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Memory Laws on Slavery in France and the Netherlands: From Guillotines to Windmills

Uladzislau Belavusau[1]

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Abstract

This article compares legislation addressing the legacy of slavery in France and the Netherlands. By virtue of its 2001 'Taubira Law', France recognised the transatlantic slave trade as a crime against humanity. Two decades later, the Netherlands has opted for softer measures, materialising in state apologies from the Prime Minister Mark Rutte (2022) and the King Willem-Alexander (2023) for the slavery trade by the Dutch empire, without its Parliament embedding these actions into a more extensive memory law. This article critically explores these divergent approaches, zooming into the strengths of France's formal legislative framework vis-à-vis the less prescriptive strategy in the Netherlands. Although the French legislative model seems more robust in its legal reckoning with the colonial past, that potentially aligns with global movements towards decolonisation and racial equity, the Dutch model benefits from avoiding the controversies associated with more rigid memory laws elsewhere, including their role in prompting 'cancel culture'. The softer approach in the Netherlands, while still adhering to international human rights standards, may foster a reconciliation on collective memory that acknowledges the Dutch colonial past without undermining social and academic dialogue on the complex subject of slavery. The constitutional context of the *Kingdom* of the Netherlands, which is wider than the *country* of the Netherlands, also bears considerable socio-legal intricacies in adopting a memory law on such issues. The model of symbolic recognition notably through the King, who embodies a form of ontological security and mnemonic constitutionalism in a monarchy, aptly fits the socio-legal settings of the Netherlands.

Keywords Memory laws · Freedom of expression · Colonial history · France · The Netherlands · Mnemonic constitutionalism · Ontological security

✉ Uladzislau Belavusau
u.belavusau@uva.nl

[1] T.M.C Asser Institute, University of Amsterdam, The Hague, The Netherlands

Introduction: Context and Structure of the Analysis

> After acknowledgment and apologies, let us work together to foster healing, reconciliation and recovery. So that we can all be proud of what we share. So that we can say:
> *Ten kon drai*.
> Times have changed.
> *Den keti koti, brada, sisa*.
> The chains are broken, brother, sister.
> *Ten kon drai*.
> Times have changed.
> *Den keti koti, fu tru!*
> The chains are broken, it's true!
> (His Majesty King Willem-Alexander, 1 July 2023).[1]

The global resurgence of anti-racist social movements in the early 2020s has sparked widespread interest along with considerable pressure on various states to legislate on issues of historical memory. These efforts stem from the belief that such historical injustices continue to influence societal (in)justice and (in)equality (McGonigle Leyh 2020; Snyder 2021). In the Netherlands, this discussion notably led to calls for the adoption of a memory law that would address the colonial past of the Dutch empire, explicitly echoing the French legislation from nearly two decades ago. In May 2020, Senator Peter Nicolaï put forward a formal inquiry on this (henceforth *Motie Nicolaï*).[2] In his *Motie*, the Senator suggested exploring the possibility of following the example of the French 'Taubira Law' (2001),[3] which recognises the transatlantic slave trade and slavery as crimes against humanity — taking it as a potential model for a Dutch law on the history of slavery (Motie Nicolaï). Legal governance of historical memory in France, in particular regarding its colonial past, builds on a series of memory laws, including the aforementioned 2001 *Taubira Law*, but also includes such laws as the now-repealed *Mekachera Law* of 2005.[4] The latter controversially mandated teaching the 'positive role' of French colonialism, which illustrates the ongoing 'right-left' tension between acknowledging historical atrocities and promoting a state-endorsed narrative. This dissonance often leads to polarising debates over the limits of state intervention in historical discourse and academic freedom (Foirry 2012; Koposov 2020). Both nations grapple with the legacies of their colonial empires, facing ongoing volatile discussions

[1] In his speech, the King cites *Keti Koti* (literally 'broken chains'), which comes from the *Sranantongo* language of Suriname, where the Dutch language remains official, despite the country leaving the Kingdom of the Netherlands and becoming an independent state in 1975.

[2] 35 300 VI, *Motie van het lid Nicolaï c.s.* (10 maart 2020).

[3] *Loi n° 2001–434 du 21 mai 2001 tendant à la reconnaissance de la traité et de l'esclavage en tant que crime contre l'humanité,* henceforth Taubira Law.

[4] *Loi du 23 février 2005 portant reconnaissance de la Nation et contribution nationale en faveur des Français rapatriés* [also known as '2005 Mekachera Law' that 'acknowledges the sufferings and sacrifices' of the 'civil and military victims' of the Algerian war on the French side].

over historical responsibility and appropriate framings of memory (see Belavusau & Gliszczyńska-Grabias 2017), which inevitably encompass the dangers of mandating memory in the name of human rights (David 2020).

Despite recommendations from an advisory group analysing the Motie (Advies Dialoggroep Slavernijverleden 2021),[5] the Dutch Parliament had not adopted such legislation by 2024. In contrast, significant symbolic steps have been taken by the Dutch leadership. The Dutch Prime Minister issued a formal apology for the Netherlands' role in the history of slavery on 19 December 2022 (see Speech by Prime Minister Rutte 2022), followed by the King of the Netherlands, Willem-Alexander, on 1 July 2023. In his speech — further documented and officially published — the King acknowledged the country's colonial past and the role of the Dutch royal family in it (see Speech by King Willem-Alexander 2023). Such political apologies can still be arguably apprehended as 'soft' memory laws because even though they do not carry the binding legal force of legislative acts adopted by the parliament, these ceremonial acts can be viewed as powerful symbolic resolutions on historical wrongs. Furthermore, these acts can influence public discourse and educational practices, as well as contribute to shaping collective memory. In principle, this is in line with what formal memory laws aim to achieve and even contribute, as I will further argue, to a specific form of mnemonic constitutionalism. The latter is, at times, even more significant than the memory laws adopted by parliaments.

The aspiration to combat racism and counteract the colonial legacy through legislation within left-wing movements, including critical legal studies, has been based on a genuine and mostly well-intended aspiration to redress historical injustice. Nonetheless, any state regulation of historical memory constitutes an extremely controversial issue from democratic and rule of law perspectives (Douzinas 2012; Wójcik 2023; Heinze 2023). After all, Vladimir Putin had little argument to justify the Russian full-scale invasion of Ukraine in 2022, other than an imagined de-Nazification of the neighbouring country along with the denial of its independent historical agency (Belavusau et al. 2025).[6] Both Russia and Ukraine, since 2014, have effectively converted memory laws into the shields and swords of memory wars (Belavusau et al. 2021; Belavusau 2022). Similarly, China has fully mimicked this initially very European mode of governing historical past via a catalogue of diverse memory laws, elevating the status of its martyrs and heroes (Chang 2024). Yet even when well-intentioned, such legislation can undermine freedom of speech without, as global experience suggests, necessarily resolving the problem of racism. Such memory laws are on the rise in many parts of the world, promulgated by the right and the left alike, albeit for different purposes and narratives. This has been abundantly demonstrated in the academic literature (Demirel 2022; Snyder 2021). Balancing legislative prescriptions on historical injustices with fundamental rights

[5] See Advies Dialoggroep Slavernijverleden (2021) – including my exploration of the pros and cons of adopting a memory law therein.

[6] See Uladzislau Belavusau, Aleksandra Gliszczyńska-Grabias, Maria Mälksoo & Angelika Nußberger (eds.), *The Politics of Memory Laws: Russia, Ukraine and Beyond*, Hart-Bloomsbury (forthcoming in 2025).

requires that any legal measure pass scrutiny on efficiency, equitability, and alignment with broader rule of law principles (Model Declaration 2019; Bucholc 2019).

This article explores the tensions surrounding memory laws in the (post-)colonial context, focusing on the contrasting approaches of France and the Netherlands. While France embraced the formal regulation of historical memory nearly two decades ago with the adoption of a law by its parliament, the Netherlands has opted for a more symbolic recognition by its head of state, avoiding direct parliamentary involvement through the formal legislative process. The article argues that, despite neither approach being capable of fully satisfying all sides in the debate on how to frame historical colonialism in the present, the Dutch model is notably less problematic for its impact on freedom of expression, adherence to the rule of law, and its fit for the unique set-up of the Kingdom of the Netherlands.

Following this first, introductory section of the article, the second section will examine the range of relevant memory laws in France and their controversial socio-legal dynamics in a (post-)colonial context. The third section will focus on the Dutch experience, highlighting the specificities of mnemonic constitutionalism in the settings of a monarchy and the intricate socio-legal context of the Kingdom of the Netherlands, that in many ways differs from its French 'republican' analogue despite common colonial similarities and practices. The conclusions will summarise the key values and drawbacks of the French model of parliamentary memory laws, explaining why the Dutch model of softer memory laws embodied as declarations from the King and the Prime Minister are more suitable for the Kingdom of the Netherlands, and may be even considered worthy of adoption in similar post-colonial contexts.

Taubira Law (2001) in the Context of Memory Laws in France

French Context and Socio-legal Framework for Memory Laws

From the sixteenth century onwards, French colonialism unfolded predominantly in Africa, Southeast Asia, and the Caribbean region. The French Empire at one point became the second largest in the world. In various periods, it covered territories including contemporary Algeria, Vietnam, and Haiti. Driven primarily by economic reasons, French colonialism was also accompanied by the dissemination of French culture with its declared mission to civilise colonised populations (Lehning 2013). The independence movements and international pressure in the mid-twentieth century led to the decolonisation process and the disintegration of much of the French empire. Yet a complex legacy of cultural influence, political relations, and enduring historical grievances in former colonies have persisted to various degrees to this day (Aldrich 1996).

The current popular terminology of memory laws among scholars originates from the French term *lois mémorielles* (literally 'memorial laws'). It was coined by French historians who protested against the increasing number of measures that compelled them to view the past through a specific lens. While the debate on the permissible boundaries of legal regulation of historical memory is certainly much older, memory laws as a separate heading were first publicly discussed in a December 2005

edition of *Le Monde (*Chandernagore 2005). At the time of their inception, four provisions were labelled as *lois mémorielles*. The first, the 1990 'loi Gayssot', brought by a communist deputy Jean-Claude Gayssot, introduced a punitive prohibition on the denial of crimes against humanity.[7] It is worth noting that criminal laws similar to this one — primarily targeting Holocaust denial — proliferated across Europe in the 1980s and 1990s, extending beyond Germany by the end of the millennium (Fronza 2018). Subsequently, the paradigm of these laws laid down a prohibition on genocide denialism in the secondary law of the European Union through the EU Council Framework Decision on Xenophobic Speech (2008) (EU Framework Decision 2008).

The second and third French laws designated as *lois mémorielles* were declaratory rather than criminal in nature. The 2001 'loi Arménie' recognised the Armenian genocide,[8] while the 'loi Taubira' (also adopted in 2001) recognised slavery and the transatlantic slave trade as constituting crimes against humanity (Taubira Law). Finally, the French set of memory laws concluded with the 'loi Rapatrié' (or *loi Mekachera*, in literature) in 2005, a now-defunct law that required schools to teach about the positive aspects of French colonialism, particularly in North Africa (*Mekachera Law* 2005).[9] Currently, only the *Gayssot* (1990) and *Taubira* (2001) laws remain in effect in France.

For the analytical aims of this article, the heading 'memory laws' encompasses all of the various forms of legal governance that establish state-sanctioned interpretations of significant historical events, personalities, and symbols (see e.g. Bán & Belavusau 2022; Garibian 2006; Fronza 2018; Belavusau & Gliszczyńska-Grabias 2017). Such laws include the diverse ways in which governing bodies employ legal norms or procedures — whether prescribed or discretionary, written or unwritten, formal or informal — in order to shape public understanding of historical past. Although the terminology of memory laws (as laws and specific provisions in statutes formally adopted by states) (Belavusau 2023)[10] only emerged in the French context of the 2000s, these legal tools have long been utilised to influence public knowledge or opinion about the past, extending, for example, to government control over media, education, culture, and other civil spheres (Koposov 2017; Belavusau & Gliszczyńska-Grabias 2017). The discussion of this cluster of laws amongst legal scholars has initially focussed on the adequacy and permissibility of the legal restrictions placed upon individuals or organisations that seek to deny, defend, excuse, or glorify past atrocities (Belavusau 2023). Familiar examples include disputes, both within and among liberal democracies, about bans on genocide denial (*négationnisme*) (Kahn 2004; Fronza 2018).

In recent years, several classifications of memory laws have been advanced in the literature (Bán 2020; Belavusau & Gliszczyńska-Grabias 2020b). Memory laws

[7] *Loi n° 90–615 du 13 juillet 1990 tendant à réprimer tout acte raciste, antisémite ou xenophobe.*

[8] *Loi du 29 janvier 2001 relative à la reconnaissance du génocide arménien de 1915* (2001).

[9] These four statutes are viewed as canonical memory laws. See Koposov (2017, p. 3).

[10] Originally *lois mémorielles* in the French terminology, often translated as *herinneringswetten* in Dutch by analogy with German *Erinnerungsgesetze*.

can primarily be divided into *punitive* and *non-punitive* categories, depending on whether they include provisions prescribing criminal consequences for violating their core tenets (Bachman et al. 2021). While the vast majority of memory laws are non-punitive or *declarative*, as they are sometimes called (Gliszczyńska-Grabias & Wójcik 2018), the most prominent example of punitive memory laws pertains to the group of legal provisions and statutes criminalising Holocaust denial. Punitive memory laws also often encompass defamation laws that prescribe criminal punishment for offences against the State, the Nation, or the Monarch when applied to speech about the past. Some states have also extended (or attempted to extend) the provisions on Holocaust denial to cover the negation and trivialisation of other atrocities, such as the Armenian and Rwandan genocides. In contrast, declaratory memory laws typically include various legal acts that proclaim the recognition of a historical fact, respect, and particular forms of remembrance (especially through the establishment of remembrance days) for victims. A significant group of memory laws also covers soft law regulations, administered by municipal, city, and provincial administrations (often related to the renaming of streets and the building of monuments), as well as regulations from education ministries prescribing history curricula. Additionally, various statutory regulations concerning controversial symbols of the past associated with atrocities (for example, the prohibition of Nazi or communist symbols and memorabilia) fall within the realm of memory laws (Bán 2018).

The initial academic examination of French memory laws focused on their impact on the freedom of historical research, conducted mainly by historians who considered themselves affected by these measures. Local historical organisations also significantly influenced French public opinion on memory laws. Through persistent op-eds and media appearances, they managed to convince the Parliament that all four memory laws posed a considerable threat to academic freedom of expression, which led in 2008 to a comprehensive review of these memory laws. Since then the term has been, if not outright pejorative, then highly controversial in the French public discourse. Nowadays, when French legislators attempt to adopt similar laws, they often make a concerted effort to demonstrate that they are not, in fact, enacting memory laws per se — even if the content of the proposed legislation aligns closely with previous *lois mémorielles*.

As the French debate on memory laws evolved, it shifted towards considering the potential impact of criminalising the denial of the Armenian genocide (and potentially other genocides) and the issue of equal treatment between that mass atrocity and the Holocaust (Duclert 2013). The 2008 French bill on the criminalisation of Armenian genocide denial was drafted as an initiative to 'transpose EU anti-racist law into national legislation', specifically the Council Framework Decision on xenophobic speech.[11] However, completely disregarding the issue of EU harmonisation

[11] *La Proposition de loi portant transposition du droit communautaire sur la lutte contre le racisme et réprimant la contestation de l'existence du génocide arménien*, no 3842 (18 October 2011). This document was meant to explain the transposition of the EU Council Framework Decision 2008/913/JHA of 28 November 2008 on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law.

in criminal law, the French *Conseil Constitutionnel* struck down the law as inherently contradictory to the constitutional protection of freedom of expression.[12]

The aforementioned Taubira Law, in particular, recognised.

> both the transatlantic and Indian Ocean slave trade [*traite négrière transatlantique ainsi que la traite dans l'océan Indien*], on the one hand, and slavery itself, on the other, that were practised from the 15th century [...] as constituting crimes against humanity (Article 1).[13]

The law also established the commemoration of the victims of slavery and stipulated that 'school curricula and research projects in the fields of history and humanities will accord to the subjects of the Negro slave trade and slavery the important place they deserve' (Article 2). Furthermore, the Taubira Law encouraged the establishment of an institute dedicated to preserving the memory of colonialism in France. In 2009, the *Comité pour la mémoire et l'histoire de l'esclavage* (Committee for the Memory and History of Slavery) was founded. The committee's role primarily involves supporting the government in regulating research, dissemination, and teaching regarding the colonial past, making recommendations for the dedication of remembrance days and commemorative events, identifying places of memory, connecting them to an international cooperative network, and raising awareness about colonial history in French schools. The government may also request the committee's professional advice in relation to the legal governance of slavery's remembrance.[14] The *travaux préparatoires* for the Taubira Law reveal that its initial proposal also included an Article 5, which was removed by the French Senate. This draft provision would have allowed associations defending the memory of slaves and the honour of their descendants to exercise the rights recognised to the civil party in cases of insult or racist discrimination. The Senate concluded that the existing provisions of Article 48–1 of the French Press Law, which already allowed associations combating racism or assisting victims of racial discrimination to take such actions, were sufficient.[15]

The Taubira Law has inspired several subsequent, though unsuccessful, attempts to criminalise the denial of the slave trade, along with the aforementioned law prohibiting the denial of the Armenian genocide. However, it has also inspired legislation at the opposite end of the colonial memory spectrum. The aforementioned 'loi Rapatrié' or Mekachera Act (2005) contrasted with the Taubira Law and its self-inculpatory nature by expressing an opposing, self-exculpatory narrative. It was intended to protect the memory of the *harkis*, i.e., French nationals living in Algeria who were repatriated to France along with auxiliaries of the French army. Unlike the Taubira Law, the Mekachera Law did not mention any crimes committed by the

[12] See para 6 in *Décision du Conseil Constitutionnel*, no 2012–647 DC du 28 février 2012.

[13] For the full current version of this legislative act, see. https://www.legifrance.gouv.fr/loda/id/LEGITEXT000005630984/.

[14] See the webpage of the Comité: www.cnmhe.fr/.

[15] See *travaux préparatoires*, available at: https://www.assemblee-nationale.fr/11/dossiers/esclavage.asp, in particular, the Report of Christiane Taubira-Delannon, 'Report Number 2320 of the National Assembly' (6 April 2000), available at https://www.assemblee-nationale.fr/11/rapports/r2320.asp.

French in North Africa before or during the Algerian War but instead made several references to the crimes committed by Algerians, stopping short of classifying them as crimes against humanity. To contrast laws, such as Taubira and Mekachera, scholars have distinguished between two groups of memory laws: *self-inculpatory*, whereby states voluntarily acknowledge guilt for past atrocities by their majority nations (Powell 2002),[16] and *self-exculpatory* (see e.g. Heinze 2019; Baets 2019), whereby states distance themselves and their majority nations from past atrocities by attributing them to foreign states or externally imposed powers (Soroka & Krawatzek 2019).

Critical Assessment of the 'French Sport' of Adopting Memory Laws

While few French historians opposed the adoption of the Gayssot Act back in 1990, which effectively established a ban on Holocaust denial, a wave of opposition emerged against the Mekachera Law of 2005, particularly concerning the clause that stipulated the 'positive effects' of French colonialism, but also against the Taubira Law of 2001 (Koposov 2020). In May 2005, *Le Monde* published a petition signed by a thousand historians calling for the abrogation of this provision and opposing the trend of imposing an 'official history' (Le Monde 2005).

In June 2005, French historian Olivier Pétré-Grenouilleau, the author of a renowned study on the slave trade (Pétré-Grenouilleau 2004),[17] gave an interview in which he noted:

> The Negro slave trade [*la traite négrière*] was not a genocide. The goal of the slave trade was not to exterminate a people […]. The genocide of the Jews and the Negro slave trade were two different processes (cited from Koposov 2017).

Although the historian did not deny the scale of the slave trade or its inhumane nature, a group of activists (the *Collectif des Antillais, Guyanais, Réunionnais*), supported by Christiane Taubira herself, accused Pétré-Grenouilleau of denying a crime against humanity, essentially conflating the notions of genocide and crime against humanity as international legal categories,[18] citing both the Gayssot Law and the

[16] For example, this applies with regard to Germans acknowledging a collective guilt for the crimes of the Third Reich, or to the French – for acknowledging the collective guilt for slave trade during the colonial past. By analogy, it will mean that the majority nation for historic Netherlands constitute the Dutchmen. The idea of a minority-majority nation invokes notions of a country that is politically and socially accountable to its diverse population. For those who hold power, it invokes fear that their power and their privilege will be lost. For those who are disenfranchised, it gives hope that their voices will soon be heard.

[17] This monograph is a comprehensive study of the global history of the slave trade, examining not only the transatlantic trade but also the African, Arab, and Indian Ocean slave trades, providing a broad, comparative perspective on this dark chapter of human history. It has been widely cited in both academic and public discourse for its innovative approach and analysis.

[18] In accordance with the UN Convention on the Prevention and Punishment of Genocide (9 December 1948), genocide is defined as acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. These acts include: (a) killing members of the group; (b) inflicting serious bodily or mental harm; (c) deliberately imposing conditions to cause physical destruction; (d) pre-

Taubira Law. Furthermore, the Collectif initiated criminal and civil lawsuits against the historian and even demanded his suspension from teaching on the grounds of being a 'revisionist'. These developments surrounding the 2001 and 2005 memory laws led to a significant mobilisation of historians, under the framework of the *Liberté pour l'histoire* petition (2005). Partially due to their pressure, the controversial clause of the Mekachera Law was repealed, and the Collectif withdrew its complaint against Pétré-Grenouilleau, likely saving the Taubira Law from being repealed by the constitutional court. The historians from *Liberté pour l'histoire* also protested against the adoption of the aforementioned EU Framework Decision (2008), that introduced the criminalisation of genocide denial in EU law (EU Framework 2008). They published the *Appel de Blois*, a manifesto signed by many of the world's leading historians, including Carlo Ginzburg, Eric Hobsbawm, Timothy Garton Ash, and Aleida and Jan Assmann (Le Monde 2008; Cajini 2017). Notably, the *Appel* protested not only the criminalisation of public discourse about the past but also the government's right to impose its official assessment of historical events through declarative memory laws, due to their chilling effect on freedom of academic expression. The document advocated for the halting of all attempts to legislate on the past (Koposov 2017).

The Taubira Law has been widely criticised on several accounts. In particular, its antagonists pointed out that its exclusive focus on the European role in the transatlantic slave trade neglects the broader global context in which slavery and human trafficking occurred, including the notorious, and at times, central involvement of Arab and other non-European actors in the African slave trade (Larané 2020; Gordon 1989; Gakunzi 2018). Some scholars, particularly within critical studies, have been criticised for oversimplifying these complexities by placing the blame exclusively on Western nations for colonial atrocities, while conveniently disregarding the complicity of other actors (Heinze 2023).

On the one hand, the Taubira Law was a step forward in addressing the specific legacy of European colonialism and its direct impact on populations of colour in Africa and the diaspora. On the other hand, however, it did not avoid the criticism of being anachronistic. In particular, Pierre Nora, one of France's most distinguished historians and the progenitor of a term central in memory studies, *lieux de mémoire* (sites of memory) (Nora 1989), argued that such memory laws, 'a distinctively French legislative sport' (*[ce] sport législatif purement français*), imposed an anachronistic view of history by applying modern legal concepts like 'crimes against humanity' to past events (Nora 2011a, 2011b). The perpetrators of those crimes have long since passed away and therefore face no risk of prosecution, unlike historians who might refer to these events in terms not permitted by law (Weil 2007). Pierre Vidal-Naquet further questioned whether the Greeks of today should decree that their ancestors, the Hellenes, committed crimes against humanity because they had slaves (Vidal-Naquet 2005).

Footnote 18 (continued)
venting births within the group; (e) forcibly transferring children to another group. In this context, genocide is distinctly different from the slave trade, as it represents a separate category of crime.

While many see Taubira Law as a legislative achievement in recognising the atrocities of the transatlantic slave trade and affirming justice for the descendants of those who suffered under European colonial rule (Cottias & Mo 2021), the significant critiques — including those raised by leading historians—highlight the crucial pitfalls of these memory laws that must be seriously assessed before suggesting the adoption of similar laws in other countries in Europe and beyond. The Taubira Law appears to impose a significant constraint on freedom of speech, particularly academic expression, within the socio-political reality of France, as evidenced by the mobilisation of historians against the censorship of their research and public discourse. In terms of the rule of law, the Law still raises concerns around the uncertainty surrounding what is permissible in academic discussions of colonial history (for a detailed discussion see Tourkochoriti 2017). Although the French approach to the legal governance of historical memory through this diverse set of laws may be characterised as both self-inculpatory (*Loi Taubira*) and self-exculpatory (*Loi Rapatrié*), it does highlight the shortcomings of the self-inculpatory approach, despite its rather idealistic purposes. The positive aspect of the French legislation lies in its substantive engagement with the argument of victimhood, as evidenced in the preparatory work for the Taubira Act. The intent of the law is undoubtedly genuine from the standpoint of a culpable state voluntarily recognising its colonial atrocities of the past. Yet, the French legislative efforts to frame its colonial legacy have been rightfully criticised for being more symbolic and anachronistically selective in their portrayal of past victimhood, as well as for exclusively blaming white Europeans, thus setting up a simplified dichotomic view of the colonial past to present a politically constructed idyllic image of France on the international stage (Bán 2020). As the Taubira Law has shown, overly prescriptive laws can unintentionally stifle scholarly debate. Logically then, we might question whether less rigid state actions could achieve a similar purpose of acknowledging past injustices without compromising academic discourse.

Adopting Memory Law(s) in the Netherlands

Dutch Context and Socio-legal Framework for Memory Laws

Historically, the Dutch colonial empire consisted of overseas territories, outposts, and enclaves controlled and administered by Dutch chartered companies (the *Geoctrooieerde Westindische Compagnie* (GWC) and the *Vereenigde Nederlandsche Oost Indische Compagnie* (VOC)) and eventually by the Dutch Republic and the Kingdom of the Netherlands. With dominance over significant international maritime routes, the Dutch governed territories through strategically placed outposts and trade-based enterprises (Israel 1990). Smaller European trading companies lacked the capacity to rival the Dutch East India Company (EIC) and West India Company (WIC), allowing the Dutch to dominate global commerce and usher in the 'Dutch Golden Age' in the seventeenth century.

The Dutch empire spread to Bengal (1627–1825), the Cape Colony (1652–1806), and the Guianas (1616–1975), and at its peak controlled territories in North and

South America, Africa, and Southeast Asia (Israel 1990). It began to decline only by the eighteenth century, in the aftermath of the Anglo-Dutch wars and territorial losses. However, the Netherlands retained control over the Dutch East Indies and the Dutch Guianas until decolonisation occurred in the second half of the twentieth century (Israel 1990). Three former colonial territories in the West Indies (Aruba, Curaçao, and Sint Maarten) remain as constituent countries (*landen*) within the Kingdom of the Netherlands.

During its colonial period, the Netherlands was heavily involved in the global slave trade, spanning from the seventeenth to the nineteenth centuries. Initially, the Dutch transported enslaved individuals to Northern Brazil and later controlled much of the trade to the Spanish colonies (African Studies Centre Leiden 2013). The Netherlands maintained fortresses along Africa's Gold Coast and exploited Suriname and Guyana as key markets. Due to the profitability of the slave trade, the Netherlands was one of the last European countries to abolish slavery in 1863, with a mandatory ten-year transition period and compensation paid to former slave owners. The dark chapter of Dutch history marked by the slave trade persisted through indirect rule until 1910, with the total Dutch involvement in such trade estimated at 550,000–600,000 enslaved people.

While it was not until 2022 that the state apology specifically for slavery was introduced, neither denialism nor apologism or glorification of slavery have been widespread and the years preceding 2022 were characterised by growing practices of national remembrance and condemnation of slavery in the Netherlands. On 1 July 1863, the Kingdom of the Netherlands abolished slavery in Suriname and the Netherlands Antilles with the Emancipation Act, the date that led to the tradition of *Ketikoti* (or *Keti Koti*),[19] a holiday marking the abolition of slavery, widely celebrated on 1 July in Suriname and the Netherlands Antilles, with growing calls for its recognition as a national holiday in the Netherlands (AT5 2020a). Less widely known is the *Dag van Besef* (roughly translated as a 'day of consciousness' from Dutch), commemorated on 30 June by primarily Afro-Surinamese groups (Waterkant 2019; AT5 2020a, b, c). This day includes national ceremonies, speeches, and discussions on the intertwined history and future between the Netherlands, Suriname, and the Antillean islands. Additionally, several monuments dedicated to the remembrance of slavery have been erected around the country since the 2000s.[20]

Beyond colonialism, the most prominent example of, de facto, Dutch punitive memory law in practice has been the prohibition of Holocaust denial by virtue of Article 137 (*c* and *d*) of the Dutch Criminal Code (*Wetboek van Strafrecht*). This provision deals with incitement to hatred, including on racial and sexual grounds. While Holocaust denial has not been explicitly illegal within the wording of the

[19] In Sranantongo (an English-based Creole language spoken in Suriname), this translates to 'the chain is cut' or 'the chain is broken.' In Suriname, it coincides with Emancipation Day, marking the abolition of slavery in 1863. Since 2009, various cities in the Netherlands have hosted activities on 30 June, making it a day of national celebration and remembrance across the country.

[20] These monuments include the *Nationaal Monument Slavernijverleden* (Amsterdam, 2002), *Levensboom* and *Monument van Besef* (Amsterdam, 2003), *Slavernijmonument* (Rotterdam, 2013), and *Zeeuws Slavernijmonument* (Middelburg, 2005).

criminal code, the courts regard it as a form of spreading hatred and, therefore, an offence. According to the Dutch Public Prosecution Office, offensive remarks are only punishable under Dutch law if they amount to discrimination against a particular group (see e.g. van Noorloos 2018; van Noorloos 2011). Recently, the Cabinet also announced an intention to prohibit Holocaust denial more explicitly (Government of the Netherlands 2023). Expanding these criminal provisions to cover the denial of colonial past through a punitive memory law could lead to unintended consequences, such as limiting academic and public discourse. The Dutch parliament has also adopted a number of non-punitive (or 'declarative') memory regulations, for example, most recently on 7 July 2023, joining the number of countries recognising the Holodomor in Ukraine (1932–1933) as an act of genocide, amidst the full-scale Russo-Ukrainian war (ongoing since 2022) (Bolle 2023).

While no formal apologies came on behalf of the government in the Netherlands, despite some organisations calling for them, until 2022 (Schaart 2020), the Mayor of Amsterdam, Femke Halsema, officially apologised for the city's historical role in slavery on 1 July 2021, during the annual *Keti Koti* celebrations. Halsema acknowledged that Amsterdam's city government, as well as its administrators and elites, were deeply complicit in the slavery system. She expressed regret on behalf of the city for Amsterdam's involvement in 'great injustice' and 'systemic inhumanity' (Halsema 2021). Before that speech, the most significant government involvement had been the attendance of officials at the 1 July ceremonies in Amsterdam, accompanied by brief expressions of regret without the acceptance of responsibility. For example, on 1 July 2008, during the Emancipation Day activities in Oosterpark, former Dutch Prime Minister Jan Peter Balkenende referred to slavery as 'a shameful episode in our history, a stain on the country's character' (Nimako & Willemsen 2011).[21]

Following political developments and the aftermath of the Motie Nicolaï, on 1 July 2020, a government advisory committee (*Advies Dialooggroep*) was commissioned to investigate the Dutch state's responsibility for slavery, delivering its report a year later (see Advies Dialooggroep Slavernijverleden 2021). The *Dialooggroep* concluded that slavery conducted under Dutch authority constituted crimes against humanity and recommended adopting legislation in this field. Following publication of this report — and notably after previously outright rejecting similar proposals from coalition partners in 2020 on the basis that 'the victims and perpetrators no longer live', and that 'others may find it painful' (Politico 2020) — Dutch Prime Minister Mark Rutte delivered a highly anticipated speech in December 2022. He apologised on behalf of the Dutch state for its involvement in slavery, addressing both the direct victims and their descendants, and explicitly recognised these actions as crimes against humanity (Government of the Netherlands 2022).

[21] However, two years prior to this statement, the Dutch Prime Minister faced criticism for seemingly praising the Dutch East India Company (*Vereenigde Nederlandsche Oost Indische Compagnie*). This trading company, the first public limited company with freely tradable shares in the world, had offices in several countries. Balkenende expressed his admiration of its commercial spirit and decisiveness, which sparked controversy.

Ironically, the Prime Minister's apology also did not go unchallenged. Critics argued that (a) the King would have been a more appropriate figure to deliver such an apology, (b) it should have been made in one of the Netherlands' former colonial territories, and (c) it should have been delivered on 1 July 2023, marking the 150th anniversary of the abolition of Dutch slavery (Henley 2022). More serious criticisms included the failure to consult with affected countries beforehand — an oversight some believed reflected a persistent 'colonial mindset' (Henley 2022). The Prime Minister of Sint Maarten, Silveria Jacobs, even stated that without prior consultation and internal discussion, the apology would not be accepted until the island's community had the chance to deliberate further (Henley 2022; The Daily Herald 2022).

Arguably in response to these criticisms, King Willem-Alexander of the Netherlands also issued an apology the following year, delivering it on 1 July 2023, marking exactly 160 years since the formal abolition of slavery in the West Indies under the Emancipation Act of 1863 and 150 years since its actual enforcement (Nowakowski 2023).[22] The apology was made during the annual *Keti Koti* commemoration in Oosterpark (Amsterdam) and deposited on the website of the Royal House of the Netherlands (see Speech by King Willem-Alexander 2023). In a symbolic gesture, the King concluded his speech with a poetic reference in Sranantongo, one of the Creole languages of Suriname, a former Dutch colony in South America where Dutch remains the official language. The King stated in particular:

> Of all the ways in which a person can be robbed of their freedom, slavery is surely the most painful. The most degrading. The most inhuman. To view a fellow human being as a commodity, to do with as you please. To use them for profit, as a beast of burden, with no will of their own. To be chained, traded, branded, worked to the bone, punished. Or even killed with impunity (Speech by King Willem-Alexander 2023).

The monarch also asked for forgiveness on behalf of the ruling Orange-Nassau family, acknowledging that they had done nothing to oppose the slave trade. He stated that Dutch ships had transported over 600,000 individuals from Africa across the Atlantic, of whom 75,000 did not survive the journey. He further mentioned commissioning independent research into his family's involvement in the slave trade, with the results expected in 2026 (Ryback 2016). Amongst others, Curaçao Prime Minister Gilmar Pisas, praised the King' apology for slavery as a historic recognition of past suffering, calling it a courageous step toward addressing painful issues and fostering better relations between Curaçao and the Netherlands, while emphasising the need for social stability and open discussion about the horrors of slavery (NL Times 2023).

[22] Slavery was officially abolished in the colonies in 1863, but it did not truly end until 1873, as many formerly enslaved people were compelled to continue working on plantations for an additional decade to minimise financial losses for the owners. See Teresa Nowakowski, Dutch King Apologizes for the Netherlands' Role in the Slave Trade, *Smithsonian Magazine*, 5 July 2023, available at: https://www.smithsonianmag.com/smart-news/dutch-king-apology-netherlands-slave-trade-180982473/.

Although these apologies lack formal parliamentary endorsement, officially published and disseminated on governmental platforms, they function in a similar way to formal memory laws by influencing public discourse and shaping collective memory. This effect extends even to current — unlikely to be successful — attempts to advance reparation in courts, on the basis of these symbolic acts by the head of the state (NL Times 2024).

Furthermore, these symbolic acts should certainly be seen within the wider phenomenon of mnemonic constitutionalism (Belavusau 2022; Belavusau & Gliszczyńska-Grabias 2020a; Vorobiova 2023) which — as I argue elsewhere (Belavusau 2024) — does not necessarily imply formal amendment of the constitution. Mnemonic constitutionalism positions the authority and legitimacy of a state within the boundaries of a certain historical paradigm, whereas current and future attitudes and behaviours of state actors derive from, and are limited by, moral lessons of the past translated into constitutional memory. Within mnemonic constitutionalism, the historical past becomes the foundation underlying the collective identity prescribed by either the national constitution itself, via constitutional symbols and figures like the monarch (Kopyś 2022; Scheppele 2023; Lee & Liou 2019; Son Bui 2023), by legal provisions which traditionally shape the substructure of national constitutional law, most prominently, via citizenship laws (Belavusau 2024; Harpaz and Herzog 2018), or by statutes shaping collective identities by virtue of imposing specific understandings of the historical past (including certain memory laws). The apologies of the King may even be classified as 'soft' memory laws — similar to parliamentary or governmental resolutions on historical events — within the expanding nomenclature of such legislation amongst scholars in this field, representing symbolic actions by heads of state that acknowledge historical injustices without imposing legally binding consequences. While lacking the formal procedural authority of legislation, similar to other non-punitive memory laws adopted by a parliament (such as commemorative resolutions), they significantly shape national ontological narratives and serve as official recognitions of past atrocities. Arguably, the impact of such mnenomic constitutionalism is even stronger given the enduring nature of the monarchy in the Netherlands. The King (Queen) within the constitutional monarchy is also a symbol of national unity and continuity, embodying the nation's identity and providing a sense of stability and historical connection, which is significant in a country known for its decentralised governance and diversity. In this respect, the monarch acts as an ontological custodian of collective memory and identity within the constitutional framework, and this type of mnemonic constitutionalism can be seen as part of the ontological security of the state (Mälksoo 2015; Mitzen 2006).

The government further announced the 'Slavery Memorial Year' during the period 1 July 2023–1 July 2024 in the Netherlands.[23] Although neither the state apologies from the King and the Prime Minister, nor the state commemorations of the 'slavery memory' are formally equivalent to memory laws adopted by

[23] See 'Slavery Memorial Year 1 July 2023 to 1 July 2024', available on the web-page of the Government of the Netherlands, at https://www.government.nl/ministries/ministry-of-education-culture-and-science/events/slavery-memorial-year.

the parliament, as in the case of the Taubira Law in France, this state-sponsored acknowledgment serves a similar purpose in establishing an 'official version of history'. These declarative acts by the Dutch government and the King, collectively certifying the apology and the commemoration, can be further conceived in the realm of 'soft' governance of historical memory. By virtue of such soft declarative memory acts, the state formally recognises historical injustices without enacting legally binding statutes. Such soft declarations lack the punitive character and legislative enactement by parliaments typical of more standard memory laws. Yet, they nonetheless perform the critical function of shaping collective memory and fostering the narrative of historical accountability. In this way, such soft state memory regulations are no less significant than the French Taubira law for acknowledging the legacies of colonialism and slavery, without the risks traditionally associated with formal memory laws.

The Less Obvious Complexity of Memory Laws in the Kingdom Setting

Further specificities of the Netherlands in comparison to France, both as a nation and as a constituent part of the Kingdom of the Netherlands, should be taken into account here, along with considerations of human rights and the rule of law. In particular, the criticism from the island communities regarding the Prime Minister's 2022 apology—as referred to in the previous sub-section—raises an intriguing, albeit technical, question within the framework of Dutch constitutional law: namely, what competencies would the Caribbean parts of the Kingdom of the Netherlands have in adopting a memory law on the historic slave trade run by the Dutch empire? The answer to this question correlates with the ontological (in-)security of these former colonial entities vis-à-vis the Netherlands (Cash & Kinnvall 2017).

In other words, should the Dutch parliament decide to produce a formal law on historical colonialism, a dilemma arises: should such legislation, recognising slavery and the slave trade as crimes against humanity, be adopted as a *rijkswet* (literally 'Kingdom Act' or 'Kingdom Law'), which applies to the entire Kingdom of the Netherlands, or as a *wet* ('regular law' or 'act') that applies solely to the Netherlands? This distinction appears significant because a *rijkswet* would require consent and legislative collaboration from all constituent countries within the Kingdom, including the Caribbean territories. It would further need to ensure a uniform legal framework, in contrast to a regular law that would only affect the European part of the Netherlands. In the meantime, there may be a pluralist benefit in leaving the overseas territories with separate legal and historical accounts of the legacy of slavery, instead of adopting a uniform Kingdom-certified narrative.

The *Koninkrijk der Nederlanden* currently consists of four autonomous countries (*landen*): the Netherlands, Aruba, Curaçao, and Sint Maarten, with the latter three located in the Caribbean. The country of the Netherlands, by contrast, consists of the European mainland and the Caribbean municipalities of Bonaire, Saba, and Sint Eustatius. In this way, both the Kingdom of the Netherlands and the Netherlands as a country comprise European and Caribbean territories.

According to the Charter of the Kingdom of the Netherlands (*Statuut voor het Koninkrijk der Nederlanden*, 1954), the Kingdom of the Netherlands can be considered a state (*staat*) (Borman 2012; Besselink 2014, Bakhuis 2020). Only the Kingdom, not its individual autonomous countries (*landen*) or public bodies, possesses international legal personality. The confusing aspect here though pertains to the fact that under purely Dutch procedural law, the part of the Kingdom that is called the country of the 'Netherlands' (*Nederland*), is in pure legal jargon referred to as '*de Staat*', meaning by this not the Kingdom, but only the Netherlands. The Constitution of the Kingdom of the Netherlands (*Grondwet voor het Koninkrijk der Nederlanden*) and the constitutional documents (*Staatsregeling*) of the three other countries are legally subordinate to the Charter. The 1954 Charter is the overarching legal framework for the Kingdom, prescribing the division of competencies and specifying the areas of internal competence for each of the autonomous countries. In this context, all areas fall within the internal competence of each autonomous country unless the Charter explicitly provides otherwise. Each autonomous country has the responsibility to promote the realisation of fundamental rights and freedoms, legal certainty, and good governance; this is their primary autonomous responsibility. It is, however, deemed to be a 'Kingdom affair' to safeguard these rights, along with legal certainty and good governance. Consequently, the Kingdom can intervene should an autonomous country fail to adequately deliver its obligations in these areas. To determine whether these obligations are met, cases are primarily assessed by the Council of Ministers of the Kingdom (*Rijksministerraad*).

Article 3(1) of the Charter stipulates that, without prejudice to what is stated elsewhere in the Charter, Kingdom matters include:

a. Maintaining the independence and defence of the Kingdom;
b. Foreign relations;
c. Dutch citizenship (*het Nederlanderschap*);
d. The regulation of the orders of chivalry, as well as the flag and coat of arms of the Kingdom;
e. The regulation of the nationality of ships and the setting of safety and navigation standards for sea-going vessels flying the Kingdom's flag, with the exception of sailing ships;
f. Supervising the general rules regarding the admission and expulsion of Dutch nationals;
g. Setting general conditions for the admission and expulsion of aliens;
h. Extradition (see Charter of the Kingdom of the Netherlands 2025)

The safeguarding of fundamental human rights and freedoms, legal certainty, and good governance is provided as an additional Kingdom affair in Article 43(2) of the Charter. From this enumeration in the *Statuut voor het Koninkrijk* (points *a.–h.* in Article 3(1) and Article 43), it therefore seems unlikely that a memory law would be considered a Kingdom Act (*Rijkswet*). However, Article 3(2) stipulates that '[o]ther subjects can be declared to be Kingdom affairs by mutual agreement' (*Andere onderwerpen kunnen in gemeen overleg tot aangelegenheden van het Koninkrijk worden verklaard*) (see Charter of the Kingdom of the Netherlands). Article 38 further confirms that the countries within the Kingdom can decide to adopt a Kingdom

Act beyond the scope of the aforementioned areas (see Charter of the Kingdom of the Netherlands). Such laws are referred to as *consensusrijkswetten* (literally, Consensus Kingdom Acts), in contrast to obligatory Kingdom Acts (sometimes referred to as *obligatoire rijkswetten*) within the competences outlined in Articles 3(1) and 43 of the Charter. The former laws require the consent of the parliaments of the Netherlands, Aruba, Curaçao, and Sint Maarten (Qoubbane 2010). Thus, the countries of the Kingdom can agree to consider the legacy of slavery a matter of concern not just for the Netherlands but for the entire Kingdom, making it a Kingdom affair to be regulated via a *rijkswet*. Prima facie, the transatlantic slave trade—particularly in the Caribbean—appears to be a matter that would fit this description. However, this option would only be feasible as a political choice, as it would require the coordination and agreement of all four autonomous countries to advance the legislation as a *consensusrijkswet*.

Should this option be exercised, the second sub-question in the Motie Nicolaï becomes relevant: namely, whether the *consensusrijkswet* should guarantee the establishment of a national monument, knowledge centre, museum, or a combination thereof.[24] This practice dates back to post-revolutionary France, where decrees authorised the creation of the Louvre in Paris (Belavusau 2015). As the case of the Institute of National Remembrance in Poland demonstrates, it is also possible to promulgate such regulations through quasi-parliamentary bodies with competences in just one area of the legal governance of history (Wójcik & Belavusau 2018). However, the majority of the soft governance of historical memory through administrative acts typically occurs at the municipal or city governance level rather than at the national level (Wójcik & Belavusau 2018).

Should there be political will to adopt a *consensusrijkswet* in this area in the Netherlands, the law could designate such institutions with Kingdom status (e.g. *Koninkrijksmuseum voor koloniale geschiedenis*). Furthermore, some of these institutions could be established outside the Netherlands, in one of the three other autonomous countries. The positive aspect of this approach is that it involves all constituent countries of the Kingdom (three of which are former colonies) in a legislative dialogue about the colonial past, helping to shape a consolidated narrative between the descendants of colonial perpetrators and their victims. The downside, however, is that this process may slow down the legislative proceedings and complicate consensus-building on the material and temporal scope of the law. Given the recent political tensions between the Netherlands and some of the Caribbean autonomous countries (e.g. Curaçao) (The Daily Herald 2022), adopting such a law could interfere with other issues, such as budgetary matters. A recurring issue within the Kingdom of the Netherlands involves the constituent countries leveraging their political bargaining power, frequently demanding increased financial support from the Netherlands by arguably exploiting various pretexts, leading to strained relations within the Kingdom. Yet, with the 'soft' symbolic memory regulation of the Prime Minister's (2022) and King's (2023) formal apologies, there were no specific legal

[24] In this regard, the *Motie Nikolai* itself inquired whether in the same law (should it be adopted), it may be possible to guarantee the establishment of the aforementioned institutions.

obligations to make that apology dependent on the adoption of a specific Kingdom Act, leading to a far more elegant and less controversial solution than French-styled memory laws.

To sum up, the necessity of adopting more stringent memory laws by the parliament in the Netherlands remains highly doubtful, which should be interpreted as a wise abstention. If that pressure is put back on the Dutch Parliament, tensions in the unique constitutional set-up between the Netherlands and its Caribbean territories will inevitably emerge. A potential memory law recognising slavery as a crime against humanity, resembling its French analogue, could be adopted as either a *rijkswet* (a Kingdom Act, applicable to the entire Kingdom) or a regular law affecting only the Netherlands, with varying ramifications for the ontological (in-)security of the constituent states of the Kingdom (Mitzen 2006). Either of these approaches therefore carries with it implications for the social-legal dynamics of the development of memory politics within the Kingdom. The option of enacting a *consensusrijkswet* involving all constituent countries could foster a unified dialogue on the colonial past. Yet it may also slow down and even negatively compromise the legislative process by exacerbating political and budgetary tensions. In contrast, the recent symbolic apologies by the Prime Minister and the King did not require the legal endorsement of the Parliament and adequately fulfilled the mission of restorative justice in the context of the Dutch mnemonic constitutionalism. In the future, the political pressure to adopt a more formal memory law through parliament resembling the French *Taubira Law*, may change this situation. Yet this change will inevitably bring a substantial risk of imposing a state-sanctioned narrative that may stifle academic freedom, hinder open debate on the complexities of the colonial past, and further polarise the Kingdom's constituent countries, in view of political and financial tensions between the Netherlands and the Kingdom's Caribbean countries.

Conclusions

In 2001, France adopted a formal legislative approach to addressing its history of slavery through the *Taubira Law*, amongst several other memory laws, including those of an even more controversial nature in their stance on colonialism. The Taubira Law officially recognised the historic slave trade of the French empire as a crime against humanity. It also mandated its inclusion in educational curricula. Despite examining this French legislation two decades later for guidance, the Netherlands has opted for a less stringent approach. Namely, the symbolic state apologies for slavery made by both the Prime Minister in 2022 and the King in 2023, without enacting a memory law in Parliament. While France's approach seeks to legislate historical memory, the Netherlands has focused on fostering dialogue and reflection without imposing binding legal obligations. The choice for the Netherlands and other countries with similar colonial histories lies between continuing with symbolic reconciliation or moving towards formal memory laws, which are often criticised for oversimplifying historical justice and raising challenges related to freedom of expression. In the Dutch context, the adoption of a memory law is further complicated by the constitutional question of whether such a law should be enacted as a

regular law by the Dutch Parliament (*wet*) or as a Kingdom Act (*rijkswet*), the latter requiring the agreement of all the constituent countries of the Kingdom of the Netherlands, adding additional layers of complexity.

Windmills versus Guillotines: Risk Pertaining to Memory Laws on Colonial Past

Both the EU and Council of Europe bear important responsibilities for the framings of memory laws in their Member States. Thus, in accordance with the EU Framework Decision (2008), EU Member States should criminalise the public denial, condoning, or gross trivialisation of crimes such as genocide and crimes against humanity — when such conduct incites violence or hatred against specific groups (EU Framework Decision 2008). However, in light of the case-law of the European Court of Human Rights under Article 10 of the European Convention on Human Rights (ECHR), a memory law, beyond the prohibition of Holocaust denial, with criminal penalties may be deemed disproportionate to the protection of freedom of — particularly, academic — speech (Belavusau 2015). A declaratory, non-punitive memory law, with a self-inculpatory nature, however, would likely not be considered disproportionate should a complaint arise at the Strasbourg Court.

Should the proposed law be adopted as a non-punitive declaratory law on the colonial past, it still poses significant risks to freedom of expression by fostering censorship and creating a chilling effect, as evidenced by the Taubira Law in France. Such a chilling effect occurs when, in fear of potential legal consequences, individuals avoid exercising their legitimate rights, including foremost their freedom of expression (Fajdiga & Zagorc 2023; Canes-Wrone & Dorf 2015). This situation could be triggered by lawsuits, court rulings, or even the mere passing of a law that implies future penalties for expressing certain viewpoints (Gutman 2016). For instance, in the United States, lawsuits specifically aimed at silencing or intimidating individuals into refraining from free expression are referred to as Strategic Lawsuits Against Public Participation (SLAPPs), highlighting a pervasive fear of legal retaliation (Bodnar & Gliszczyńska-Grabias 2023). Artistic narratives and academic accounts related to colonialism should therefore maintain a significant scope of freedom, provided they do not explicitly incite hatred or violence towards particular ethnic or racial groups (Fijalkowski 2014; Gliszczyńska-Grabias 2023; Belavusau 2022).

However, even in its non-punitive form, a memory law comparable to the Taubira Law could contribute to the proliferation of a so-called ‘cancel culture’ in Dutch and other Western institutions (Mounk 2023; Ng 2022; Motica 2021). By virtue of this phenomenon, individuals or groups are ostracised or penalised for expressing views that deviate from the mainstream or accepted narrative. Although this phenomenon often stems from a genuine aspiration to protect vulnerable groups from harm, in the long run it inadvertently leads to the suppression of legitimate academic debate in line with intellectual conformity. While cancel culture is often associated with right-wing critiques, it should also come under scrutiny from left-wing thinkers, considering that such practices hinder the exploration of complex historical issues (Kahn 2024). In their prescription of specific interpretations of historical events, memory

laws further exacerbate this issue. Ultimately, any deviation from the socially-certified historical narrative might be seen as intolerable. At times this leads not only to public shaming but also professional consequences (Mounk 2023). The pursuit of justice for historical wrongs must therefore be balanced against the protection of intellectual inquiry and open dialogue. Memory laws designed as mechanisms of restorative justice, in this respect, can quickly evolve into tools of ideological enforcement.

(In)advertent Advantages of the Dutch Mnemonic Constitutionalism

The recent Dutch approach to historical memory builds on state-issued apologies and investment into research on slavery rather than binding legislation, promulgated by parliaments. Arguably, it offers a more contextually appropriate response to the country's colonial past in comparison to the French model of memory laws, such as the Taubira Law. Neither the Dutch, nor the French approaches are capable of satisfying both sides of the political spectrum regarding the attitude to the slavery past of these countries. Yet memory laws, promulgated by parliaments, though seemingly more progressive, are inevitably even more controversial. For the left, they are ineffective without punitive measures and compensation schemes to the descendants of historical victims, and thus, are arguably unable to fully address entrenched injustices. From the perspective of the liberal centre and the right, even non-punitive laws will inevitably result in a chilling effect on freedom of — especially — academic speech, as illustrated by the strong opposition from French historians, mobilised in their defence for *Liberté pour l'histoire*, disregarding their political preferences. This paradox highlights a curious phenomenon: while these laws aim to address historical wrongs, they often suffocate the very discussions required to process them, on a rotating basis from the right to the left. The 'guillotines of memory' introduced by French legislation two decades ago, with their rigid, often contradictory, and highly charged legal interpretations in the midst of heated social debates, stand in sharp contrast to the Dutch approach of nurturing the 'windmills of history'. Until recently, the Netherlands has adopted a policy of minimal governmental intervention into historical discourse, allowing a presumed consensus on apologising for the legacy of slavery to be expressed by the head of government and, most notably, the King. The King, in this context, embodies a sense of ontological security and represents a form of mnemonic constitutionalism within the nation.

By contrast, France's legislative approach to historical memory has been characterised not only by seemingly noble self-inculpatory laws, like the Taubira Law, via which the state acknowledges its past wrongdoings. The urge to legislate on history has led to a very diverse set of laws, including the now-defunct *Loi Rapatriés* (Mekachera Law), for example. The latter mandated the teaching of the 'positive aspects' of French colonialism in North Africa, demonstrating how easily the praise for the French approach on the left can turn into an ironic joke, with the law here playing to the tune of dominant political trends, rendering the French approach hardly as progressive as it may first appear. Conversely, the Netherlands ventured into this area of historical governance via law two decades later, which may seem

markedly less 'progressive' from the standpoint of an academic subject like the historic slave trade. However, instead of mimicking what Pierre Nora has described as a distinctively 'French sport' of enacting memory laws (Nora 2011a, b), the Netherlands has managed to avoid extremes by using symbolic actions to address the darker chapters of its history. Paradoxically, that alternative approach may align better with the values of a liberal democracy, despite the inevitable criticisms from various quarters.

While French memory laws have traditionally drawn much attention in other countries with colonial or totalitarian pasts, the Dutch model may offer a more flexible and balanced alternative than those embedded in rigid legal frameworks. This approach may hold particular appeal for monarchies, from the UK to Japan, in the future, where the unique aspect of mnemonic constitutionalism allows apologies from the King or Queen to serve not merely as symbolic gestures but as enduring, performative acts (Allington 2021). While neither the French nor Dutch model is perfect in terms of delivering the idyllic historical justice, the choice of the legal governance of history should favour dialogue over the blunt force of legal sanctions or the exclusions and disenfranchisements which fall on the martyrs of cancel culture, while still providing meaningful acknowledgment of historical injustices. Where France has reached for the sharp edge of the guillotine to enforce binary narratives on its past, the Netherlands, for the current moment, have chosen the windmill — slower and more cumbersome, perhaps (and for those who demand blood from history, even standing as a metaphor for futility), but far less likely to sever heads along the way.

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