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### History, Memory and the Law in France, 1990–2010

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# *History, Memory and the Law in France, 1990–2010*

History, memory and the law have been in a particularly intense relationship in France over the past twenty years or so. It is the intensity of this relationship which I wish to stress here by briefly recalling its history and its causes.

This history chiefly began in 1990 with the Gayssot law, which makes it an offence to question or “contest” crimes against humanity as defined by the Nuremberg tribunal, an offence punishable by penal sanctions and which was extended to the crime of “genocide” two years later.

However, the promulgation of this law did not at the time provoke much protest from historians. Indeed the opposite was true, being as it was taken within a specific context: the arrest of a *milicien*,<sup>1</sup> Touvier, after years of accomplices turning a blind eye, and above all the increasing power of what has become known as “negationism” (Holocaust denial), started by Robert Faurisson and taken up by Jean-Marie Le Pen. There were only two well-known personalities from the historical community who spoke out. Madeleine Rebérioux, then president of the Human Rights League (Ligue des droits de l’Homme) in a sensational article in the magazine *L’Histoire*,<sup>2</sup> and Pierre Vidal-Naquet,<sup>3</sup> whom no one could suspect of complacency towards negationism, who had brilliantly picked apart its mechanisms and whose parents died during deportation. I will add here that personally I was not very favourable because, having worked for some years on the matter of national memory, I feared that by giving preference – were it for the best reasons in the world – to the

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memory of a particular group, this would be but the thin end of the wedge; a process impossible to halt once set in motion. What is more, the existing legal armoury was sufficient as it had already permitted the conviction of Faurisson. However, these misgivings did not extend to formal opposition.

It was only in 2005 that the historical community took action following two coinciding incidents. Firstly, the Mekachera law of 23 February 2005 according to which “the nation gives recognition to its repatriated French citizens” and stipulating in Article 4 that the school curriculum and textbooks were under obligation to “show colonisation in the positive light which it deserves”.

Secondly, the Pétré-Grenouilleau affair, named after the historian who had shortly before published a book in the Bibliothèque des histoires series – a collection which I head at Gallimard – entitled *Les traites négrières (The Slave Trades)*.<sup>4</sup> The author won several prizes, yet he was taken to court by a black action group, the Collective of Antilleans, Guyanese and Réunionnais (Collectifdom), for statements published in *Le Journal du dimanche* that he made when receiving the French Senate’s history book award; statements which called into question the legitimacy of the 2001 Taubira law, which had been voted unanimously at the suggestion of the National Assembly deputy for Guyana, who declared that slavery and the Atlantic slave trade since the fifteenth century were a “crime against humanity”.

These simultaneous incidents – one coming from the right, the other from the left – all of a sudden sensitised the historical community to the legislative drift, which for fifteen years had been leading the National Assembly more and more frequently and disturbingly to *qualify* the past. The parliament was liberally declaring historical events to be “crimes against humanity”, events which were certainly morally condemnable, but whose *legal* qualification rendered any further discussion impossible at the risk of sanctions.

Four “memory laws” had thus been voted: in addition to the Gayssot law repressing the denial of the Jewish genocide, the law of 21 January 2001 by which, in a single article, “the French Republic recognises the Armenian genocide of 1915” (a tragedy for which France is in no way responsible); the law of 21 May 2005, known as the Taubira law, condemning slavery and the Atlantic slave trade, yet sparing the Arab and inter-African slave trades. Lastly, the colonisation law described above. A drift all the more disturbing for it came to light on this occasion that a dozen such laws were being drafted, starting with a law on the Romani people, another on the War in the Vendée during the French Revolution and a third on the famine in Ukraine in 1932.

It is within this context that a widespread reaction occurred among historians. Firstly, a petition against the colonisation law was initiated, following a forum organised by Claude Liauzu, Gilbert Meynier and Gérard Noiriel, entitled “No to teaching an official history”, which led to the creation of the Vigilance Committee against the State Use of History (Comité de vigilance contre les us-

ages publics de l'histoire, or CVUJH), presided over by Noiriel. Secondly, at the initiative of 19 internationally renowned historians, the Liberté pour l'Histoire association was created, presided over by René Rémond, whom I had the honour of succeeding, and which quickly gathered several hundred members.

This legislative drift could not in fact appear anything but dangerous to historians on several levels. Aside from the fact that it risked paralysing research and that it dangerously mirrored totalitarian practices, aside from the fact that this drift was not occurring in any democracy other than in France – already all good reasons to condemn it – this collection of laws was, in its very nature and in the eyes of professional historians, contrary to the very ethos of historical research. It demonstrated a tendency to reread and rewrite the whole of history exclusively from the victims' point of view. It also demonstrated a regrettable tendency to project onto the past moral judgments belonging exclusively to the present without taking into account the change in the times; this being history's very purpose and the very reason for learning and teaching history in the first place.

Many historians were at first hesitant about joining Liberté pour l'Histoire because in its very principles it went as far as challenging the Gayssot law, which had taken on a sacred quality thanks to the increasingly pregnant memory of the Shoah. It is important therefore to be clear on this point.

We continue, I continue, to be wary of the Gayssot law, all the more so since alongside the old reasons for not being in favour of it, an additional reason – the most powerful and important argument of all – presents itself: the Gayssot law was certainly not voted against historians, on the contrary; yet it was the legal model and template for all of the laws which followed; it inspired them. This had what is known as a perverse effect. A condemnation of the other laws, and following the very principle of all of these laws, would unavoidably entail a condemnation of this first law.

It is now over 20 years since the law was voted, and even if we continue to regret it intellectually speaking, Liberté pour l'Histoire does not campaign for its suppression and does not wish to challenge it, for the simple reason that this legal and official challenge would only be seen in the public eye as authorising and even encouraging the denial of the Jewish genocide.

### ***History and memory***

The wishes of Liberté pour l'Histoire have been heard at the national scale. A commission, presided by Bernard Accoyer, president of the National Assembly, led to a report being voted unanimously in 2008. According to its terms, with the existing laws remaining unchanged, it would be preferable for the National Assembly to abstain in the future from any law qualifying the past; all the more so given that constitutional reform from now on permits questions of memory to be settled not through laws but through "resolutions".

At the European level, the debate on legislation dealing with the past was reopened by a draft Framework decision of 17 April 2007, making it an offence punishable by imprisonment to "grossly trivialise" any genocide, crime against humanity or racist war crime. It represents, in

other words, a generalisation and even an extension and enforcement of the Gayssot law, and the 27 countries of the European Union were given two years to inscribe into their respective constitutions. At the time of ratification and at the suggestion of *Liberté pour l'Histoire*, France chose an option whereby it would only recognise those crimes against humanity defined as such by an international tribunal. This means that genocides during the twentieth century could be potentially recognised, but not those occurring earlier within the nation's history.

To conclude, let us clarify the precise separation made between the political and the historical, between history and memory, by an association such as *Liberté pour l'Histoire*. It is clear that political decision-making bodies have the right and indeed the duty to take an interest in the past in order to orientate and position the collective memory, this clearly lying within their province. Yet they do not have the right to make use of laws which qualify the facts of the past and dictate history. It is up to the politicians to commemorate, to pay homage and to organise compensation; it is up to them to honour the victims. It is up to the historians to do the rest, to establish the facts and to propose interpretations of these facts, restricted by neither constraint nor taboo. In short, to practice what Marc Bloch called their "*metier d'historien*" (profession of historian).

If the debate in France took on this particular form and this intensity, generating books and debates, political divisions and an evocation of the bigger picture, there are two reasons for this. First, because the automatic recourse to the *law*, and with it all that is formal and judicial, exacerbated the relationship of politics with history and memory. Recent constitutional reforms planned to make it possible once more for deputies to vote for a "resolution" instead of a law, as they had been under the Fourth Republic, precisely in order to avoid these conflicts of memory. A "resolution" commits to nothing.

What made the conflict so visible – and precisely allowed historians to win it, albeit provisionally – was the opportunity for the historical community to react.

Various conditions contributed to this: the central Paris location, the legal means to create an "association" in accordance with the law of 1901, the ease of access to political figureheads, at least for the most well-known historians. This combination of factors does not exist in other European countries and the absence of these conditions does not make it easy for colleagues in the European Union to take action. And yet it is at this level that the game is now played.

## NOTES

- \* This paper was delivered to the 21st International Congress of Historical Sciences, Amsterdam, on 23 August 2010. I would like to thank Prof Luigi Cajani for organising the roundtable debate and for offering me this forum.
- 1 A member of the "Milice", the militia of the Vichy Regime.
- 2 Madeleine Rebérioux, "Le génocide, le juge et l'historien", *L'Histoire* 138 (1990), 92–94.
- 3 Pierre Vidal-Naquet, *Les Assassins de la mémoire*, Paris: La Découverte, 1987.
- 4 Olivier Pétré-Grenouilleau, *Les Traites négrières: Essai d'histoire globale*, Paris: Gallimard, 2004.