

The governance of history via law: An overview

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ABSTRACT

The study discusses the legal governance of historical memory through the presentation of the phenomenon of memory laws. It reflects on the appearance of these laws in the legal system, emphasizes their different definitions and classifications, at all the levels (constitutional, statutory and quasi-legal), and among various areas of legislation. The paper further points out the context and development of Hungarian memory laws, highlighting the special importance of this legislation in the current political and legal situation as well as potential lessons in the wider European context.

KEYWORDS

history, law, memory laws, Europe, Hungary

1. INTRODUCTION

In spring 2022, several bills were introduced in the Hungarian parliament for discussion. In the proposal for the 2023 budget, the drafters put forward their intention to rename the position of ‘government commissioner’ (*kormánybiztos*) to ‘capital and county government commissioner’ (*főispán*) in the public administration system.¹ In addition, the proposal for the Eleventh

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¹T/360 Proposal on the Establishment of the 2023 Central Budget of Hungary.

Amendment to the Fundamental Law contains the renaming of counties from their current Hungarian title as *megye* to the more ancient name of *vármegye*.² Although these two terms can be translated with the same words in English, there is a significant difference between them as *vármegye* carries particular historical connotations. These changes in the laws, while they seem innocuous, are indeed notable because they present the latest example of a growing tendency in recent Hungarian legislation – bringing back the names and titles used during the 19th and early 20th centuries in the administrative system, and replacing those originating from the communist regime.

As these draft provisions have just become law, they provide excellent opportunities to review the connection between history and law in Hungary through the analysis of *memory laws*. Research on the legal governance of historical memory has gradually emerged in recent years, as both national and the international politics have shown how governments assert increasing influence over the official historical narratives of their respective countries. This can be done for various motivation and purposes, including the creation of an international image, exerting domestic political control or expressing moral concern over the nation's security.

This study presents the foundational and encompassing aspects of the legal governance of historical memory through a review of legal sources demonstrating the tangible influence of historical narratives via law. It points out the difficulty to fit the way certain elements of Hungarian history are reflected in legislation into the system of international models. Collective remembrance, expressed through laws, has been of outstanding importance in the country since the 1990s, however, in the 2010s, the enforcement of historical narratives gained even further prominence and relevance in legislation.

Furthermore, the examination of the Hungarian situation is useful for several reasons. First, the extent of the state's involvement in history-related legislation has progressed to a much greater scope than anywhere else in Europe, thus it can signal a potential direction in terms of the evolution of memory laws. Second, the Hungarian example represents a specific Central and Eastern European context, and since the priorities of the Hungarian legislator are quite different from its mainstream European counterparts, the national developments serve as a lesson and probable warning.

2. WHAT ARE MEMORY LAWS?

Despite subtle differences in their content, all memory laws have one thing in common: they define a state's relationship with its own past. Memory laws 'sanction a legitimate relationship to the past by regulating certain remembrances outside the accepted boundaries of political bargaining'.³ In addition, memory laws further express the 'contemporary mindset',⁴ the perception with which the powerful actors of a given era consider the historical past of their country. The pioneers of the term 'memory law' characterize them as quite dangerous, because these laws only establish one official version of the truth, guarded by the state as unquestionable.⁵ The nature of

²T/361 Proposal on the Eleventh Amendment to the Fundamental Law of Hungary.

³Mätksoo (2015) 7.

⁴Rémond (2006).

⁵Nora (2006).



what memory laws are can be quite vague, and providing an exact definition has proven to be particularly difficult. Some simply describe them as ‘legal aberrations’ that are ‘formulated to proclaim authoritative versions of some invariably sensitive history.’⁶ However, while the adoption of some memory laws could be problematic, their presence in the legal system can also signal reconciliation. On occasion, state interference into remembrance is expected by society, and can be tool to acknowledge contentious aspects of the past. For example, laws of recognition of different atrocities, such as the Armenian genocide or the transatlantic slave trade bring awareness to the historical experiences of different minority groups.

In the simplest terms, commemoration laws ‘enshrine state-approved interpretations of historical events.’⁷ Due to the gradually expanding interest in memory laws, some have suggested widening the academic field by advancing a new discipline on ‘law and memory’ that will examine the specific issues memory laws present.⁸

Turning to the potential categorizations of memory laws, a distinction can be made between punitive and declarative regulations.⁹ Emanuela Fronza characterized the distinction through the motivation of memory laws by the invitation to remember versus the aim to punish negationist behaviour.¹⁰ Sévane Garibian has further expanded on the classification by singling out laws with a normative function versus laws with a declarative function.¹¹ She defines laws with normative functions as representing more than merely criminal punishment by possessing normative functions due to, for example, their impact on education (Fig. 1).¹²

2.1. Classification of memory laws

First, memory laws have been classified on a diachronic basis. Uladzislau Belavusau have sorted memory laws into four streams: (1) genocide denial prohibitions, (2) laws concerning the ‘falls of 20th century dictatorships’, (3) decommunization laws, and (4) laws ‘deal(ing) with genocide and other mass atrocities subsequent to the introduction of the crime of genocide in international law.’¹³

Second, based on their impact on historical memory, Antoon De Baets employs a different classification of memory laws on the basis of their impact on the work of historians, containing limits on such work set by public interest of the state or of society.¹⁴ De Baets identifies memory laws in four topics: laws regulating the legacy of historical figures (where, in his categorization a memory laws can function as an anti-defamation measures), laws regulating historical symbols, including flags, monuments, memorials, national anthems, street names. He regards these memory laws as ‘heritage laws’.¹⁵ His third group of laws encompasses measures regulating the legacy of

⁶Heinze (2017) 417.

⁷Belavusau and Gliszczynska-Grabias (2017) 1.

⁸Heinze (2017) 432–33.

⁹Garibian (2006b) 479.

¹⁰Fronza (2011) 156–81.

¹¹Garibian (2006a) 161–62

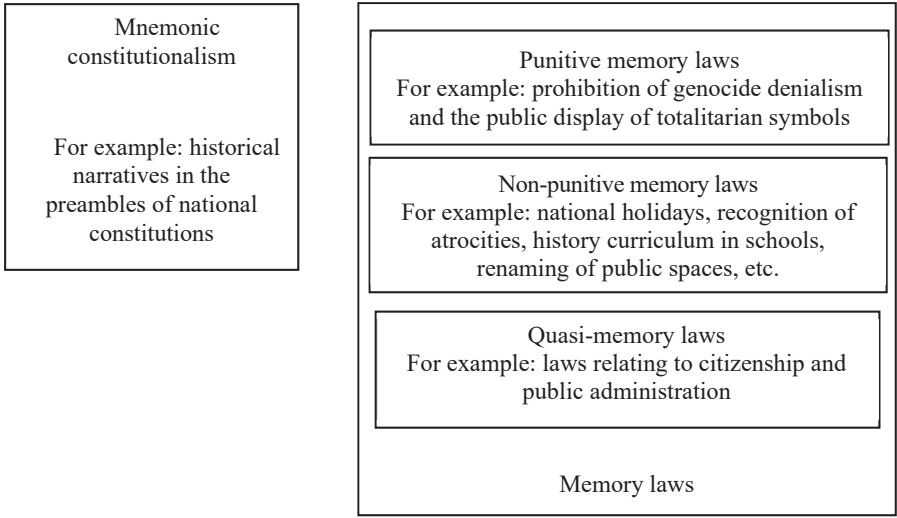
¹²Garibian (2006a) 162.

¹³Belavusau (2015a) 543–45. On decommunization laws, see further: Hashimoto (2016) 171–84.

¹⁴De Baets (2019) 40.

¹⁵De Baets (2019) 47.





The legal governance of historical memory – brief overview

Fig. 1. The legal governance of historical memory – brief overview

historical figures through anniversaries and commemorations (in his categorization, these laws can also regulate public order as well). De Baets’ final group of memory laws concern historical events, identifying genocide denial laws and some recognition laws as examples. Despite his slightly different perspective, De Baets also employs the punitive/declarative divide in his categorization as he finds memory laws of a prohibitive nature (criminal sanctions) particularly problematic, whereas memory laws with prescriptive, non-coercive nature are not as extensively criticised by him.¹⁶ De Baets’ perspective is quite unique as it distinguishes memory laws from genocide denial laws – unlike any other categorization. He claims while these two groups can overlap but treats them separately due to the distinctive link identified between genocide denialism and hate speech.¹⁷

Recently, the punitive/declarative distinction has proven insufficient to describe the expanding list of memory laws. Eric Heinze has thus proposed to replace the term memory law with ‘laws affecting historical memory’ to justify the broader scope of examination.¹⁸ He suggests, under this category, to differentiate between non-regulatory (those laws that are purely declarative) and regulatory memory laws (laws ‘requir(ing) government action’ either in a punitive or a non-punitive manner).

¹⁶De Baets (2019) 55. De Baets further mentions how prescriptive memory laws have two types: coercive and non-coercive. In his categorization, prescriptive memory laws which are also coercive function similarly to prohibitive memory laws, containing possibly criminal sanctions in case of non-compliance.

¹⁷De Baets (2019) 59.

¹⁸Heinze (2017) 415.



The definition of ‘declarative memory law’ has varied since the inception of the term. Heinze uses it to indicate laws that do not require further government action, thus restricting the scope of declarative laws, citing the example of provisions such as the French state’s recognitions of the Armenian genocide.¹⁹ In contrast, Nikolay Kaposov equates declarative memory laws to ‘memory laws of the periphery’ (whereas ‘hard core memory laws’, in his interpretation, consist of genocide denial bans).²⁰

Among the memory laws of the periphery, he introduces a wide scope of provisions whose common theme is ‘giving an official assessment of historical events’. The scope of these laws can entail recognition of an event, national holidays, remembrance days, commemoration ceremonies, street renaming, erecting monuments, organization of archives, regulation of history teaching, legislation on veterans, amnesty laws, rehabilitation of victims, laws providing compensation to victims of mass atrocities, lustration laws and legislation on the prohibition of symbols, political parties, and ideologies.²¹ In addition, while most scholars regard the creation of the first memory laws as dating from the late 1980s to the early 1990s, Kaposov reaches back to the beginning of the 20th century to locate their origin. He regards the 1915 Declaration of the Entente concerning the massacre of the Armenians by the Ottoman Empire as Europe’s first memory law. He further differentiates between the ‘anti-racist’ and ‘anti-fascist’ memory laws adopted from the 1950s to the 1970s.²²

As a departure from the punitive-declarative division, George Soroka and Felix Krawatzek categorize memory laws from yet another perspective, focusing on the intentions and motivations of the state for the introduction of these measures. They differentiate between prescriptive and proscriptive memory laws. In their view, prescriptive memory laws ‘reflect and anxiety to preserve national values,’ whereas proscriptive memory laws ‘codify already existing societal taboos.’²³ The Polish law of 2018 is cited as an example for the former, while Holocaust denial prohibitions represent the latter group.²⁴

2.2. Mnemonic constitutionalism

In 2018, Uladzislau Belavusau introduced the concept of ‘mnemonic constitutionalism’ into the discussion on the legal governance of historical memory.²⁵ He defines mnemonic constitutionalism as a ‘constitutionalism (that) encompasses, yet transcends pure measures against genocide denialism and declarative memory laws.’ On the one hand, the use of history has never been missing from constitution-making. In fact, on several occasions, the constitutional preambles’ function entails an engagement with the history of the state – in order to affirm distance from previous totalitarian regimes, to commit to the investigation of the past or to justify the state’s existence with historical narratives.²⁶ The threat of mnemonic constitutionalism manifests itself

¹⁹Heinze (2017) 418

²⁰Kaposov (2017) 6.

²¹Kaposov (2017) 7.

²²Kaposov (2017) 18–38.

²³Soroka and Krawatzek (2019) 157–60.

²⁴Soroka and Krawatzek (2019) 159.

²⁵Belavusau (2018).

²⁶Belavusau (2018). See further: Scheppele (2000) 19–23.



in the political overuse of history. It necessitates selecting an official historical narrative of the state, which, if chosen for political reasons, result in far-reaching consequences. As the foundation of the legal system, a 'mnemonic' constitution provides a basis for an entire regime of memory laws. Their codified narratives subsequently serve as the justification for non-legal developments as well (such as policy decisions and rhetoric). The idea of constitutions as particular tools of transmitting historical narratives have appeared in the works of Heino Nyyssönen and Jussi Metsälä, who introduced the notion of constitutional memory, incorporating texts (primarily constitutional preambles) that 'highlight historical events, canonize an interpretation of the past as the basis of the whole legal and political system.'²⁷

The preamble of the Fundamental Law is also unique from any other constitutional preambles.²⁸ In comparison, of the twenty-six EU Member States that possess a written constitution, only fifteen contain a preamble. The presence of a preamble must be emphasized as it often serves as a general placeholder for historical references. Among the fifteen, five constitutions (the French, Greek, Irish, Italian and German constitutions) incorporate short and introductory preambles in order to symbolically differentiate their respective political systems from previous regimes, with brief but respectful nods towards their historical achievements. Two additional constitutions, the Spanish and the Portuguese, include lengthier preambles, with declarations of transition from fascist dictatorships to democracy.

The constitutions of the other EU member states, such as Bulgaria, the Czech Republic, Estonia, Lithuania, Poland, Slovakia and Slovenia, were drafted in the period following the fall of communist dictatorships. Their rather long preambles refer to historical narratives, moral and even religious values. Such historical citations are used because these states have ceased to exist from time to time throughout history, or gained independence only in the early 1990s. Thus, their constitutional preambles serve the purpose of establishing the existence of the state and its historical continuity.²⁹

2.3. Quasi-memory laws

In addition, several provisions can be identified as going beyond the traditional conceptual scope of memory laws, as they touch on policy areas seemingly separate from historical memory. For example, various European citizenship laws were inspired by the correction of historical wrongs, such as the Spanish practice of granting citizenship to the descendants of expelled Sephardic Jews, and the Hungarian dual citizenship law, which has been relied on by the descendants of Hungarians who lived in territories belonging to the country in before 1920.³⁰

Quasi-memory laws form a collective of provisions, which, on the surface, do not contain historical references, but still possess a historical dimension. A closer examination shows an impact of historical memory, especially in their drafting and implementation. While quasi-memory laws have no bearing on historical memory on their surface, their application can

²⁷Fekete (2011) 33–45.

²⁸Nyyssönen and Metsälä (2020) 323–40.

²⁹Fekete (2011) 33–45.

³⁰Nyyssönen and Metsälä (2020).



prominently affect various aspects of peoples' lives through exclusionary devices. Such quasi-memory laws include regulations relating to citizenship,³¹ public administration (symbolic naming of public places),³² the judicial system (such as the Hungarian transformation of the judiciary on the basis of history)³³ and minority protection (defining minorities on a historical basis, excluding certain groups).³⁴

2.4. Memory laws and politics: self-inculpation and self-exculpation

Memory laws affect the legal and political aspects of society. Through this, it is possible to differentiate between various approaches to dealing with the past through law. Eric Heinze distinguishes self-inculpatory and self-exculpatory approaches concerning the potential political motivations of memory laws.³⁵ The self-inculpatory approach focuses on official narratives created by the state aiming to thoroughly deal with the past – including creating opportunities for an open debate about the state's own role in various historical atrocities with the help of historical expertise.³⁶ Ideally, a self-inculpatory approach should avoid excessive politicization of historical narratives. The self-inculpatory approach manifests itself in the creation of historical narratives that are solidly grounded, defend well-argued facts, and, at best, do not involve criminal sanctions. Unfortunately, although the self-inculpatory approach involves the intention to deal with the past, its outcomes can vary. In some cases, the measures motivated by the self-inculpatory approach either go too far or not far enough. The most prominent examples of the self-inculpatory approach include recognition laws and genocide denial bans that target those who question the existence or certain aspects of historical atrocities.

By contrast, through the self-exculpatory approach, the state creates official narratives that are factually contradictory and the degree of politicization of historical memory is striking in such cases. Occasionally, these official narratives are supported by the introduction of criminal sanctions against those who do not support or hold views dissenting from the state-sanctioned version. The self-exculpatory approach involves the creation of historical narratives that focus on the supposedly glorious past, often at the expense of factual evidence and can result in the punishment of those who contradict the official narrative. This can be done through various means, such as criminal provisions, lack of funding or institutional takeover. Demonstrating a self-exculpatory approach, these memory laws are changed often or arbitrarily, without proper debate in order to achieve political goals.

Maria Mälksoo, in her analysis of the historical past from the perspective of foreign policy, created her own model for describing the behaviour of states, distinguishing between reflexive and security-oriented approaches.³⁷ The security-oriented approach culminates in

³¹For example, see the 2017–86 Law on Equality and Citizenship.

³²Wójcik and Belavusau (2018).

³³2011/CLXI Act on the Administration and Organization of Courts.

³⁴2011/CLXXIX Act on the Rights on Nationalities.

³⁵Heinze (2019).

³⁶Heinze (2019).

³⁷Heinze (2019). Furthermore, in Heinze (2018) relates his theory to genocide denialism as well.



confrontational, self-assertive foreign policy behaviour, where perceived historical rights and grievances influence decisions.³⁸ Mälksoo points out that the approach to mnemonic security in particular ‘results in a militarization of punitive memory laws.’³⁹ Thus, her interpretation of the mnemonic security approach is ultimately very similar to Heinze’s characterization of self-exculpation by states. Both approaches, but particularly that of the self-exculpation and mnemonic security present the threat of becoming tools in a potential deterioration of the rule of law.

3. THE MEMORY LAWS OF HUNGARY

The initial conceptualization of memory laws is quite unique in Hungary. In fact, the term memory law exists in two distinct translations in the Hungarian language, both of which have their own specific definition and context of use: *emléktörvény* and *emlékezettörvény*. The *emléktörvény* is the older phrase, and the one that has been used in local political debates and court decisions.⁴⁰

It can be literally translated as ‘individual memory law or law of a single memory’. The first modern *emléktörvény* was enacted in 1990, on the first day of sitting of the first freely elected Hungarian parliament. The law commemorates Imre Nagy and other communist politicians who participated in the 1956 Revolution and were executed for it.⁴¹ This law has proved to be controversial, as Parliament was called upon to also enact laws affirming the culpability of certain communist leaders, which it has failed to do thus far. Nevertheless, more of these laws have been introduced in the last 30 years.

3.1. The initial legislation

In the early 2000s, the French term *loi mémorielle* emerged simultaneously. The Hungarian *emléktörvény*, while sharing some similarities with the *lois mémorielles*, has its roots in the 19th century and is defined locally in a different way.⁴² Contemporary commentators have already identified the 1827/XII Act as such *emléktörvény*, but the name has not become broadly-known until the 1990s.⁴³ Since the 1827 Act, all legal measures aimed at commemoration are referred to as *emléktörvény*. Their topics include many momentous events and significant people from Hungarian history. These include the 1848–1849 Revolution and War of Independence, the significance of which is noted by several anniversaries and commemorative honours for its figureheads,⁴⁴

³⁸Heinze (2019).

³⁹Mälksoo (2019) 373–97.

⁴⁰Mälksoo (2019) 395.

⁴¹1990/XXVIII Act on the Codification of the Significance of the 1956 October Revolution and War of Independence.

⁴²The first paper using the term ‘emléktörvény’ was Tamás (1996).

⁴³1827/XII Act on the Codification for Posterity of the Names of Those who Proposed the Spreading of the National Language and Donated for the Establishment of a Scientific Society.

⁴⁴For example: 1898/V Act on the Celebration of the Adoption of the Laws of 1848; 1927/XXXII Act on the Codification of the Eternal Merit and Memory of Lajos Kossuth; 1948/XXIII Act on the Codification of the Memory of the 1848–1849 Revolution and War of Independence.



several pro-Hungary figures from the Habsburg dynasty,⁴⁵ the founding of the state,⁴⁶ the War of Independence in the early 18th century led by Ferenc Rákóczi⁴⁷ and the resistance efforts in the post-WWI chaos.⁴⁸

The term *emléktörvény* has also appeared in a 2009 decision of the Hungarian Constitutional Court. According to the Court, it is always declarative, its sole aim being to commemorate the significance of historical persons or events.⁴⁹ On the political level, *emléktörvény* can also be cited as a legislative measure with a value-creating function: a signifier of values the parliament holds worthy of the active commemoration for citizens.

The other concept, *emlékeztörvény*, has a somewhat more confusing genesis and definition. It is a newer term that can be translated as ‘collective-memory law or law of collective memory.’ It has found its way to the Hungarian language as the translation of the everyday name of the Spanish Historical Memory Law.⁵⁰ It has been so far used exclusively in reference to foreign memory laws.⁵¹ It has not appeared in political debates or court decisions; however, translations of English academic articles that refer to memory laws have used *emlékeztörvény* rather than *emléktörvény*.⁵² As scholarship in Hungarian on memory laws is quite sparse, the name *emlékeztörvény* is yet to appear in an original Hungarian article. Nevertheless, *emlékeztörvény* would actually be a more inclusive translation of memory laws.

3.2. The current regime

Moving on from terminology towards the actual laws, Hungary possesses punitive, non-punitive and quasi-memory laws. Of the two punitive memory laws, the prohibition on genocide denialism – the 2010 ban on the denial, trivialization or justification of genocide and crimes against humanity committed by the National Socialist and communist regimes – is similar to those found in other European countries. The already mentioned ban on the public display of totalitarian symbols is, in turn, more regionally unique to Central and Eastern Europe. Non-punitive memory laws regulate several areas connected to remembrance, including recognition of historical atrocities,⁵³ the commemoration of

⁴⁵1917/I Act on the Codification of the Memory of Glorious King Franz Joseph I.

⁴⁶1896/VII Act on the Codification of the Thousand-Year Memory of the State Foundation.

⁴⁷1906/XX Act on the Return of the the Ashes of Ferenc Rákóczi II and his Exiled Companions.

⁴⁸1922/XXIX Act on the Codification of the Memory of the Sopron Referendum; 2014/CIII Act on the Villages of Loyalty.

⁴⁹604/B/2009 AB határozat, ABH 2010, 2077.

⁵⁰Nemes (2015) 141.

⁵¹Belavusau (2015b) 248–69.

⁵²Hungarian academia has been intensely debating this topic, albeit without mentioning memory laws specifically, see for example Pataki (2010) 778–98, Gyáni et al. (2008).

⁵³H/6288 Decree on the 70th Anniversary of the Great Ukrainian Famine of 1932–1933.



famous figures and events,⁵⁴ the investigation of the past,⁵⁵ and the teaching of Hungarian history. Quasi-memory laws have appeared in multiple areas of lawmaking, including related to the awarding of citizenship,⁵⁶ minority rights,⁵⁷ administrative law,⁵⁸ and the legal system.

To demonstrate how quasi-memory laws can be used to repossess perceptions about history, I will briefly analyse the regulations relating to the transformation of the Hungarian legal and administrative system via the inclusion of history – recalling the glorification of the past. In the historical memory and historical education of Hungary, the era of the Austro-Hungarian Monarchy (1867–1918), especially its 19th-century years, are regarded as a golden age of national history. In the aftermath of the Austro-Hungarian Compromise of 1867, the Hungarian nation had become a vocal part of a contemporary European superpower. The Hungarian political elite, representing less than 50 per cent of the total population, controlled the policy direction and internal affairs of the Hungarian half of the empire. The legacy of this period, the era of dualism (*dualizmus*), is often wrapped in nostalgia, and a tendency is present in the country to idealize this era due its much larger territory and its strong and active role in European politics, which Hungary has lost in the 20th century. These quasi-memory laws may intend to transform the legal system are tools of symbolism to compare the Hungary of the 2010s to this magnificent era.

In 2012, the Hungarian Supreme Court (*Legfelsőbb Biróság*), then the highest court in non-constitutional matters since the 1990 democratic transition, was renamed as the *Kúria*. The *Kúria* retained the powers of its predecessor and was authorized to act as the highest appeals court, to create standards for lower courts to achieve legal uniformity, and to analyse domestic case law in order to map contemporary legal practice. While it fills the same position of the highest adjudicator in non-constitutional matters as the Supreme Court, translating its name in English to Supreme Court would ignore the historical undertones the title *Kúria* carries. It is inspired by the *Magyar Királyi Kúria* (Royal Curia of Hungary), the highest court of the country between 1723 and 1949.⁵⁹ This institution ceased to exist in the aftermath of the communist *coup d'état* and the subsequent re-structuring of the judicial system and had not been restored after the democratic transition. Their places had previously been filled by the Constitutional Court and the Supreme Court. The renaming of the highest non-constitutional court of

⁵⁴These laws are: 1990/XXVIII Act on the Codification of the Significance of the 1956 October Revolution and War of Independence; 2000/I Act on the Memory of the State Foundation of St. Stephen and the Holy Crown; and the 2010/XLV Act on National Unity.

⁵⁵1995/LXVI Act on the Protection of Public Records, Public Archives and Private Libraries; 2003/III Act on the Foundation of the Historical Archives of the State Secret Services and the Uncovering of the Past Regime's Secret Service Activities.

⁵⁶2010/XLIV Act on the Modification of the 1993/LV Act on Hungarian Citizenship.

⁵⁷2011/CLXXXIX Act on the Rights of Nationalities.

⁵⁸For example 2006/V Act on Public Company Information, Company Registration and Winding-up Proceedings, Paragraph 3(6); 2011/CLXXXI Act on the Judicial Registry of NGOs and the Related Procedural Rules, Paragraph 36(4a).

⁵⁹The current law mentions the following old legislation: 1871/XXXI Act on the Arrangement of First Instance Courts.



Hungary to *Kúria* also carried the symbolic reference to more prosperous times – the aforementioned second half of the 19th century. It further echoed the elimination of the last remnants of communism.⁶⁰

Quasi-memory laws similarly transformed the administration system as well. Before the territory loss caused by the Trianon Treaty, the administrative units of Hungary were called *járás* (a term untranslatable to English). Each county consisted of around 10–15 *járás*. They had been eliminated in the 1980s, and were restored in 2013.⁶¹ There was no discernible reason for such a sudden transformation of the legal and administrative system post-2010, but it confirms the arbitrary selection of historical narratives, in these cases used to underline nostalgia for allegedly better times and symbolically connect the current regime to the golden age of 19th-century Hungary. The most recent laws dealing with the renaming of the counties and the government commissioners to more ancient, historically connected names of *vármegye* and *főispán* respectively, fit into the above-discussed trend in the current Hungarian legislation.

4. CONCLUSIONS

As the analysis above demonstrates, legislation related to Hungarian historical memory is increasingly gaining ground in public life and is significantly connected to politics. The content of the memory laws projects the history-related priorities of the current government very well; therefore, it may be worth monitoring the development and political context of these laws in the future.

The recent crisis of the rule of law in some EU member states may justify that, despite the respect for national identity, the European community should develop a stronger position regarding what can and should be included in the memory laws. The rise of the legal regulation of historical memory, with the intention of fighting extremism began in the 1990s through the introduction of genocide denial bans. By the end of the 2000s, the instrumentalization of historical memory by law resulted in memory wars, and due to the intervention of law in history, governments and judges began to act as guardians of national history, taking on the role of historians.⁶² Thus, memory laws were used as a tool both for the controversial glorification of the noble past and for attempts dealing with dark and brutal legacies.⁶³ The instrumentalisation of historical memory has strengthened narratives rooted in national values, whether they are self-exculpatory and more populist-leaning or self-inculpatory, and more liberal.⁶⁴

Therefore, the legal governance of historical memory should be an area of consideration in academic or institutional assessments. Interference of law into historical memory, while unavoidable, if too invasive, makes a poor imitation of historical debate. It must be pointed out that states must intervene in the creation of historical narratives via law, and the results are not

⁶⁰This reform also touches on regional courts, creating *Ítéltábla, a Törvényszék, and Járásbíróság* in the 2011/CLXI Act on the Administration and Organization of Courts.

⁶¹2012/XCIII Act on the Establishment of *Járás* and the Amendments of Related Legislation.

⁶²Bertrams and Broux (2007) 75–134.

⁶³Couperus and Tortola (2019) 105–18.

⁶⁴Harris (2012) 350.



always necessarily negative. When different groups in society demand the adoption of memory laws, in order to acknowledge their historical experience, the existence of these laws can foster reconciliation and a more inclusive approach to the past.

However, when these laws can lead to the neglect of historical facts, insufficient consideration of complicated historical context and simplification of events because the official narratives often serve more as justification of political decisions rather than actually dealing with the past. That is why the legal governance of historical memory is a crucial area to defend democratic values like the rule of law.

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