

== Introduction ==

How Maurice Halbwachs Died—and How We Remember Him

ENTERING one of the exhibition halls of the memorial site of the former German Buchenwald concentration camp, just outside the picturesque town of Weimar with its history of humanist thought, visitors encounter a small exhibit commemorating Maurice Halbwachs, the late French sociologist and student of Emile Durkheim. It is at this site where, as inmate 17,161, Halbwachs suffered pain and humiliation and finally, in mid-March of 1945, shortly before the liberation of the camp and the end of World War II, death. In 1944 he had dared to demand information and justice from the authorities after the brutal murder of his Jewish in-laws either by the Gestapo or by henchmen of the collaborative Vichy regime of his native France. His suffering and death, like that of millions of others in the Nazi concentration and extermination camps, was most certainly real.

Yet our memory of this suffering is constructed. We learn about it through the Buchenwald display, a dedication in René König's renowned *Handbuch der empirischen Sozialforschung* (König 1967), or in Lewis Coser's introductory chapter to Halbwachs's texts on collective memory. Coser, a former president of the American Sociological Association, was himself a refugee from Nazi Germany and a victim of Vichy France's internment camps (Coser 1992, 6–7). Narratives and memorials provided by later and present-day actors, including scholars and government agencies, are based on such accounts, and we will never know what shape the stories might have taken under Halbwachs's own authorship. It is through the former that Halbwachs emerges as a ghostly, haunting figure in today's world—a theme to which we return in chapter 4. We engage Maurice Halbwachs's scholarship on collective memory in greater detail in chapters 1 and 2.

The Nazi atrocities that victimized Maurice Halbwachs were also processed in courts of law, most famously in the International Military

Tribunal at Nuremberg, and these legal proceedings played a crucial role in documenting and memorializing the horrors of the Nazi past. Justice Robert Jackson, the American chief prosecutor at the tribunal, had hoped that they would do so, and he expressed his hope with often cited words: “Unless we write the record of this movement with clarity and precision, we cannot blame the future if in days of peace it finds incredible the accusatory generalities uttered during the war. *We must establish incredible events by credible evidence*” (quoted in Landsman 2005, 6–7; our emphasis).

Justice Jackson was not alone in this hope, of course. President Franklin Delano Roosevelt clearly thought along similar lines. As his confidant, Judge Samuel Rosenman, noted, Roosevelt “was determined that the question of Hitler’s guilt—and the guilt of his gangsters—must not be left open to future debate. The whole nauseating matter should be spread out on a permanent record under oath by witnesses and with all the written documents” (quoted in Landsman 2005, 6). Roosevelt had come to believe that revisionist interpretations of World War I, which challenged the doctrine of Germany’s primary guilt, had contributed to isolationist tendencies in the United States that Roosevelt despised. His interest in documenting the Nazi regime’s aggression and atrocities through court proceedings, and thus preserving them for posterity, was thus not just an effort to seek accountability and to write history but also a political strategy that was shared by his World War II allies.¹

Today, Jackson’s and Roosevelt’s convictions, at least overlapping with Emile Durkheim’s classical sociological ideas about the effects of legal proceedings, find renewed relevance in light of recent atrocities such as those in Rwanda, East Timor, Sudan’s South and its Darfur region, the former Yugoslavia, and Iraq and also following the end of dictatorial or autocratic regimes in East Central Europe, Asia, Africa, and Latin America. Simultaneously, and unavoidably after the rewriting of history in the post-civil rights movement era, attention has also been directed inward: How do Americans remember atrocities, not just those committed by foreign powers but also those perpetrated in the course of American history? What role did foreign and domestic trials play in establishing such memories? What are the consequences for today’s responses to grave human rights violations at home and abroad?

We wrote this book as the twentieth century had recently drawn to a close. The period’s political history is in many respects Janus faced. The century witnessed multiple genocides, brutal dictators, and countless mass atrocities. The occurrence of mass killings and abuses of uncounted human beings, unfortunately, does not distinguish the last century from many previous ones—even if the context of modern states caused a qualitative change. However, as the Harvard legal scholar Martha Minow

(1998) keenly notes, a truly exceptional facet of the twentieth century has been the invention of legal institutions to seek some form of accountability, redress, or perhaps even reconciliation in the wake of collective violence and atrocity.

During the past century democracy expanded across much of the globe, and a new vocabulary emerged around the idea of human rights. Some have even diagnosed the late twentieth and early twenty-first centuries as a “justice cascade” (Sikkink 2011). For instance, World War II and the Holocaust were followed by the Nuremberg tribunals and eventually by reparations—albeit never adequate—for some victims; the atrocities in the former Yugoslavia led to the International Criminal Tribunal for the former Yugoslavia (the ICTY); an International Criminal Tribunal was established after the Rwandan genocide; and the end of apartheid in South Africa gave way to a novel Truth and Reconciliation Commission. The decades preceding World War II witnessed the emergence of humanitarian law, codified in the Hague and Geneva Conventions. These cases, of course, represent but a sampling of injustices and legal responses in their aftermath. But they provide inspiration and material for our thoughts.

Maurice Halbwachs’s suffering and that of the tens of millions of other victims of atrocities, law’s contribution to the collective memory of such suffering, and the consequences of collective memories for the control of future hate-inspired violence are the subjects of this book. Halbwachs’s ideas on collective memory, richly developed in a growing body of scholarship, guide us in the project. Our empirical examples focus primarily on American memories of atrocities committed by Americans and by others; on ways law contributed to these memories; and on paths along which memories, in turn, inspired later lawmaking and enforcement aimed at the establishment of a more peaceful world.

The first two chapters of this book establish some basic principles, lessons provided by many decades of inspiring scholarship. Insights concern the nature of collective memory, the role law plays in establishing such memory, and the effects of collective memory on later stages of conflict, especially as they entail the making and enforcement of new laws. They also address the role of emergent global scripts and norms regarding human rights and, simultaneously, the role social actors play in generating and enacting such scripts. Chapter 1 especially links these discussions with ideas developed by Martha Minow about cycles of violence and the Minnesota political scientist Kathryn Sikkink on the justice cascade.² These ideas motivate our scholarly and practical interest in ways in which cycles of violence, accelerated too often in human history, can be slowed or even brought to a halt. While our empirical analysis will have to stop at the moment at which control mechanisms are enacted and

implemented, our theorizing reaches toward the potential consequences of such control mechanisms.

The subsequent three chapters offer a set of case studies that shed empirical light on the question of how legal interventions color our memories of evil. Throughout these chapters we ask whether Jackson's and Roosevelt's trust in the history-writing power of law is indeed justified. Or do the limitations and the particular logic of legal proceedings distort history in ways that fail to teach us the desired lessons?

Specifically, chapter 3 considers the infamous My Lai massacre committed by American soldiers during the Vietnam War. This atrocity was narrated early on by three independent sources: an Army commission, a famous journalistic account, and also—and especially important here—criminal court proceedings. A comparison of these early accounts is followed by an empirical exploration. We ask whether and how these partially competing narratives are reflected in American history textbooks and in media reporting throughout subsequent decades. How, for instance, do our history lessons teach us to remember My Lai, if at all? What do journalists have to add? What role do political interests of later days play in the memorization of My Lai? Is the presumed ritual force of law confirmed? And what might the patterns we identify say about American culture more broadly? Our findings provoke questions regarding the consequences of a resurgence in American pride in the military and American soldiers' attitudes regarding torture and war crimes.

Chapter 4 builds on arguments regarding the path dependency of collective memory. It thus asks how previous commemorations color later memories. It also examines the use of "bridging metaphors" that link My Lai to later events. Here we focus on one empirical case, the killing of many civilians in the town of Haditha during the Iraq War by U.S. military. How do different news media compare My Lai and Haditha; that is to say, how do they build bridges that connect them? Do they stress their likeness (mimetic bridging) or similarities of context (contextual bridging)? Do they use consequences of My Lai to predict the impact of the Haditha killings (prognostic bridging)? Or do they highlight differences between the old and the new (bridging challenges)? Using websites of pro-soldier movements we also ask how the legal process channels emotional energy against the killers. Did law intensify emotions, or did it restrain them by undermining critical coverage? We finally introduce the concept of "haunting" and explore the role of trials in promoting or putting an end to haunting.

Chapter 5 takes us outside the United States, into the former Yugoslavia. Here, too, we seek to understand how legal narratives interact with competing accounts to reach a broader public through mediators such as news reports. At the center of this story is the late Slobodan

Milosevic, the former Serbian and Yugoslav president and defendant before the ICTY until his March 2006 death in custody shortly before the court could reach a verdict. Again, we analyze American media reports, beginning shortly before the outbreak of the Balkan wars until several years beyond its ending (from 1989 to 2006). We ask how journalists report about Milosevic at different stages of war and how their reporting is affected by legal proceedings. How did the ritual potency of trials work out in this case? Again, are Jackson's old hopes that trials may document incredible events through credible evidence confirmed? Or does law distort the story of Milosevic and the Balkans? How do its narratives interact with accounts from other fields such as foreign policy and diplomacy?

In chapter 6 we ask what image emerges when many processes of memory formation, like those we studied for My Lai, Haditha, and the Balkans, aggregate to form the structure of American memories of atrocities. What is the impact on the composite picture of domestic legal responses in which only low-level perpetrators are found guilty, combined with cases that did not evoke any legal response and with foreign cases in which high-ranked leaders of state crime are prosecuted? How do American memories differ from those of a country like Germany, in which atrocities, albeit of a most different—in fact, unique—quality, were processed in criminal trials, including trials against high-level perpetrators?

Having used such case studies to shed light on the question of how legal proceedings affect the representations and memories of past atrocities, we then set out to ask, Why care? Why do such memories matter anyway? In chapter 7 we provide a preliminary answer. We draw on a range of the extant literature to show that collective memories have considerable consequences. Collective memories motivate social actors to take a stand in the face of grave atrocities, they inspire social movements, and—crucial for our purposes—they may mobilize the use of law as a weapon against hate and violence. Carrier groups, the use of bridging metaphors, and historical consciousness play important roles. Chapter 7 then progresses to two examinations of the effect of collective memory on law, specifically hate crime law, and its enforcement in cross-national and, within the United States, cross-jurisdictional comparisons.

Chapter 8 explores how American and German differences in memory translate into distinct laws on the books and law in action. We use hate crime law as an example, a type of law that seeks to forestall hate-inspired violence. How do differences in collective memory act in combination with particularities of the institutional context in which carrier groups form and operate, of state organization, and of differential exposure to international scripts?

While such comparison yields important insights, countries are clearly not monolithic. We thus take the core ideas from chapters 6 through 8 and, in chapter 9, apply them to a singular case in the United States. Is variation in the memory of atrocities and injustice within the United States associated with legal responses to hate-inspired crime? Here a much larger number of units allows for a statistical test of our theoretical expectations. The reader will learn what differences we found in the distribution of collective memory markers across the country, especially Holocaust memorials and streets named after Martin Luther King Jr. Such patterns open the door to several questions to which we were able to find at least preliminary answers: Do law enforcement agencies implement hate crime policies more vigorously where past episodes of bigotry and hatred are commemorated? What is the effect on practices such as police compliance with federal hate crime law and the creation of formal departments on hate crime enforcement? Do we find differences between the effect of the commemoration of foreign atrocities and that of domestic injustice? Chapter 9 provides answers to these questions.

Finally, a concluding chapter 10 links our empirical findings with those of previous research on related themes. This discussion yields comparative insights, reaching far beyond the case of American collective memories and law. It indeed tells us that we must take into account the reciprocal relationship between law and collective memory of hate and atrocities when we seek to interrupt cycles of violence. With regard to American history, it speaks to the problematic effects of focusing on low-level actors alone in cases of perpetration committed by the government and the military of the United States.