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The Global Reach of Beijing's Push to Juridify Memory

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China's Memory Laws

On 7 May 1999, during the NATO bombings of what was then Yugoslavia, US stealth bombers dropped five GPS-guided precision bombs on the PRC embassy in Belgrade, killing three Chinese journalists and injuring 20 diplomats working there. While Washington has insisted that the bombing was caused by a tragic set of errors, Beijing

calls it a 'barbaric atrocity' that the Chinese people will 'never forget'. At the site of the former embassy building the Chinese government has erected a memorial engraved with the text 'Honor Martyrs, Cherish Peace'.

This year marks the 25th anniversary of the bombing. If previous years are anything to go by, we can expect a solemn commemoration in which Serbian government leaders and Chinese diplomats will come together to jointly mourn the three Chinese 'martyrs' and condemn NATO's actions. Normally dozens of local Chinese attend to pay respect to their fallen compatriots, perhaps 'spontaneously', as the Chinese state media like to emphasise, or perhaps because recent Chinese laws encourage it. For China has its memory laws too, and it is time to start paying attention to them.

Memory Laws beyond Europe

The study of 'memory laws' has seen a spectacular rise in recent years as governments worldwide are reverting to formal legislation to shape and secure their preferred historical discourses and outlaw narratives subverting these. Despite the increasingly global nature of this phenomenon, this budding scholarly genre has remained largely preoccupied with developments in Europe. Until very recently, Chinese memory laws have been overlooked in these discussions.

One explanation for this is that in European policy debates and legal discourses, the PRC is generally perceived as a lawbreaker, not a lawmaker. Another contributing factor is that European scholars, inspired by the early generation of Holocaust denial bans, have long advanced a narrow definition of memory laws as laws criminalising particular statements about the past. These 'memory laws per se' are sometimes contrasted with 'de facto memory laws', a much broader category which encompasses any legal regulations governing historical memory and commemorative practice.

Seen from a global perspective, this typology seems arbitrary and exclusive. A key aspect of memory legislation is that it results in the juridification (*Verrechtlichung*) of historical memory and the (partial) monopolisation by national legal systems of historical interpretation. If we are to engage in meaningful transnational comparison of such instruments, their functional properties, and their socio-legal impact, we will need an neutral, inclusive and open-ended conceptual typology rather than one rooted in the contingent development of positive law in Europe.

Deepening the Chinese Rule of Law by Monopolising Memory

In recent years, the Chinese state, or more accurately the Chinese party-state, has committed itself to turning China into 'a law based country'. This began in 2012 when Xi Jinping came to power and has since become a key policy objective. In 2018, the aim of 'advancing the rule of law under Chinese socialism' was included in the PRC Constitution. This 'legal turn' in Beijing's domestic statecraft draws on an instrumentalist, narrow understanding of the law, which must at all times remain subordinated to political power, exercised exclusively by the Chinese Communist Party (CCP).

The emerging scholarship on Beijing's authoritarian legality has yet to address the rise of Chinese memory laws, despite the fact that historical memory in China is increasingly shaped through law, broadly defined. This includes major CCP resolutions on history as well as a range of formal laws, quasi-laws and implementing measures. The state draws on this expanding system of declaratory, regulatory and punitive regulations to monopolise 'correct' memory and suppress what it deems 'historical nihilist' counter-memory. There is only one correct interpretation of the national past, and it is the party-state – and the party-state alone – that promulgates and polices it.

In 2018, the Chinese state enacted the Heroes and Martyrs Protection Law, which calls on citizens to 'respect, study, and defend' national heroes and criminalises their defamation. To date, laws such as these have been invoked by Chinese courts to imprison a popular blogger for questioning Beijing's official account of the 2020 Sino-Indian border clashes; to cancel a veteran journalist who ridiculed the depiction of Chinese soldiers in a state-sponsored blockbuster propaganda film on the Korean War; and to rebuke and censor a historian for questioning a story of local heroes in World War II included in standard history textbooks. At the same time, the new laws are also at the base of a wide-scale domestic policy push aimed at promoting the 'spontaneous' commemoration of martyrs by the general public during national holidays.

The Long Arm of China's Memory Laws

But the impact of China's far-reaching new memory laws is not limited to its domestic jurisdiction. As China is globalising, it is not just Chinese products, capital, labour and know-how that are crossing its domestic borders; although less widely noticed, so too are Beijing's state-sanctioned discourses, practices and norms. And this trend also is supported by a recently expanded system of laws and related regulations.

In April 2020, the Chinese Ministries of Veterans Affairs, Foreign Affairs and Finance, together with the Political Work Department of the Central Military Commission, jointly promulgated a set of implementing measures of the Heroes and Martyrs Protection Law. Under these measures, Chinese embassies and consulates abroad are obligated to erect, maintain and protect memorials for Chinese martyrs who are buried in their respective host countries and are further encouraged to 'guide' Chinese delegations, tourists, students and expats in commemorative activities.

Accordingly, what Chinese state media tends to portray as 'spontaneous' participation in official commemorations of Chinese martyrs abroad, such as the victims of the NATO bombings of Belgrade in 1999, perfectly fits a deliberate strategy supported by an expansive system of memory laws with extraterritorial effect. Apart from the three journalists in Serbia, other recognised Chinese martyrs in Europe include tens of thousands of labourers who perished during World War I in Belgium and France and two engineers who gave their lives during construction work in Malta.

Upholding the Rule of Law in Europe

Where the application of these measures leads to government interference with Chinese nationals residing in European societies, this could constitute a violation of fundamental rights granted to them by the host state's national constitution and international treaties to which it is a signatory. These could include the right to freedom of thought, the right to hold opinions without interference and the right to freedom of expression, as stipulated in articles 18 and 19 of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Any such violation would require an immediate and firm response from the host state in the form of effectively safeguarding and enforcing the rights of the foreign visitors and residents involved. Liberal democracy is inherently vulnerable and requires constant maintenance. But ultimately even more concerning than the external threats posed by authoritarian memory practices are those emerging from within as a result of the emulation of these practices.

As I have set out elsewhere, I do not think that authoritarian memory laws can be effectively countered by codifying one's own historical interpretations and promulgating one's own monopoly on memory. Such a response not only risks kindling a 'memory war' that may ultimately result in actual conflict but also eats away at the rule of law at home. Rather than allowing such 'backsliding' to weaken European democracies, a wiser response would be to keep highlighting to the public the controlled and coercive nature of memory production in authoritarian states whilst ensuring safe and open environments at home for unhampered debate on controversial historical topics.

Probing Chinese Memory Laws

Regardless of one's stance in the 'slippery slope' debate on memory laws, there is an urgent need to enhance our understanding of memory laws also outside of Europe, abandon deceptive binaries of 'democracy' versus 'autocracy', and adopt open-ended, functional models for studying and comparing memory laws. As global memory practices may be converging in unexpected ways, it is time to start paying more attention to the formal lawmaking practices of authoritarian states and to the expanding system of Chinese memory laws.

Meanwhile, all signs are pointing to an unprecedented commemoration of Chinese martyrdom in Serbia next week on the occasion of the 25th anniversary of the NATO bombings. It has been speculated that Chinese president Xi Jinping will attend this year's commemoration during his first post-Covid trip to Europe. Whether he does participate remains to be seen, but if the Chinese head of state is in Belgrade at that time he would be wise to do so, lest he fall foul of Beijing's far-reaching new memory laws.

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