

# The Representation of the State Memory Politics in National Constitutions: Axiological Aspects

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## ABSTRACT

The article studies the state politics of memory. The digitalisation of society leads to the dominance of post-truth in the media sphere, which exacerbates information and memory wars. Memory conflicts based on incompatible interpretations of historical events and stages can become a serious threat to political stability. The urgent task of the state is to find balance between the freedom of research and other types of activity, expressing opinion and ensuring a reliable Past. The politics of memory is studied mainly by historians who analyse the legal regulation of commemorative and memorial practices using a narrow approach. They emphasize punitive measures that reinforce the state-supported image of the Past. We develop a broader legal approach to the study of the state politics of memory, which allows us to identify its axiological dimension. We consider the texts of constitutions to be a reflection of the values of the state memory politics. The constitution, as the basic law of the country, performs not only legal, but also ideological functions, acting as a manifesto of the political elite, class, national or social group that has come to power. Constitutional texts always incorporate a system of values and anti-values, an assessment of the past and goals for state construction, so the presence of the images of the Past in them is natural. Having considered modern constitutions that include reference to the Past, we identify three levels of axiology in the constitutional representations of state politics: 1) maintaining the national image of History; 2) the state's responsibility to protect History; 3) the state protection of Memory. We conclude that the representation of the state politics of memory in national constitutions contains a complex system of images of the past, identities and values that are connected with it, as well as relevant measures to support and/or prevent them.

**Keywords:** *historical memory, images of the Past, memory politics, Constitution, constitutional doctrines, representation of memory politics*

## 1. INTRODUCTION

The perception of the past is an important factor in sustainable political and legal development. The image of common History cements the national identity, consolidates various points of view on the future of the country and the goals of state construction seen as projects of a common cause for the citizens. Its role as a source of doctrinal legal concepts and a tool for legitimising doctrinal legal principles remains undervalued in legal research. At the same time, the digitalisation of social communication has given individual memory a loud voice: ordinary people who previously kept their family and personal memory private, now easily objectify it on social networks and Internet platforms. Their versions of "what really happened" often

become more influential in the public consciousness than the data recognised in historical research. Public consciousness today is saturated with conflicting and contradictory images of the Past, each of which can be used as a resource for memorial wars viewed as a special type of ideological confrontation. Under the conditions when the media defines post-truth, memorial conflicts provoke protest movements and socio-political struggles, intertwining with a system of economic, political, and ethnic determinants of political instability. Therefore, modern states pay serious attention to the control of History, trying to keep the unity of memory of key events. In historical research, this activity is characterised by the concept of memory politics (less often – historical politics). In legal research, the concept of "memory politics" has not yet received a categorical development.

The subject structure of memory politics is diverse, since it is implemented by a variety of participants, but the key subject is the state. The legal aspects of the state memory politics are related to the legal regulation of commemorative practices, in which the state uses legal means to protect a particular image of the past, monuments and ways of celebrating memorable dates. Historical researchers give the state politics of memory a limited legal description. Firstly, the state legal politics of memory is most often viewed in a negative dimension, as an activity that punishes the replication of the images of the Past, recognised by the state as unacceptable. Secondly, the state as the basic subject of state and legal politics is often interpreted in a positivist way, as a source of legal prescriptions, conducting its own will on the basis of its own interests. This approach negates the role of legal values in the state memory politics, the fundamental importance of natural rights, and anthropological goal-setting in law. It is possible to overcome its shortcomings within the framework of legal research by referring to the representations of the past in legal doctrines formalised in the basic laws. Constitutional provisions based on certain doctrines can themselves become a source of new doctrines. As T. Y. Khabrieva notes, the doctrinal significance of the Russian Constitution can be revealed by comparing it to the fundamental formulations of other national constitutions [1].

One of the ways to represent the state politics of memory is its reflection in the texts of constitutions. The Constitution is a political and legal document of great force, it performs not only the legal functions of the basic law of the state, but it also has great significance as a manifesto of the political elite, class, national or social group that has come to power. An important role is played by the system of values and anti-values embedded in the text of the Constitution, assessment of the past and setting goals for the state construction. In this article we will focus on the analysis of ideas about the Past that are reflected in modern constitutions. Based on the formal legal method supplemented by an axiological approach, we will present three axiological levels of representation of state politics: 1) maintaining the national image of History; 2) the state's responsibility to protect History; 3) state protection of Memory.

## **2. STATE POLICY OF MEMORY: TO THE PROBLEM OF DEFINITION**

The state politics of memory is studied within the framework of memory studies, based on the works of M. Halbwachs, J. Assmann, P. Nora, A. Assmann, E. Hobsbawm and others [2], who analysed various forms of collective memory. They used the term "collective memory" to describe generalized individual memories, formal and informal commemorative practices, and collective representations rooted in traditions, myths, mass stereotypes, languages, art, and popular culture [3]. In Russian research, the problems of collective memory became relevant in the 90-s of the XXth century due to the socio-political demand for historical research. The works of

Yu. Lotman and M. Barg became popular at that time, and the work of L. P. Repina determined the direction of commemorative research for the future [4]. They used the concept of historical memory to describe the processes of forming collective ideas about the past, which was understood not only as the memory of historical events, but also as their symbolic representation [5].

Historical memory was considered not only as a term, but also as a socio-political concept that allows us to adequately represent the formation of collective identities based on shared memories and formed under the influence of state politics. This trend was quite consistent with Western research strategies that considered historical memory in the format of state politics [6].

At the same time, in the Western segment of historical and political research, the concept of historical politics is traditionally used to describe a set of practices by which political forces in power seek to assert certain interpretations of historical events as dominant [7]. In modern research, historical politics is increasingly associated with the interpretation of the past for solving urgent practical problems and it is becoming increasingly important for describing the phenomenon of using history to achieve political goals and cultural hegemony in the social space. In this regard, the use of the concepts "political use of history", "memory mode" [8], "memory culture", and "memory games" [9], along with the term historical politics, seems quite justified, emphasizing the manipulative nature of the phenomenon.

The use of past events and memorials for political purposes creates the problem of "instrumentalization" of memory, which is considered within the framework of the theory of memory politics. The researchers suggest that memory politics should be understood as "purposeful activity to represent a certain image of the past that is in demand in the political context, through various verbal (speeches of politicians, history textbooks) and visual (monuments, state symbols) practices" [10]. A. I. Miller defines memory politics as a special case of historical politics involving active participation of power structures, confrontationism, and the pursuit of party interests [11]. According to V. A. Achkasov, the politics of memory is carried out in order to form national identity and it is an effective tool for constructing nations [12]. Thus, the politics of memory is translated into the category of symbolic politics, the connections of both are well traced in the works of O. Y. Malinova [13].

The symbolism of the memory politics generates the problem of mythologization and ideologization of the historical past, which is considered in both Western [14] and Russian studies [15]. These works raise the question of legitimate and illegitimate forms of using the past, consider the threats and risks of trivializing history that arise when historical memory becomes the object of political communication [16].

Today's research in the field of memory politics in the West has developed into a special interdisciplinary scientific field focused on four main topics: 1) the use of the past in the formation of national and regional identities; 2) the study of the memory of colonialism; 3) "the study of the problematic

past", the trauma of memory, the main one being the Holocaust; 4) problems of memory politics in the context of transitional justice aimed at overcoming the consequences of systematic human rights violations related to the history of authoritarian regimes [17]. In Russia, along with the study of these topics, special attention is paid to the study of the role of the state and its institutions in the implementation of memory politics. These studies are focused on state studies, and they use the terms "state politics for the preservation of historical memory" [18], "state politics related to holidays" [19] or "state memory politics" [20], which we will use in this study.

### **3. FIRST LEVEL: CREATION AND CONSOLIDATION OF THE NATIONAL IMAGE OF HISTORY**

This is the most vivid, explicit and narrative level. Retelling of the most significant and "valuable" events from the point of view of the authors of the Constitution is usually given in the preamble of the Constitution or in the Declaration of Independence (a separate source of constitutional law, which, as a rule, precedes the adoption of the Constitution). At this point, certain stages of the formation of national statehood are highlighted: national liberation struggle, war with external enemies, liberation from colonial dependence or occupation regime, social revolution, restoration of territorial unity and formation of the nation-state.

For example, the preamble to the Constitution of the People's Republic of China specifies the following historical events: 1840 – the beginning of the First Opium War between Great Britain and the Qing Empire, which, as the preamble states, resulted in the transformation of China into a "semi-colonial and semi-feudal country"; 1911 — the Xinhai revolution and the formation of the Republic of China; 1949 — the victory of the Chinese democratic revolution and the proclamation of the People's Republic of China. The subsequent history is described more generally, for example, it is narrated that "the people of China and the People's Liberation Army of China resisted imperialist and hegemonic aggression, sabotage and armed provocations, thereby ensuring the state independence and security of China and strengthening the state's defence capability", without mentioning the armed conflicts that China entered into. The main achievements of the subsequent historical period include the overthrow of the power of imperialism, feudalism and bureaucratic capitalism, the destruction of human exploitation, the creation of an independent socialist industry, increase in agricultural production, significant progress in educational, scientific and cultural fields, as well as in socialist ideological education. Sun Yat-sen, Mao Zedong, Deng Xiaoping and XI Jinping are named national leaders who contributed to the implementation of China's historical mission. The most significant actors which played a major role in the formation of independent statehood and the modern political regime are the People's Liberation Army of China and the Communist Party of China [21].

The preamble to the Constitution of the Democratic Republic of East Timor declares that the creation of the state was the result of the longstanding resistance of the Timorese people to colonizers and foreign invaders. The milestone dates are: 28 November 1975 — liberation from Portuguese colonial dependence, 7 December 1975 — military invasion of East Timor by Indonesian armed forces, 1987 — the creation of the National Council of Resistance of the Mauberans, 1998 — the creation of the National Council of Resistance of the Timorese, 20 May 2002 — international recognition of the independence of East Timor. In addition to the National Councils mentioned above, the main driving forces of the national liberation movement are the national liberation forces of East Timor, the Secret Front, which is widely deployed on enemy territory, and the Catholic Church of East Timor, which has always given refuge to victims and has stood by them, protecting their most important rights.

Historical narratives are presented in the preamble to the Constitution of the People's Democratic Republic of Laos dated 13-15 August 1991, the Constitution of South Korea dated 17 July 1948, the Constitution of the Socialist Republic of Vietnam dated 15 April 1992, and the Constitution of Cuba dated 1976. National liberation uprisings, revolutionary events, and subsequent democratic transformations are named in these documents as the key episodes that have a fateful significance for the state. The documents name national heroes and public associations that played the most significant role: Chao Fa Ngum, the Communist party of Indochina, the Lao People's Revolutionary Party (People's Democratic Republic of Laos), Ho Chi Minh and the Communist party of Vietnam (Socialist Republic of Vietnam), Jose Marti, Fidel Castro, and the Communist party (Republic of Cuba).

The peculiarity of the narratives studied above is the consolidation of the idea of continuity of national history as liberation from colonialism or foreign dependence, overcoming feudalism and building a new type of national state. This way of memorial representation, according to V. V. Bushuev, solves several problems: reflection of the state concept of national history in the Constitution "expresses the sacred matrix of historical consciousness of society, the "sacred history" of the people. Fixing it at the level of the Constitution as the basic law, allows protecting the sacred pages of history and the sacred historical heroes from being discredited" [22].

There are other models of historical narratives reflected in national constitutions. For example, the preamble to the Constitution of the Polish Republic dated 2 April 1997 builds the concept of Three Polish Republics: the first two are The Polish-Lithuanian Commonwealth (1569-1795) and the Polish Republic (1918 – 1939), the Third Republic is modern Poland. Other historical periods, including the Polish People's Republic (1944-1989), are referred to as "the sad experience of the times when fundamental freedoms and human rights were grossly violated in our Homeland".

The preamble to the Constitution of Latvia creates the concept of Two Latvian Republics: the Latvian State which was proclaimed by the Act of Independence dated 18

November 1918, its polity was enshrined in the Constitution adopted by the Constituent Assembly on 15 February 1922 and modern Latvian Republic, the Constitution proclaims 4 May 1990 to be the historic moment of its rebirth – the day when the Supreme Council of the Latvian SSR adopted "The Declaration on Restoration of Independence of the Republic of Latvia". Regarding the period of Latvia's accession to the Soviet Union and its existence under German-fascist occupation, the Constitution contains the wording that "the people of Latvia did not recognise the occupation regimes and resisted them". In the above-mentioned Declaration on the restoration of the state independence of the Republic of Latvia, the inclusion of Latvia in the Soviet Union is characterised as "an international crime that resulted in the occupation of Latvia and the elimination of the sovereign state power of the Republic of Latvia" [23].

Similar provisions are also found in the Declarations of Independence of other Baltic states. Thus, the Declaration of the Supreme Council of the Lithuanian SSR dated 26 May 1989 states that "the sovereign state of Lithuania was forcibly and illegally annexed to the Soviet Union, thereby losing its political, economic and cultural independence" [24]. In the Estonian Sovereignty Declaration dated November 16, 1988 the Soviet period is characterized as extremely negative, it is determined that the result of the internal politics of Stalinism and the period of stagnation "in the land of Estonia for Estonians as the indigenous nationality was unfavourable demographic situation, the natural environment in many regions of the country was in a catastrophic situation, the ongoing destabilisation of the economy affected the living standards of the entire population of the Republic" [24]. The historical research noted that "the idea of political and state continuity of the modern Baltic states with their historical predecessors has become central to modern political and historical memory, it determines the main vectors and directions of the development of memory politics, becoming the only officially supported version of national history, which is replicated at all levels of education from primary school to universities" [26]. In the texts of constitutions and declarations of independence, this politics is achieved in two ways: by appealing to historical events that confirm historical continuity, and by marginalising the Soviet period.

Not all constitutions present the historical narrative in as much detail as the constitutional texts cited above. Quite often the preambles of constitutions present the state concept of history in a "compressed" form.

For example, the Constitution of Slovakia begins with the words: "We, the Slovak nation, mindful of the political and cultural legacy of our ancestors and the centuries-long experience of the struggle for national existence and statehood, about the spiritual heritage of Cyril and Methodius and the historical legacy of great Moravia". The preamble to the Constitution of the Czech Republic emphasizes loyalty "to all the good traditions of historical statehood of the Crown lands of Czech and Czechoslovak statehood". The Constitutions of the Republic of Belarus and Ukraine use a nearly identical formula: "based on the

long history of development of Belarusian statehood" and "based on the centuries-old history of Ukrainian state-building". The preamble of the Armenian Constitution has a reference to the exercise of the "sacred Covenant of their freedom-loving ancestors on the restoration of the sovereign statehood." The Constitution of Russia states that "the Russian Federation, united by a thousand-year history, preserving the memory of the ancestors who gave us the ideals and faith in God, as well as continuity in the development of the Russian state, recognises the historically formed state unity" [27].

We can conclude that the detailed description of the most significant historical events, as well as the short generalised appeal to the past, solve other important tasks in addition to the axiological marking of the national past, such as revealing the historical foundations of national identity, national character traits (freedom, heroism and sacrifice, determination, good-neighborliness, and love for one's own language and culture). What is more, the legal aspects of succession from one state to a newly formed one, are established. For example, the Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia adopted on 23 December 1993 provides that Slovenia assumes all the rights and obligations provided for by the Constitution of the Republic of Slovenia and the Constitution of the Socialist Federal Republic of Yugoslavia. The Constitution of Russia establishes that the Russian Federation is the legal successor of the USSR on its territory, as well as the legal successor (legal holder) in respect of membership in international organisations and their bodies, participation in international treaties, as well as in respect of the obligations and assets of the USSR stipulated by international treaties outside the territory of the Russian Federation (Article 67.1).

The concept of the historical formation of the nation defines the axiological foundations of its further development and the goals of the upcoming state building. Sometimes a prospective function is realised through setting specific constitutionally significant goals. For example, the Declaration of Independence of Israel adopted on 14 May 1948 explicitly states that "The State of Israel will be open for Jewish immigration and for the ingathering of the exiles; it will foster the development of the country for the benefit of all its inhabitants; it will be based on freedom, justice and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions; and it will be faithful to the principles of the Charter of the United Nations" [28].

The preamble to the Constitution of the People's Republic of China defines that "the basic task of the nation is to concentrate its effort on socialist modernisation along the road of Chinese-style socialism. Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship and the socialist road, persevere in reform and opening to the outside world, steadily improve

socialist institutions, develop the socialist market economy, develop socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernise the country's industry, agriculture, national defence and science and technology step by step and promote the coordinated development of the material, political and spiritual civilisations, to turn China into a socialist country that is prosperous, powerful, democratic and culturally advanced" [29].

More often the goals of state-building are formulated more generally. For example, as the implementation of democratic reforms and the peaceful unification of the native state, strengthening national unity through justice, philanthropy and brotherly love (South Korea); building a country of peace, independence, democracy, unity and prosperity (Laos); building and developing a free and democratic state based on respect for human rights and the principles of civil society, which is an integral part of the family of European and world democracies (Czech Republic); ensuring civil consent, inviolable foundations of democracy and the rule of law (Republic of Belarus); ensuring freedom, public welfare, and civil consent for descendants (Armenia), giving guarantees for the existence and development of the nation, its language and culture for centuries (Latvia, Estonia).

Through the description of victories in the national liberation struggle and social revolutions, through the declarations of loyalty to the memory of heroes, the history is extended to the present day, the current generation is positioned as the successors of the great work of state construction carried out by previous generations, and is included in an unceasing historical chain.

#### **4. SECOND LEVEL: DETERMINATION OF THE STATE'S RESPONSIBILITIES FOR THE PRESERVATION OF HISTORICAL HERITAGE AND PROMOTION OF THE NATIONAL MEMORIAL CONCEPT**

This level of national memory politics is usually expressed in constitutional chapters and sections on education and culture. For example, the Constitution of the Philippines contains the following provisions: "the State preserves, develops and promotes the national historical and cultural heritage and resources... the artistic and historical heritage of the country is considered the cultural wealth of the nation and is protected by the State" (Articles 15 and 16, Part XIV). Similar norms are established in the Constitution of the People's Republic of China: "The state protects places of scenic and historical interest, valuable cultural monuments, and treasures and other important items of China's historical and cultural heritage" (Article 22).

The functions of the state to preserve and protect historical monuments and cultural heritage have also been established in the constitutions of Armenia, Greece, Cuba, Latvia, Lithuania, Slovenia, and Ukraine.

A different concept is presented in the constitutions of Georgia, Belarus, Kazakhstan, and Tajikistan, where

respect for historical and cultural heritage is one of the rights and duties of every citizen.

An important aim of the state memory politics is to create conditions for citizens to study national history, assimilate its concept, and consolidate a system of consistent knowledge about the past of their country. This task is pursued with the help of educational institutions, so a number of constitutions establish norms on patriotic education of young people (Cuba, Kazakhstan, Russia). The Constitution of the Philippines defines that "educational institutions inculcate patriotism and nationalism, foster love of humanity, respect for human rights, appreciation of the role of national heroes in the historical development of the country, teach the rights and duties of citizenship, strengthen ethical and spiritual values" (Section 3 of Article XIV).

Many constitutions ensure freedom of teaching, but the limits of this freedom are defined differently. The Basic Law of the Federal Republic of Germany contains rules that establish that "the entire school system shall be under the supervision of the state" (Part 1 of Article 7) and "the freedom of teaching shall not release any person from allegiance to the constitution" (Part 3 of Article 5).

The Hungarian Constitution, on the other hand, guarantees the freedom of scientific and artistic life, as well as the freedom of education and teaching, by stating that "only representatives of science have the right to determine the scientific value of research" (Article IX. (2)).

The constitutions of some states establish social guarantees for the participants of historic events. For example, the Polish Constitution stipulates that the state provides special care for veterans of the struggle for independence, particularly war invalids (Article 19). The special care of the state for the disabled and victims of war, widows and orphans of those who fell in the war, is guaranteed by the Greek Constitution (Article 21.2). The special status of war veterans is proclaimed by the Constitution of the Republic of Belarus (Article 47). The Constitution of Russia has a norm that the Russian Federation honours the memory of the defenders of the Fatherland (Article 67.1).

#### **5. THIRD LEVEL: PROTECTION OF MEMORY AND ADOPTION OF MEASURES AIMED AT PREVENTING THE REPETITION OF NEGATIVELY ASSESSED EVENTS AND HISTORICAL CATASTROPHES**

It should be noted that norms aimed at protecting the national concept of historical memory and preventing the repetition of tragic events in national history are usually established by special laws, as well as by the law providing for liability for administrative offences and criminal law. Therefore, the existence of such norms in the text of constitutions should be recognised as rather an exception. Such norms are established in the Constitution of the Republic of Poland, according to Article 13 "political

parties and other organisations whose programmes are based upon totalitarian methods and the modes of activity of nazism, fascism and communism, as well as those whose programmes or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the state politics, or provide for the secrecy of their own structure or membership, shall be prohibited" [30]. In addition, Article 43 ensures no statute of limitation regarding war crimes and crimes against humanity.

While the above mentioned article of the Polish Constitution refers to "methods and techniques" of certain political regimes that existed in the recent historical period, some national constitutions contain more generalised prohibitions on establishing state or official ideology (Russia, Ukraine, Tajikistan), but given the socialist past of these countries, it can be assumed that the ban on state ideology is an implicit attempt to create a constitutional and legal mechanism to prevent the return to the Communist ideology.

One of the results of the constitutional reform in Russia has been ensuring state protection of historical truth and prohibition of belittling the significance of the feat of the people in the defence of the Fatherland (Article 67.1).

More often, prohibitions aimed at preventing the repetition of negative events that took place in the past are established in criminal or administrative laws, in sections aimed at protecting the constitutional order and state and territorial integrity of the country.

## 6. CONCLUSION

At the first axiological level of representation of the state politics of memory, associated with the creation and consolidation of the national image of history in the constitutions, most often there are explicit axiological narratives of the constitutional preamble. A distinctive feature of such narratives is the principle of economy of discourse – the constitutional narrative not only contains a basic scheme of interpretation of state history, but also sets the vector of national identity, defining the key features of the national character.

The second axiological level is represented by the formulation of the state's obligations to preserve historical heritage in the constitutional sections devoted to education and culture. It is characterised by the justification of the special importance of studying history by the citizens and the system of state guarantees associated with it.

The third level accumulates the measures for the protection of memory. The appeal to the prevention of historical catastrophes plays a special role in it.

Thus, the representation of the state politics of memory in national constitutions contains a complex system of images of the past, associated identities and values, as well as relevant measures to support and/or prevent them.

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