
Fig.: Snapshot of Armenian genocide denial sky-writing campaign in New York, April 2016.

LAW OF DENIAL

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Abstract Law's claim of mastery over past political violence is frequently undermined by reversals of that relationship of mastery, so that the violence of the law, and especially its symbolic violence, becomes easily incorporated into longues durées of political violence, rather than mastering them, settling them, or providing closure. Doing justice to the past, therefore, requires a political and theoretical attunement to the ways in which law, in purportedly attempting to address past political violence, inscribes itself into contemporary contexts of violence. While this may be limited to an analysis of how law is an effect of and affects the political, theoretically this attunement can be further refined by means of a critique of dynamics that are internal to law itself and that have to do with how law understands its own historicity, as well as its relationship to history and historiography. This article aims to pursue such a critique, taking as its immediate focus the ECHR case of *Perinçek v Switzerland*, with occasional forays into debates around the criminalisation of Armenian genocide denialism in France. The *Perinçek* case concerned Switzerland's

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criminalisation of the denial of the Armenian genocide, and concluded in 2015 after producing two judgments, first by the Second Chamber, and then by the Grand Chamber of the ECHR. However, although they both found for the applicant, the two benches had very different lines of reasoning, and notably different conceptions regarding the relationship between law and history. I proceed by tracing the shifting status of 'history' and 'historians' in these two judgments, and paying attention to the deferrals, disclaimers and ellipses that structure law's relation to history. This close reading offers the opportunity for a critical reappraisal of the relationship between law, denial and violence: I propose that the symbolic violence of the law operative in memory laws is a product of that which remains unresolved in law's understanding of historicity (including its own), its self-understanding vis-à-vis the task of historiography, and its inability to respond to historical violence without inscribing itself into a history of violence, a process regarding which it remains in denial.

Keywords Armenian genocide; denialism; Perincek v Switzerland (ECHR); memory laws

Introduction

When the French National Assembly passed a draft bill to criminalise the denial of the Armenian genocide in 2006, Hrant Dink, journalist and editor-in-chief of the Istanbul-based Armenian-Turkish bilingual weekly newspaper *Agos*, declared that if this bill were to come into effect, he would travel to France to breach it by publicly denying the genocide.[1] At the time of this statement, Dink had been in the spotlight in Turkey for his efforts to render the Armenian genocide publicly addressable. He had received explicit death threats from Turkish ultranationalists who held protests in front of his office building, and he was subjected to a campaign of judicial harassment that took the form of a series of criminal investigations and prosecutions for 'denigrating Turkishness' and other crimes of

[1] 'Fransa'da "soykırım yapılmadı" derim', *Milliyet*, 9 October 2006, http://www.milliyet.com.tr/fransa-da--soykirim--yapilmadi--derim/siyaset/haberdetayarsiv/09.10.2006/173613/default.htm (accessed 25 July 2018). In the end, the French draft bill did not come into force because a political decision prevented it from appearing on the Senate's agenda. Later, in 2011, a draft bill criminalising the denial of genocides 'recognised by law' (including the Armenian genocide, officially recognised in France in 2001, with law no 2001-70) was passed by both the French National Assembly and the Senate, but overturned by the Constitutional Council in February 2012 (decision no 2012-647). This was repeated more recently with a draft bill, specifically criminalising the denial of the Armenian Genocide, passed in 2016 and overruled by the Constitutional Council in January 2017 (decision no. 2016-745).

expression. In his attempts to undo the strange amalgam of silences and hyper-productive denials surrounding the Armenian genocide in the public and official discourse in Turkey, Dink was both particularly effective as a magnetic and compelling spokesperson, and particularly vulnerable as a member of Turkey's now miniscule Armenian population. The tragedy that followed is relatively well-known: A few months later, in January 2007, Dink was assassinated by a 17-year-old hit-man who was almost certainly backed by a network of state officials.[2] As the European Court of Human Rights (ECHR) judgment in *Dink v Turkey* (2010, §107) noted, the judicial harassment that Dink was subjected to in the lead-up to the assassination played an important role in turning him into a high-profile target of fatal violence.

Why did Dink object to France criminalising the denial of the Armenian genocide, when he had been criminalised in his home country for speaking of the genocide and for working to render the genocide speakable? Why would he take the risk of being prosecuted as a genocide denier in France, when he had taken so many risks for sake of the public avowal of the Armenian genocide in Turkey? Dink's own explanation of his position on the French bill was couched in terms of freedom of expression: just as one had to resist criminalisation for speaking of the genocide in Turkey, one had to resist criminalisation for denying the genocide in France.[3] It would, however, be a mistake to interpret Dink's position as a form of free speech absolutism that is wilfully blind to the contexts of political, structural and objective violence that ostensibly 'free' speech circulates in and latches on to.[4] To the contrary, Dink objected to the bill precisely because of a certain political acuity – he thought it would aggravate existing conflicts by reinforcing and further

[2] At the time of writing, the Hrant Dink murder trial is ongoing with 85 suspects including senior officials of the Turkish gendarmerie and police.

[3] 'Fransa'da "soykırım yapılmadı" derim'.

[4] The political limitations and functions of free speech absolutism have been highlighted in recent high-profile debates, for example, by Mamdani (2006) in the aftermath of the Danish cartoon crisis, and El-Enany and Keenan (2015) following the Charlie Hebdo killings.

entrenching polarised positions on the issue.[5] Indeed, the immediate political context of the bill, namely France's questionable opposition to Turkey joining the European Union, and the popular resentment that this produced in Turkey at the time, meant that the bill, rather than serving the purpose of doing justice to the genocide itself, offered the genocide up as a new weapon in a contemporary conflict. Thus instead of rendering the genocide addressable, not just as historical fact but also in terms of its presences today so that reconciliation and reparations may be in sight one day, the draft bill made the genocide unaddressable in brand new ways by engineering a new political present for it, repoliticising its acknowledgment and denial according to a contemporary battle map, and potentially contributing new circuits and patterns of violence to its repertoire – for example, by pointing out Turkey's Armenian minority population as a target for the resentment that had been building up in the EU accession process.[6]

Doing justice to the past requires a political and theoretical attunement to the ways in which law, in purportedly attempting to address past political violence, inscribes itself into contemporary contexts of violence. This may be limited to an analysis of how law is an effect of and affects the political; or in the above example, how certain political expediencies contribute to the formulation of memory laws, and how these laws in turn can become mobilised, ostensibly against their 'general spirit', to aggravate existing political conflicts. However, we may further refine this attunement in a critical register, suspending our common assumptions about the 'general spirit' of memory laws, to instead question what it is about memory laws that renders them particularly vulnerable to political

[5] Dink articulated this in numerous interviews at the time. See also, a letter to the French daily *Liberation* that he co-signed with eight others, published one week before the draft bill was due to be debated in the National Assembly: 'Le travail sur l'histoire sera bloqué en Turquie', *Liberation*, 10 May 2006, p. 35.

[6] At the time, Archbishop Mesrob II Mutafyan, the Armenian Patriarch of Constantinople, stated that 'As Turkish Armenians we feel serious pressure in relation to this bill' and called for increased state security to protect churches and minority schools ('Ermeni Patriği: Fransızlar diyaloğu sabote ettiler', *Hürriyet*, 13 October 2016, http://www.hurriyet.com.tr/gundem/ermeni-patrigi-fransizlar-diyalogu-sabote-ettiler-5251443, accessed 8 July 2018).

instrumentalization. In the above example, the attempted imposition of a universalised truth about the Armenian genocide, laudable as it may be in itself, interpenetrates with, and becomes subsumed by the longue durée of a European universalism that is exclusionary, interventionist and often experienced by Europe's others as hypocritical (cf. Wallerstein 2006). What is it that so easily lends memory laws to political agendas and temporalities that are seemingly beyond their own purview?

There has been a recent reanimation of debates concerning the legal regulation of public memory in Europe.[7] A key catalyst for this was the 2008 European Union Framework Decision which called for each member state to criminalise 'publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes'.[8] Just as in the earlier episodes of scholarship on the subject, which had mainly clustered around high-profile cases of so-called 'revisionist' historians, in this more recent body of work there is a general consensus on the political histories that have rendered memory laws necessary, desirable, or at least understandable. The common points of reference here are World War II, the Holocaust, and the consequent international legal processes, including the emergence of a new regime of human rights. Generally, the current entanglements of denialist or other forms of provocative speech with hate speech is evaluated against this background. With the history of law thus backgrounded, the questions that come to the fore in this literature tend to revolve around issues such as the challenge of assimilating the legal imposition of historical truths in liberal democratic frameworks, the problem of balancing the need to protect freedom of expression with the need to prevent hate speech, the question of the proportionality of using criminal law to regulate public memory, or the potential backlash and antagonization that such regulation could create. However, for a more refined analysis, it may be not only worthwhile but also

[7] See, for example, Hennebel and Hochmann (2011), Löytömäki (2014), Belavusau and Gliszczyńska-Grabias (2017) and Fronza (2018).

[8] EU Framework Decision 2008/913/JHA of 28 November 2008.

necessary to foreground the background, and to reflect on the legal effects of the political histories that are understood to justify contemporary memory laws. This would be a task of attempting 'to identify ... what is forgotten in law, and to understand the law's mode of justifying what is forgotten' in the words of Emilios Christodoulidis (2001, p. 208), who writes of the need to find ways of resisting what he calls 'law's immemorial', that is, 'the logic of a certain concealment of *what* is forgotten and of *that* it is forgotten' (ibid). Such a shift of perspective might be vital for addressing the ways in which law's claim of mastery over past political violence is undermined by frequent reversals of that relationship of mastery – reversals that enable the violence of the law, and especially its symbolic violence, to become easily incorporated into longues durées of political violence, rather than mastering them, settling them, or providing closure.

This article aims to pursue such a critique, taking as its immediate focus the ECHR case of *Perinçek* v *Switzerland*, with occasional forays into debates around the criminalisation of Armenian genocide denialism in France. The *Perinçek* case concerned Switzerland's imposition of criminal sanctions on a visiting Turkish politician who publicly denied that the Armenian genocide was a genocide. At the ECHR, the applicant claimed that Switzerland thus breached his right to freedom of expression. The case concluded in 2015 after producing two judgments, first by the Second Chamber, and then by the Grand Chamber of the ECHR.[9] However, although they both found for the applicant, the Chamber judgment and the Grand Chamber judgment had very different lines of reasoning, and notably different conceptions regarding the relationship between law and history. I proceed by tracing the shifting status of 'history' and 'historians' in these two judgments, and paying attention to the deferrals, disclaimers and ellipses that structure law's relation to history and historiography. An insight that the *Perinçek* case provides is that insofar as 'genocide' remains a legal term of art with a very narrow definition, its denial, when

[9] Hereafter, for sake of clarity, in-text citations of the two judgments will specify '(*Perinçek* 2013)' for the Chamber judgment, and '(*Perinçek* 2015 [GC])' for the Grand Chamber judgment.

couched in legalistic terms, effects law's inadvertent complicity with the politics of genocide denial. But this insight can be pushed further to interrogate law's own denials that augment this complicity. In the *Perinçek* case, I identify these denials as produced by what remains unresolved in law's understanding of historicity (including its own), and by its conflicted interpretation of its own role vis-à-vis the task of historiography. I trace how these denials proliferate law's symbolic violence, rendering it unable to respond to historical violence without inscribing itself into a history of violence – a process regarding which it remains in denial.

The Envoy

First, a note on the protagonist of the ECHR case. Doğu Perinçek is a socialist-turned-ultranationalist politician who has been on Turkey's political scene for more than half a century. He first emerged as a socialist student leader affiliated with the Workers Party of Turkey (Türkiye İşçi Partisi) in the late-1960s, while he was completing his doctorate in law – a qualification that would come to have some significance at the ECHR. Perinçek then became the founder and leader of a Maoist party which has had various official names over the past decades, but is generally referred to as the Aydınlık (Enlightenment) group, after the title of their periodical. Following the 1971 and 1980 coups d'état, Perinçek spent a total of 7 years in prison for his role as the chairman of this party. In the late 1990s, his party made a conspicuous shift in its political profile, and took a distinctly statist and ultranationalist turn. This led to complete reversals of the party's positions on critical issues such as the Kurdish right to self-determination, the legitimacy of the Turkish army's invasion of Cyprus in 1974, and indeed, the criminality of the deportations and massacres of Ottoman Armenians during World War I.[10] As part of this shift, the party began to make

[10] While some commentators identify this shift as a full about-turn (e.g. Zileli 2015) others trace the party's currently amplified strands of ultranationalism, militarism, Kemalism and statism to its conception of the

alliances with a number of far-right groups and figures. One outcome of these associations was Perinçek and a number of his fellow party members' prosecution and conviction in the infamous Ergenekon trial (in session 2009-2013), also known as Turkey's 'deep state' trial, where defendants were effectively accused of state-sponsored crimes against the state.[11] Perinçek was sentenced to aggravated life imprisonment for founding and leading an armed terrorist organisation, attempting to overthrow the government by force, inciting an armed uprising against the government, and obtaining classified documents, among other offences, and spent 6 years in prison from 2008 to 2014.[12]

One alliance that Perinçek's party made with the far-right in the lead up to the Ergenekon process was the so-called Talât Pasha Committee, formed to serve as a platform for genocide denial, and named after the Ottoman statesman widely deemed the architect of the 1915 Armenian genocide. It was as part of this campaign that Perinçek and his allies travelled to several cities in Switzerland in 2005 to deny the genocide publicly, in order to test Switzerland's memory laws. They managed to provoke a criminal legal response: Perinçek was convicted under a Swiss law that forbids the denial of 'a genocide', formulated in these vague terms because the legislators were keen to avoid Holocaust exceptionalism, even though it was Holocaust denialism that initially triggered the legislative debates (*Perinçek* 2015 [GC], §22). His conviction was upheld through two appeals, first by a cantonal court, then by the federal court. Perinçek applied to the ECHR with a number of claims, most importantly that his conviction constituted a breach of his right to freedom of expression under Article 10 of the European Convention on Human Rights. The Turkish government was granted representation as a third party intervener. The

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political in its earlier guises (Birikim 1997; Aydın 1998). See also Polat (2014) for a discussion of Perinçek's contemporary political position as neo-conservative, neo-nationalist and neo-Eurasianist.

[11] See Ertür (2016), where I explore the bizarre ironies of the Ergenekon process.

[12] See Detailed Judgment in the *Ergenekon Case*. Perinçek and other Ergenekon defendants' convictions were overturned by the Court of Appeal in April 2016 due to its finding of a host of procedural irregularities, and a retrial was ordered, which began in June 2017 and is ongoing at the time of writing.

Second Chamber ruled in Perinçek's favour in December 2013, and upon Switzerland's request the case was referred to the Grand Chamber. At this stage, various additional third party interveners were allowed, including the Armenian and French governments, Turkey's Human Rights Association, Truth Justice Memory Centre, a number of other NGOs and private persons. Importantly, due to his involvement in the Ergenekon case in Turkey, Perinçek had been subject to a travel ban which would have barred him from attending the Grand Chamber hearing of the ECHR in Strasbourg in January 2015. However, less than two weeks before the hearing, Perinçek's travel ban was lifted by a Turkish court, expressly to allow him to attend the hearing in Strasbourg. In its ruling, the Istanbul Criminal Court stated: 'The hearing at the ECHR is not just about the personal views of the defendant on the Events of 1915, but about whether or not the ECHR is going to accept the official theses of the Turkish state concerning the 1915 Armenian event.'[13] Thus although on trial in Turkey for state-sponsored crimes against the Turkish state, Perinçek was sanctioned as an envoy to the Turkish state to represent its position on historical state crimes.

The fact that Perinçek's case went all the way to the ECHR Grand Chamber was a significant political victory for the so-called Talât Pasha Committee: This successful legal provocation entailed the ECHR's spectacular instrumentalisation in denialism in the centenary of the Armenian genocide. The high profile of the case allowed Perinçek and his allies to claim in their media campaign that this would be the case that decides whether or not there was a genocide. The campaign was effective: the ECHR Grand Chamber hearing was widely covered in the Turkish media as *the trial* that would put an end to the so-called 'hundred-year-old genocide lie'. It also received coverage internationally, mostly owing to Amal Clooney's celebrity presence at the hearing as part of the team representing Armenia. The Grand Chamber published its judgment on 15 October 2015, also ruling in Perinçek's favour and finding a breach of Article 10 by Switzerland. Back in Turkey, Perinçek and his

[13] Özge Eğrikar, 'Milli Menfaat'ten AİHM'ye Gidiyor', *Hürriyet,* 20 January 2010, http://www.hurriyet.com.tr/milli-menfaat-ten-aihm-ye-gidiyor-28004890.

party celebrated the judgment claiming in bold PR campaigns, 'We put an end to the genocide lie'.

The Judge, the Historian and the Politician

While the *Perinçek* case was obviously never meant to, and did not result in a judgment about the facticity of the Armenian genocide, Perinçek's application did exploit a number of indeterminacies concerning what can be legally acknowledged as historical fact, and this is precisely what the political instrumentalization of the case turned on. These indeterminacies can be understood as pertaining to that which remains unresolved in law's relationship to history, and more specifically, law's self-exposure to a riddle that it is ultimately unable to solve: Who decides the facticity of 'historical fact'? Is it the judge (i.e. a competent court), the historian (i.e. a general scholarly consensus over facts), or the politician (i.e. a statement of recognition by a political body)? This is a riddle that runs through the *Perinçek* case, and bedevils in particular the 2013 judgment by the Second Chamber. Especially noteworthy is the way in which the judgment, in its inability to alter the terms of the question or to properly suspend it, falls into the trap of this riddle, producing a series of denials of its own, which in turn bind it to the denialist agenda that it was meant to deliver judgment on. Two dynamics intertwine to produce this consequence: firstly, the Second Chamber judges' inability to dissociate themselves from the markedly legalistic arguments of the applicant; and secondly, the effects of what may be interpreted as a form of Holocaust exceptionalism in ECHR's jurisprudence.

The Second Chamber judges had to respond to Perinçek's thoroughly legalistic argument. Perinçek argued that when he said 'The Armenian genocide is an international lie', he was not denying the reality or the factuality of the massacres and deportations of Armenians in 1915 and the following years – he admitted that these took place. What he took issue with was the designation of these deportations and massacres as genocide. He

argued that genocide is a legal designation, defined by international law; therefore, questioning, indeed denying the applicability of this legal designation to the events in question should not be subject to sanction. Note that Perinçek's argument is not a new one in the arsenal of denialism pertaining to the Armenian genocide:[14] unlike Holocaust denialism which tends to target the facts themselves and the evidentiary framework (i.e. 'there were no gas chambers'), Armenian genocide denialism often resorts to this more legalistic argument.[15] This legalistic or 'interpretative denial' (Cohen 2001, p. 9, 106) is enabled by the fact that 'genocide' is a legal term of art that was coined more than three decades after the events in question, and has a very narrow application, requiring a specific intent 'to destroy, in whole or in part, a national, ethnical, racial or religious group'. The argument goes that unlike the Holocaust, which was recognised in the International Military Tribunal at Nuremberg against the major war criminals (IMT), there has been no judgment by a competent court that has established the deportations and massacres of Ottoman Armenians in 1915 as a 'genocide'. Thus went Perinçek's argument at the ECHR: the fundamental difference between his case and other ECHR cases concerning denialism was that the latter concerned the Holocaust, which 'had been categorised by the Nuremberg Tribunal as a crime against humanity' (*Perinçek* 2013, §79). Here, a sleight of words obscures an inconvenience that the legal history of the word 'genocide' poses for a strictly legalist approach. It was not 'genocide' but indeed 'crimes against humanity' that figured as a legal category in the IMT process, which preceded the 1948 UN Convention of the Prevention and Punishment of the Crime of Genocide by two years. The IMT indictment

[14] The focus of this article, namely, the contemporary entanglements of law and denial, preclude a wider review of the different arguments and strategies historically employed in the service of denying the Armenian genocide. This is the subject of numerous careful studies published over the last few decades, notably by Hovannisian (1984, 1998) and Charny (1991), and more recently a monumental undertaking by Göçek (2015) who traces patterns of collective denial across hundreds of Turkish memoirs.

[15] Although see Hovannisian (1998) for numerous commonalities between Holocaust denialism and Armenian genocide denialism.

evoked the word 'genocide' only once, and used it merely descriptively rather than as a legal category,[16] whereas the final judgment did not even mention it once.[17] In other words, strictly speaking, the Holocaust was not categorised as a 'genocide' at Nuremberg, and thus this legalistic brand of interpretative denialism, if argued *ad absurdum*, would involve taking issue with the legal characterisation of the Holocaust itself as a genocide.[18] Another inconvenience posed by the legal history of the term 'genocide' is that, even though the UN Genocide Convention was undoubtedly triggered by the Holocaust, its preamble avoids attributing an exceptional legal status to the Holocaust, instead noting 'that at all periods of history genocide has inflicted great losses on humanity'.

The interpretative denialism regarding the Armenian genocide further exploits the 'specific intent' requirement of the legal category of genocide as articulated in the 1948 Convention and in its later iterations, utilising the fact that unlike the Nazi regime, the Ottoman authorities did not diligently keep documents and archives of the evidence of their 'intent to destroy, in whole or in part, a national, ethnical, racial, or religious group'. Indeed, the legal category's requirement of a 'specific intent' has, to some extent, shaped the contemporary historiography of the Armenian genocide, with historians avowedly attempting to trace the genocidal intent in the archives, looking for traces of evidence of Talât Pasha's criminal intention as they work against state-sponsored denialist research.[19]

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[16] Under 'Count 3: War crimes': '[The defendants] conducted deliberate and systematic genocide, viz., the extermination of racial and national groups, against the civilian populations of certain occupied territories in order to destroy particular races and classes of people and national, racial, or religious groups, particularly Jews, Poles, and Gypsies and others.' (IMT Indictment, VIII A)

[17] For the idiosyncratic legal history of 'genocide' bound up as it was with the tenacious efforts of Raphael Lemkin, see Earl (2013) and Sands (2016).

[18] Geoffrey Robertson QC, representing Armenia, made this point in the Grand Chamber hearing (*Perinçek*, Webcast of GC Hearing).

[19] For example, historian Taner Akçam (2012) draws on a variety of sources in his attempt to prove intent, including testimonies given in the Ottoman Courts-Martial of 1919-20 which sentenced Talât and others to death for organizing the massacres of Armenians, reports of Talât's discussions with foreign diplomats, and cables sent by Talât in his capacity as Interior Minister. See also Dadrian and Akçam (2011) for an extended

Thus, Perinçek in his application submitted 'that "genocide" was a clearly defined international crime… which required any one of the specified acts to have been 'committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group' (*dolus specialis*) [and according to International Court of Justice] that the onus was on the applicant party to prove an allegation of genocide and that the requisite standard of proof was high.' (Perinçek 2013, §83).

The challenge that this legalistic denial posed for the Chamber judgment was compounded by the fact that *Perinçek* was the first case at the ECHR concerning the denial of the Armenian genocide. The court's jurisprudence on denialism has developed mainly through cases involving the denial of the Holocaust, or revisionism of facts and events surrounding the Nazi regime and its collaborators.[20] Significant for *Perinçek* is a formulation that has emerged in relevant ECHR case law concerning 'clearly established historical facts', the negation of which is excluded from the protection of Article 10 governing the right to freedom of expression, on the basis of Article 17 which prohibits the abuse of rights. In ECHR decisions and judgments, the usual form this formulation takes is that what is being denied or 'revised' is deemed to, or deemed not to 'belong to the category of clearly established historical facts – such as the Holocaust – whose negation or revision would be removed from the protection of Article 10 by Article 17' (*Lehideux and Isorni v France*, §46). The rule has come under scrutiny in legal scholarship for building an 'exceptional regime' in ECHR's jurisprudence by affording Article 17 a content-based 'guillotine effect' in Article 10 applications (Lobba 2015). More pertinently for our discussion, the category of 'clearly established historical facts' effects the legal reinscription and reproduction of a form of Holocaust exceptionalism, so that although proffered as exemplary ('such as'), the Holocaust becomes paradigmatic. As Laurent Pech

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discussion of the Ottoman Courts-Martial, including English translations of the key remaining documents of this process.

[20] Although, for an exception, see *Fatallayev v Azerbaijan* (2010).

(2011, p. 219) writes, 'While the court uses the plural, the sole Holocaust has been found to constitute a clearly established historical fact, and the court has yet to precisely explain when exactly a historical fact does become "clearly established".' Indeed, once the jurisprudence begins to revolve around a notion of 'clearly established historical facts', the riddle inevitably imposes itself: Is it the judge, the historian, or the politician who shall determine when a historical fact becomes clearly established? Pitted against this category of 'clearly established historical facts', for which the Holocaust provides the singular example, are facts which are deemed to be subject to 'ongoing debate between historians', a category that the Chamber judgment borrows (§99) from previous case law.[21] As Pech (2011, p. 219) writes, 'the question then becomes: how can a court determine when a debate between historians has ended?'[22] ECHR's case law leaves this question unanswered.

It is important to note that Armenian genocide denialism also often capitalises on this notion of the interminability of historical debate. 'Let's set up a joint Turkish-Armenian panel of historians' Turkish officials exclaim.[23] '#Let history decide' reads a skywriting for the denialist campaign over New York City on the 101st anniversary of the genocide (see Fig.). 'I have 90 kilos of documents in evidence' Perinçek gleefully claims at the Grand Chamber hearing, and complains that the Swiss courts were unwilling to consider this archive that would prove that the genocide is no genocide.[24] These are perfect

[21] See, for example *Chauvy v France* (2004).

[22] The cited article by Laurent Pech provides a comprehensive review of criminalisation of Holocaust denial in Europe, and offers a critical take on the EU Framework Decision 2008/913/JHA of 28 November 2008, which calls for each member state to ensure that 'publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes' is punishable. Pech had the opportunity to test some of his analyses and arguments as Perinçek's counsel in the ECtHR Grand Chamber hearing on 28 January 2015, see *Perinçek*, Webcast of GC Hearing.

[23] Compare this to infamous Holocaust denier Faurisson, whose language 'is that of the positivist; he is endlessly calling for the opening of archives and the engagement of debate.' (Mehlman 1992, p. xix)

[24] Compare, again, to Faurisson, who Pierre Vidal-Naquet famously identified as a 'paper Eichmann': 'Eichmann crossed Europe to organize the train transport system. Faurisson does not have trains at his disposal, but paper. P. Guillaume describes him for us: "a man thoroughly in possession of his subject (200

examples of what philosopher Marc Nichanian (2009) refers to as 'historiographic perversion'. For Nichanian the perversion is symptomatic of a much deeper problem concerning the 'truth of the facts' in the aftermath of genocide. Nichanian (1999, p. 257) understands the interminable deferral of historical judgment on the question of 'genocide' as a product of the genocidal machinery itself, which he suggests may be 'the first philosophical machinery of the twentieth century'. The genocidal act is one that necessarily, by its nature, effects an epistemic crisis: as an act of negation, 'genocide is destined to annul itself as fact' (Nichanian 2009, p. 30). Writing in the aftermath of a trial in which the defendant, the orientalist historian Bernard Lewis, took recourse to the same brand of interpretative denial as Perinçek's, Nichanian states:

> in the genocidal and denegating will, it is not the qualification of the events that is in question. …In the last resort, what is at stake is the factuality of the fact, its reality. At stake is the universal procedure of validation. But the events have been invalidated from the start, in their very eventiality. *That is what constitutes the genocidal fact.* (ibid., emphasis in the original)

For Nichanian, 'perverse historians play with this originary invalidation, they wager on it, they repeat it and extend it' (ibid.), and thus the deferral to historical inquiry (i.e. #LetHistoryDecide) is in itself productive of denialism.

The judgment in the civil action brought against Bernard Lewis in France in 1994 is interesting to consider in terms of the tug of war that law stages between the judge and the historian on the question who has jurisdiction over historical facts. The action against Lewis was the final point of the controversy triggered by his statements in a *Le Monde* interview effectively trivialising the Armenian genocide. In the trial he argued along the interpretative/legalistic denialist line and stated that what he denied wasn't the fact that one and a half million Armenians perished during the deportations, but that these events should

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kilograms of working documents, representing research on several tons of texts)" (Vérité, p. 139)' (Vidal-Naquet 1992, p. 24).

be characterised as genocide. The High Court of Paris ruled against Lewis and found him liable for damages, while clarifying that this was not on the basis of the necessity to characterise the massacres and deportations of 1915 as a genocide. The court took recourse to the usual disclaimer on the matter, stating that 'the courts do not have as their mission the duty to arbitrate or settle arguments or controversies these events may inspire and to decide how a particular episode of national or world history is to be represented or characterized'. Instead, the verdict was based on the finding that Lewis 'concealed information contrary to his thesis' and 'failed in his duties of objectivity and prudence by offering unqualified opinions on such a sensitive subject', and thereby 'unfairly rekindled the pain of the Armenian community'. In the Lewis judgment, the combination of the court's rejection of jurisdiction over history and its finding of a failure of objectivity constituted a central indeterminacy: The judge deferred to the historian on the question of veracity, while passing judgment on the historian's methods of verification, which in turn was meant not to be interpreted as a reclamation of the jurisdiction over veracity.

The same indeterminacy finds a different articulation in the Second Chamber judgment in *Perinçek*. The judgment is clearly lured by the appeal of the legalism of the applicant's argument, in fact, it seems to have bought it wholesale. Notably when Perinçek argued the 'no judgment by a competent court' line, he suggested that he could not have expected to be prosecuted for challenging the legal designation, especially not as a doctor of laws, with his 'legally-oriented mind' (*Perinçek* 2015 [GC], §286). The judges of the Second Chamber indeed do seem to have perceived the appellant as a peer of sorts, a fellow jurist. In the brief summary of the judgment, it is twice stated that Perinçek 'is a doctor of laws'; in the full text of the judgment, the fact that Perinçek has a PhD in law comes up now and again.[25] Thus Perinçek flirts with the Second Chamber judges: *I'm like you, a*

[25] In freedom of expression cases at the ECHR, the profession of the applicant is taken into account, and for good reason (see discussion in Hennebel and Hochmann 2011, pp. xxviii-xxix). Yet the emphasis on

doctor of laws, I can take issue with legal designations and interpretations. The judges requite Perinçek's advances; the recognition of Perinçek as a doctor of laws, and the identification of the issue at stake as the freedom to debate a legal characterisation, determines the gist of the judgment of the Second Chamber: *He is a doctor of laws, he is one of us, he is free to publicly discuss and debate the appropriate legal characterisation of this or that act.* What compounds this approach, as I have indicated, is an exceptional status granted to the Holocaust, as the judges take caution to distinguish the *Perinçek* case from cases involving Holocaust denialism. According to the judgment of the Second Chamber, the case is distinct in three ways: first, Holocaust deniers were denying the facts and not their legal characterisation; second, their denial 'concerned crimes perpetrated by the Nazi regime that had resulted in convictions with a clear legal basis'; and third 'the historical facts challenged by the applicants in those cases had been found by an international court to be clearly established' (§117). Apparently, what makes 'fact' is a finding by an international court, with a clear legal basis.

Even though the judgment repeatedly takes recourse to the usual disclaimer on its task not being to settle matters of history (e.g. 'The Court further reiterates that while it is an integral part of freedom of expression to seek historical truth, it is not the Court's role to settle historical issues' [§99]), it cannot quite grant this power to anyone else either. In its response to Switzerland's argument that there is a general academic consensus that the events of 1915 constituted genocide, the judgment comes out as sceptical:

> it is even doubtful that there can be a 'general consensus', particularly among academics, about events such as those in issue in the present case, given that historical research is by definition subject to controversy and dispute and does not really lend itself to definitive conclusions or the assertion of objective and absolute truths. (§117)

Perinçek's 50-year-old doctoral qualification when his subsequent career has had nothing to do with legal practice or scholarship is conspicuous.

We have nothing authoritative to say about history, that is up to the historians. But we can say that historians in turn can have nothing conclusive to say about history because by definition historical research does not lend itself to the assertion of objective and absolute truths. The matter rests undecided, and can therefore be endlessly questioned, especially by a doctor of laws who is taking issue with the legal characterisation as such with regards to events whose historical status has not been judged as objective history, that is as 'clearly established facts' by law, which in turn can't have anything authoritative to say about history unless explicitly enlisted and competent to do so, because that's up to the historians, who in turn can have nothing conclusive to say about history… The combined effect of legalism, Holocaust exceptionalism and historical scepticism in the Chamber judgment produces an endless deferral which both empowers the judge with jurisdiction over history more than the historian, but at the same time functions as a disavowal of that jurisdiction so that the deferral itself comes to effect denial. Inadvertently, the judgment performs the very function that it was enlisted for by the applicant, namely, casting doubt on the factuality of genocide.

How can this particular form of denial-by-deferral be countered? Styled as an archive of the self-evidence of the Armenian genocide, the dissenting opinion penned by two of the Second Chamber judges takes recourse to documentation, evidence, proof. But it is important to be cognizant that such archival recourse is always already enlisted and disempowered by the logic of denialism (Lyotard 1988, §9-13). The very engagement in the effort of validation fails to recognise that the opponent is 'playing another genre' (ibid., §33-34) and fuels the obscene hyperproductivity of denialism: '90 kilos of documents!' Perinçek exclaims, '200 kilos of working documents' Faurisson claims. Marc Nichanian has a different proposal. For him, memory laws are precisely what is needed for countering denial-by-deferral. Writing against the background of intensified controversy concerning the Gayssot Act, which criminalises the denial of the Holocaust in France, and responding

to contentions that the act unjustly usurps the historian's jurisdiction, Nichanian (2009, p. 39) argued for the necessity of such laws in the following terms:

> There had to be a law to recognize something that no one had recognized until then, because no one had needed to recognize it, namely, that – in the extreme conditions of humanity…*only the law can tell the fact*. …the law should certainly not intervene in the interpretation of an event. Yet it has no choice but to intervene in order to posit a fact as such, there where the fluctuation of the very notion of fact could lead to generalized insanity.

Thus for Nichanian, in the face of an epistemic crisis that is caused by the extreme conditions of the violence of the genocide, which is in turn aggravated by the endless historicist deferral of determination, by keeping the object open to disputation and re-contextualisation, law has to play a decisive and interventionist role. It must say, *this is the fact, this is genocide, denying it is illegal*.

However, we may need to question whether this appeal to the performative power of law to institute the fact by naming alone can fully resonate in a scene of law. Admittedly, performativity is indeed a key mode in which law operates. H.L.A. Hart, whose friendship with J. L. Austin was by own his account (Hart 1983, pp. 2-3) formative for his legal thinking, recognised this when he stated that in Austin's idea of performative utterances, 'the law came into its own' (Hart and Sugarman 2005, p. 274). Hart finds an unlikely seconder for this opinion in Jacques Derrida (2000, p. 467), who noted that 'the juridical is at work in the performative'. Nevertheless, legal performatives cannot quite operate in the mode that Nichanian proposes, that is, explicitly and unapologetically instituting facts by naming alone. The common register for law's performativity is not, and cannot be 'it is because I say so', but it is rather, 'it is, because it self-evidently is'. In other words, as Derrida (2002) has insightfully proposed, it is necessary for law to pass its performatives

off as constatives, propping up this disguise by a scaffolding of self-evidence and conventionality.

Tellingly, the wording of the Gayssot Act actually excludes Nichanian's rationale for it. The Act criminalises the negation of 'crimes against humanity' as defined by the Charter of the International Military Tribunal (IMT) and as established by international and French courts on that basis. Thus previous performative legal moments, here the retrospective institution of 'crimes against humanity' by the IMT Charter and subsequent trials, are rendered not only constative, but also non-negatable, by recourse to their own definitional authority in a circular self-referentiality.[26] In this spirit, a recent review of the Gayssot Act by the French Constitutional Council (decision no. 2015-512) refused to allow the Armenian genocide within its scope, even though the French National Assembly publicly recognised the genocide in 2001 by passing a bill to this effect, and the court could have relied on that as a basis to take as given the 'truth of the fact' of genocide. Earlier, the French Constitutional Council, in responding to a proposed bill criminalising Armenian Genocide denialism on the basis of the 2001 political recognition, declared the bill unconstitutional stating that, 'a legislative provision with the purpose of "recognizing" a crime of genocide cannot in itself have the normative scope attaching to the law' (decision no. 2012-647). While there is indeed a normative difference between a law (or 'legislative provision') that recognizes a crime and thus memorializes it, and a law that criminalizes the denial of a crime, the significant point here is that a politically produced legal recognition of genocide as fact (i.e. a remembrance law enacted by a parliament) does not legally resonate as weighty a sign of self-evidence as a finding by a competent court as to the fact of genocide. In this context, Emilios Christodoulidis' argument in 'Law's Immemorial' finds a specific articulation. Christodoulidis (2001, p. 218) writes:

[26] See Fraser (2011, pp. 21-22) for an argument in favour of such self-referentiality in memory laws.

> law's memorial events cannot stand independent of law, … memory is always-already institutional memory and … thus it cannot break free of the 'trappings' of the institution because both time and eventhood are determined institutionally … and this undercuts … the attempt to call upon the institution of law itself to articulate and guarantee the truth of a memory that is purportedly independent of it.

The 'trappings' of law's self-referentiality reinscribes, in this case, the Armenian genocide as immemorial, despite the political institution of its recognition as a law.

The Swiss judgments that convicted Perinçek had actually sufficed with a barely disguised and indeed political rather than legal performative institution of genocide as fact. The Swiss judgments avowed that the matter was technically officially unsettled: there had not been an international tribunal recognising the Armenian genocide, the majority of states had not passed laws recognising the genocide, and the Federal Council of Switzerland itself had advised the National Council against officially recognising the genocide. Nevertheless, they relied on the existence of what they referred to as a 'broad consensus within the community [i.e. the Swiss public] which is reflected in the political declarations and is itself based on a wide academic consensus as to the classification of the events of 1915 as genocide' (qtd. in *Perinçek* 2013, §13). The public opinion says so, therefore it is. But it was precisely this political category of consensus that became a problem at the ECHR, especially in the judgment of the Second Chamber, which dedicates a section to this notion, entitled 'Method adopted by the domestic authorities to justify the applicant's conviction: the notion of consensus' (§114-18). The judgment finds the said method 'questionable' (§118).

Judging the Presence of the Past

One way of countering legalism's denial-by-deferral is to ask for law's withdrawal, to argue that if the Court claims not to have jurisdiction over history, then the Court must

remain silent vis-à-vis history. This was the gist of Armenia's submission to the Grand Chamber as a third party intervener. Rather than arguing for Switzerland or against Perinçek, Armenia intervened to 'correct the record', and 'correct certain misjudgments of fact' (*Perinçek*, Webcast of GC hearing). It agreed with 'Perinçek and the government of Turkey that the Court is not required to determine whether the massacres suffered by the Armenians amounted to genocide' (ibid.) and took the Second Chamber to task for exceeding its stated jurisdiction and hence indirectly casting doubt on the facticity of the Armenian genocide. Although Perinçek's counsel Laurent Pech 'could not identify any relevant legal arguments for settling the pending case' in Armenia's submission (ibid.),[27] the Grand Chamber's judgment shows that this intervention was audible, because the judgment is extremely cognisant of what it does and does not say about history.

In coming to the same conclusion as the Second Chamber that there should not have been criminal sanctions imposed on Perinçek for his utterances, the Grand Chamber consciously avoids any pronouncements to do with the historical record in its reasoning. It achieves this by addressing the judgment to the present life of the denialist utterances, that is, the present life of the history that is being denied: the focus is shifted away from the constative content of denialist utterances, to their perlocutionary effects. This happens in two movements. First, the judgment speaks of how, 'many of the descendants of the victims of the events of 1915 and the following years – especially those in the Armenian diaspora – construct [their] identity around the perception that their community has been the victim of genocide' (*Perinçek* 2015 [GC] §156). It then acknowledges that freedom of expression may be interfered with to protect that identity. Here we have a shift from history to memory, in so far as past violence is handled as a sedimentation in the form of national identity. The judgment recognises the presence of this particular formation of memory rather than deeming it a matter of past violence whose historical, factual, legal status is yet

[27] Surprising given his own (Pech 2011) questioning of the soundness of ECHR's notion of 'clearly established historical facts'.

to be settled. Grand Chamber's conclusion in this regard is that Switzerland's 'interference with the applicant's right to freedom of expression can thus be regarded as having been intended 'for the protection of the… rights of others' (§157). Nevertheless the Grand Chamber decides that criminal penalty was 'not necessary in a democratic society' to that end. So there is the recognition of a wounded identity and its rights, but criminal sanctions are seen as disproportionate to protect this memory.[28]

Secondly, the Grand Chamber considers the present danger of these utterances for the public and 'democratic society' in general. Here the ruling depends, again, on a crucial distinction between Holocaust denialism and the present case. However, this distinction is quite different than what we find in the Chamber judgment, which had depended on a dubious notion of 'clearly established historical facts' to distinguish the Holocaust from the Armenian Genocide. The Grand Chamber judgment states that Holocaust denialism is rightly criminalised by a number of European states, but that this is less about the question of facticity than the question of the present life of Holocaust denialism:

> For the Court, the justification for making [Holocaust] denial a criminal offence lies *not so much in that it is a clearly established historical fact* but in that, in view of the historical context in the States concerned … its denial, even if dressed up as impartial historical research, must invariably be seen as connoting an antidemocratic ideology and anti-Semitism. Holocaust denial is thus doubly dangerous, especially in States which have experienced the Nazi horrors and which may be regarded as having a special moral responsibility to distance themselves from the mass atrocities that they have perpetrated (§243, emphasis mine)

Thus history is figured not in terms of clearly established facts and objective truths, but rather in terms of the crises it effects in its present life. Rather than exposing itself to a maddening riddle and bogging itself down in a crisis of verification in which the IMT

[28] The ultimate wisdom and desirability of this formulation around the woundedness of an identity can of course be questioned (cf. Brown 1995).

serves as a desperate grip on 'fact', the court withdraws from that realm altogether to consider instead the ways in which the past populates the present. This is an imaginative move in terms of both capturing and countering strategies of denialism without rendering law fully vulnerable to instrumentalization by those strategies.

Nevertheless, denial proves necessary to the judgment, albeit in a different form, traceable in the way the ECHR distinguishes the present life of the Armenian genocide from the present life of the Holocaust when discussing whether interference with the right to freedom of expression was 'necessary in a democratic society'. The Grand Chamber's reasoning for the distinction proceeds in two main steps: First, the link between the Holocaust and current day European states does not exist between the events of 1915 and Switzerland (§244). Second, the impact of this history may be considered for present-day Turkey, but Switzerland was not considering this when convicting Perinçek, and none of the submissions clearly establish the relevance of the applicant's denial of 'genocide' for that particular domestic context (§245). In making this analysis, the Grand Chamber glosses over the important submissions of a number of third party applicants, including a submission by the International Federation for Human Rights, and a joint submission by Turkish Human Rights Association, Truth Justice Memory Centre, and the International Institute for Genocide and Human Rights Studies. These argued that there is a direct link between Perinçek's statements and the climate of hostility against Armenians in Turkey. In rejecting the relevance of that argument, not so much by debating and disputing it, but by rendering it inaudible, the Grand Chamber effects its own denial. By distinguishing the present life of the denial of the Armenian genocide from the Holocaust in this particular way, the court seems to be saying: *their ghosts are not our ghosts, they cannot be understood to haunt the present in the same way*. Further, by excluding the present Turkish context from consideration, the Grand Chamber also denies the relevance and the potential violence of its own judgment for that context. In Turkey, the judgment was indeed distorted

and flaunted as the victory of Turkey's official theses in Europe. Perinçek's party claimed 'we put an end to the lie of genocide' during their propaganda campaign for the November 2015 general elections. The official website of the Ministry of Foreign Affairs currently repeatedly miscites the Grand Chamber judgment as legitimating Turkey's theses on the events of 1915. And all this was entirely foreseeable. Ironically, through the ECHR's moves to distinguish this case from Holocaust denialism, the old European borders get re-established: *their ghosts are not our ghosts, our judgment does not bear on their world.* While there is some weight to the argument that ECHR's jurisprudence has to be 'highly context-specific' (§208) when considering whether an interference with the right to freedom of expression is necessary in a democratic society,[29] what the judgment cannot take stock of or respond to is the Court's own enlistment as a key infrastructure in the context which it understands itself as merely responding to.

What can legal judgment make of denial when it has been provoked and rendered necessary by a denialist agenda? How does denial contaminate judgment? How does it operate through judgment? How does it condition judgment? Such lines of inquiry into the entangled operations of judgment and denial bear on the question of law's implication in temporalities of violence in a case like *Perinçek*, where judgment has to grapple with the injurious presence of a past that is seen as settled neither by history nor by law. If legal judgment is often a necessity that has to address itself to a moment of crisis, this moment is never one of pure presence. In this particular case, it was a particularly rigid and intractable sedimentation of the past; an interbedding of law, history and violence that also imposed itself as an epistemic crisis. Thus the legal figuration of this 'moment' in the ECHR judgments not only says much about what judgment can make of sedimented temporalities

[29] See, however, Kahn (2017) for an important and insightful set of objections to the 'nexus argument' mobilised in the *Perinçek* case, whereby a nexus is required between the state enacting the ban on denial and the historical act being denied.

of violence, but also determines how judgment places and re-places itself within that sedimentation – whether it works as a force of dissipation or a further layer in the sedimentation. It is in this sense that in addressing itself to the crisis of history and memory, judgment not only figures temporality but also configures itself onto a plane of temporality that is only partially of its own making.

We may need to ask, what is the task of legal judgment in the face of a hyper-productive denialism, which is never merely about silent negation but rather a proliferation of 'interpretations' and 'archives' that colonises as its infrastructure and medium official fora, legal and historical 'scholarship', and even human rights courts? The register of such judgment cannot be legalism, since the only closure that legalism produces tends to be in the form of a closing in on itself – an obliviousness to its own context and effects, other than its legal context and legal effects. Nor can it be historicism, as the tendency to endlessly contextualize and recontextualize plays into the hands of denialism. What may be needed is a form of judgment that is critically and self-critically attuned to the juxtapositions of law, history, and violence, starting with an awareness and avowal of the potential of its own violence – this may be a register to further articulate.

References

Akçam, Taner. 2012. *The Young Turks' crime against humanity*. Princeton: Princeton University Press.

Aydın, Suavi. 1998. 'Milli Demokratik Devrim'den 'Ulusal Sol'a Türk solunda özgücü eğilim. *Toplum ve Bilim* 78: 59-91.

Belavusau, Uladzislau and Aleksandra Gliszczyńska-Grabias, eds. 2017. *Law and Memory: Towards Legal Governance of History*. Cambridge: Cambridge University Press.

Birikim. 1997. Geçmişin 'Aydınlık'ından dersler. *Birikim* 98: 19-30.

Brown, Wendy. 1995. *States of Injury: Power and Freedom in Late Modernity*. Princeton: Princeton University Press.

Charny, Israel W. 1991. The psychology of denial of known genocides. In *Genocide: A critical bibliographic review, vol. 2*, ed. I.W. Charny, 3-37. London: Mansell.

Christodoulidis, Emilios. 2001. Law's Immemorial. In *Lethe's Law: Justice, Law, and Ethics in Reconciliation*, eds. E. Christodoulidis and Scott Veitch, 207-227. Oxford: Hart.

Cohen, Stanley. 2001. *States of denial: Knowing about atrocities and suffering.* Cambridge: Polity Press.

Dadrian, Vahakn N. and Taner Akçam. 2011. *Judgment at Istanbul: The Armenian Genocide trials*. Berghahn: New York.

Derrida, Jacques. 2000. Performative powerlessness: A response to Simon Critchley. *Constellations* 7(4): 466-468.

Derrida, Jacques. 2002. Declarations of independence. In *Negotiations: Interventions and interviews, 1971-2001*, trans. Tom Keenan and Tom Pepper, 46-54. Stanford: Stanford University Press.

Earl, Hilary. 2013. Prosecuting genocide before the Genocide Convention: Raphael Lemkin and the Nuremberg Trials, 1945-1949. *Journal of Genocide Research* 15(3): 317-337.

El-Enany, Nadine, and Sarah Keenan. 2015. 'I am Charlie and I guard the master's house.' *Critical Legal Thinking*, 13 January 2015. http://criticallegalthinking.com/2015/01/13/charlie-guard-masters-house/. Accessed 25 July 2018.

Ertür, Başak. 2016. The conspiracy archive: Turkey's 'deep state' on trial. In *Law, violence, memory: Uncovering the counter-archive*, eds. Stewart Motha and Honni van Rijswijk, 177-194. London: Routledge.

Fraser, David. 2011. Law's Holocaust denial: State, memory, legality. In *Genocide denials and the law*, eds. Ludovic Hennebel and Thomas Hochmann, 3-48. Oxford: Oxford University Press.

Fronza, Emanuela. 2018. *Memory and Punishment: Historical Denialism, Free Speech and the Limits of Criminal Law*. The Hague: Asser Press.

Göçek, Fatma Müge. 2015. *Denial of violence.* Oxford: Oxford University Press.

Hart, H. L. A. 1983. *Essays in jurisprudence and philosophy*. Oxford: Clarendon.

Hart, H. L. A. and David Sugarman. 2005. Hart interviewed: H.L.A. Hart in conversation with David Sugarman. *Journal of Law and Society* 32(2): 267-293.

Hennebel, Ludovic, and Thomas Hochmann, eds. 2011. *Genocide denials and the law*, eds. Ludovic Hennebel and Thomas Hochmann. Oxford: Oxford University Press.

Hovannisian, Richard G. 1984. Genocide and denial: The Armenian case. In *Toward the understanding and prevention of genocide: Proceedings of the International Conference on the Holocaust and Genocide*, ed. Israel W. Charny, 84-99. Boulder: Westview Press.

Hovannisian, Richard G. 1998. Denial of the Armenian Genocide in comparison with Holocaust denial. In *Remembrance and denial: The case of the Armenian Genocide*, ed. R. Hovannisian, 201-236. Detroit: Wayne State University Press.

Kahn, Robert A. 2017. Banning genocide denial – should geography matter?. In *Law and Memory: Towards the Legal Governance of History*, eds. Uladzislau Belavusau and Aleksandra Gliszczyńska-Grabias, 329-47. Cambridge: Cambridge University Press.

Lobba, Paolo. 2015. Holocaust denial before the European Court of Human Rights: Evolution of an exceptional regime. *European Journal of International Law* 26(1): 237-253.

Löytömäki, Stiina. 2014. *Law and the Politics of Memory: Confronting the Past*. London: Routledge.

Lyotard, Jean-François. 1988. *The differend: Phrases in dispute*, trans. Georges van Den Abbeeele. Minneapolis: University of Minnesota.

Mamdani, Mahmood. 2006. The political uses of free speech. *Outlook*, 14 February 2006. https://www.outlookindia.com/website/story/the-political-uses-of-free-speech/230211. Accessed 25 July 2018.

Mehlman, Jeffrey. 1992. Foreword. In Pierre Vidal-Naquet, *Assassins of memory: Essays on the denial of the Holocaust*, ix-xxi. New York: Columbia University Press.

Nichanian, Marc. 1999. The truth of the facts. In *Remembrance and denial: The case of the Armenian Genocide*, ed. Richard G. Hovannisian, 249-270. Detroit: Wayne State University Press.

Nichanian, Marc. 2009. *The historiographic perversion*. Trans. Gil Anijdar. New York: Columbia University Press.

Polat, Necati. 2014. Resistance to regime change in the Middle East. *Interventions* 16(5): 634-654.

Sands, Philippe. 2016. *East-West Street: On the origins of genocide and crimes against humanity*. London: Weidenfeld & Nicolson.

Vidal-Naquet, Pierre. 1992. *Assassins of memory: Essays on the denial of the Holocaust*. Trans. Jeffrey Mehlman. New York: Columbia University Press.

Wallerstein, Immanuel. 2006. *European Universalism: The Rhetoric of Power*. New York: New Press.

Zileli, Gün. 2015. 41 yıl önceki TİİKP ve bugünkü VP. 14 May 2015 http://www.gunzileli.com/2015/05/15/41-yil-onceki-tiikp-ve-bugunku-vp/. Accessed 25 July 2018.

Legal Sources

Constitutional Council (France) Decision no. 2012-647 DC of 28 February 2012.

Constitutional Council (France) Decision no. 2015-512 QPC of 8 January 2016.

Constitutional Council (France) Decision no. 2016-745 DC of 26 January 2017.

Chauvy v France (2004) European Court of Human Rights. Application no. 64915/01. Judgment 29 June 2004.

Dink v Turkey (2010) European Court of Human Rights. Application no. 2668/07. Judgment 14 September 2010.

Ergenekon Case (Turkey) Detailed Judgment. 2014. Istanbul 13th High Criminal Court. Case no: 2009/191. Judgment no: 2013/95.

Fatallayev v Azerbaijan (2010) European Court of Human Rights. Application no. 40984/07. Judgment 22 April 2010.

Lewis Case (France) High Court of Paris. 21 June 1995: *Juris-Data* no. 044058.

Lehideux and Isorni v France (1998) European Court of Human Rights. Application no. 24662/94. Judgment 23 August 1998.

Perinçek v Switzerland (2013) European Court of Human Rights. Application no. 27510/08. Chamber Judgment 17 December 2013.

Perinçek v Switzerland (2015) European Court of Human Rights. Application no. 27510/08. Webcast of Grand Chamber Hearing. 28 January 2015. https://www.echr.coe.int/Pages/home.aspx?p=hearings&w=2751008_28012015&language=lang&c=&py=2015. Accessed 25 July 2018.

Perinçek v Switzerland (2015 [GC]) European Court of Human Rights. Application no. 27510/08. Grand Chamber Judgment 15 October 2015.