais, Joseph Crespino, Astrid M. Eckert, Robyn Fivush, Sander L. Gilman, Eric Goldstein, Ruby Lal, Deborah E. Lipstadt, Julia Lopez Fuentes, James V.H. Melton, Robert A. Paul, Gyanendra Pandey, Pamela Scully, Allan E. Tullos, and other colleagues.

I often recollect invigorating discussions with my friends and colleagues from Georgia Tech, especially Kenneth J. Knoespel and John E. Kriege. At Hopkins, I learned a lot from Peter Jelavich, Michael Kwass, John Marshall, Philip Morgan, Anne and Kenneth B. Moss, and Todd Shepard, whose suggestions, including their comments on my paper on memory laws presented at the History Department's famous Seminar in May 2013, were of utmost importance to the development of my book project. I am also grateful to Hopkins' President Ronald Daniel, Michael Cohen, and Emily Rose and her family for their support and inspiring conversations, which made my year at Hopkins both possible and very pleasant. I am grateful to Martin Kagel and Alexander Spektor (University of Georgia in Athens), Elizabeth A. Papazian (University of Maryland), Anton Weiss-Wendt (Holocaust Studies Center, Oslo), Uladzislau Belavusau (University of Amsterdam), Aleksandra Gliszczynska-Grabias (Polish Academy of Sciences), Alexey Vasilyev (Institute of Central and Eastern Europe, Lublin), Irina Varskaya ("Gefter," Moscow), Sabina Loriga (EHESS), Sophie Coeuré (École Normale Supérieure), Olivier Salvatori (Éditions Gallimard), and Vododimir Sklokin and the entire team of the Ukrainian Catholic University at Lviv for the hospitality extended to my lectures, papers, and articles on memory laws and related matters: their comments on my work have been most helpful.

My thanks, as always, go to my dear friends in America, France, and Russia, Olga Bessmertnaya, Nathalie Heinich, Christian Jouhaud, Ilya Kalinin, Judith Lyon-Caen, Christophe Prochasson, Marianna Taymanova, and especially Irina Prokhorova, whose always interesting ideas and the attention to my work have been a condition sine qua non of this book and my previous publications. Working with Liv Bliss on my manuscript was both extremely useful and enjoyable. And I am most grateful to

Michael Watson and his colleagues from Cambridge University Press, as well as to the anonymous reviewers whose comments on my manuscript have helped me improve it.

My family's benevolent support has been invaluable during my work on this book, as it has always been in the past. For many years, my wife Dina Khapaeva has been my fairest and toughest critic. Many (perhaps most) of the ideas that I develop in this book were born of our long and (typically) amicable conversations. During the years I have been working on this book, our daughter Katia has grown from a thoughtful teenager into a rising Rubens scholar and has become a full-fledged member of our "home academy," whose judgments in intellectual (and other) matters are rapidly becoming priceless to her parents. I cannot sufficiently acknowledge my debt to both of them.

I dedicate the book to the memory of my late friends Yuriy Markovich Shmidt (1937–2013) and Leonid Mikhailovich Batkin (1932–2016). Yuriy Markovich was a distinguished lawyer and one of the leading defenders of human rights in Russia from Soviet times into the Putin period. Leonid Mikhailovich was an outstanding historian of the Italian Renaissance and one of the most brilliant members of my teachers' generation. But he was also an important figure in the Russian democratic movement and a founder (in 1988) of the Moscow Tribune, a political club whose role in the democratization of Soviet society is hard to overestimate. The wisdom, honesty, and courage of people like Yu. M. Shmidt and L. M. Batkin have forever made the memory of the democratic reforms of the 1990s the main source of hope for Russia's future.

# Chronological Table

1915, May	France, England, and Russia condemn the massacre of the Armenians in Turkey as a crime against humanity
1939, April	French <i>Loi Marchandea</i> prohibits hate speech
1945, August	Definition of crimes against humanity in the Charter of the Nuremberg Tribunal
1945, May	Austrian <i>Verbotsgesetz</i> (Prohibition Law, amended in February 1947) prohibits fascist party and ideology
1946, January	Article 86a of the West German Penal Code bans the use of Nazi symbols
1948, December	Convention on the Prevention and Punishment of the Crime of Genocide
1948, December	Universal Declaration of Human Rights
1950, August	Nazis and Nazi Collaborators (Punishment) Law in Israel
1952, June	<i>Legge Scelba</i> in Italy prohibiting the <i>apologia del fascismo</i>
1960, April	Austrian Insignia Act forbids Nazi uniforms and symbols
1960, May	Article 130 of the West German Penal Code bans incitement to hatred
1961, April–December	Eichmann trial in Jerusalem
1965, December	International Convention on the Elimination of All Forms of Racial Discrimination
1968, November	Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity

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1970, December	West German Chancellor Willy Brandt's <i>Kniefall</i> before the monument to the Warsaw Ghetto Uprising
1972, July	French <i>Loi Pleven</i> bans hate speech
1977, October	Amnesty law in Spain
1978, December	<i>Affaire Faurisson</i> begins in France
1978, April	Television miniseries <i>Holocaust</i> broadcast in the United States (and in January 1979 in Germany)
1978, October	Portugal prohibits fascist organizations
1979, September	German Federal Court rules that Holocaust denial is punishable as an insult to the honor of German Jews
1980	France, the United Kingdom, and Brazil declare 1980 the Year of Heritage
1985, June	German memory law
1986, July	Israeli memory law
1986–1987	<i>Historikerstreit</i> in Germany
1987, June	Recognition of the Armenian genocide by the European Union
1990, July	French <i>Loi Gayssot</i>
1991, October	Czechoslovak Lustration Act
1991, December	Stasi Records Act in Germany
1992, February	Austrian memory law
1993, April	Hungary bans the use of fascist and communist symbols
1993, June	Swiss memory law (enacted in 1995)
1993, June	Mancino law criminalized the wearing of fascist symbols in Italy
1993, July	Czech Act on the Illegality of the Communist Regime
1994, October	Article 130 of the German Penal Code amended to ban Holocaust denial
1995, March	Belgian memory law
1995, May	The first (failed) attempt to pass a memory law in Russia
1995, September	Albanian law on communist crimes against humanity
1995, November	Spanish memory law (invalidated in part in 2007)
1996, July	European Council Joint Action/96/443/JHA

*Chronological Table*

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1997, February	A Holocaust Denial Act introduced in the British parliament
1997, July	Luxembourgian memory law (amended in 2011 and 2012)
1997, November	The Supreme Court of the Netherlands rules that Holocaust denial is punishable as a form of hate speech
1998, December	Polish memory law
1999, December	Liechtenstein's memory law
2000, January	Stockholm International Forum on the Holocaust
2000, May	Bulgarian law on the criminal nature of the communist regime
2000, October	Czech memory law (amended in 2009)
2001, January	France recognized the 1915 Armenian genocide
2001, May	<i>Loi Taubira</i> recognizing slavery and the slave trade as a crime against humanity
2001, November	Slovak memory law (amended in 2005)
2002, March	Romanian memory law (amended in 2006 and 2015)
2002, August	Slovak Nation's Memory Act
2003, January	Additional Protocol to the Convention on Cybercrime
2004, March	Macedonian memory law
2004, June	Slovenian memory law (amended in 2008)
2005, February	Andorra's memory law
2005, February	French <i>Loi Mekachera</i> on the memory of the Algerian war (repealed in part in 2006)
2005, June	Turkey criminalizes insults to the Turkish state
2005, December	Creation of the Liberté pour l'histoire association
2006, March	Cyprus ratifies the Additional Protocol
2006, October	A law criminalizing the denial of the Armenian genocide adopted by the lower house of the French parliament
2006, November	Ukrainian parliament recognizes the Holodomor as a genocide
2007, September	Portuguese memory law
2007, December	<i>Ley de la Memoria Histórica</i> in Spain
2008, June	Prague Declaration on European Conscience and Communism

2008, October	<i>Appel de Blois</i> against memory laws
2008, November	Accoyer Commission recommends the French parliament refrain from adopting new memory laws
2008, November	Albanian memory law
2008, November	European Council Framework Decision 2008/913/JHA
2009, May	Latvian memory law (amended in 2014)
2009, July	Maltese memory law
2010, January	Hungarian memory law (amended in June)
2010, April	Montenegrin memory law
2010, June	Lithuanian memory law
2011, April	Bulgarian memory law
2011, October	Cypriot memory law
2011, December	French law penalizing the denial of the Armenian genocide (declared unconstitutional in February 2012)
2012, May	Community of Independent States' model law against the rehabilitation of Nazism
2014, January	"Dictatorship laws" in Ukraine
2014, May	Russian memory law (the "Yarovaya Act")
2014, May	Second version of the Latvian memory law
2014, September	Greek memory law
2015, April	De-communization laws in Ukraine
2015, April	Cyprus criminalizes the denial of the Armenian genocide
2015, April	Spain reintroduces a memory law
2016, June	Italian memory law
2017, January	New French memory law