

- Posner, Hon. Richard A. (2004) *Catastrophe: Risk and Response*. New York: Oxford University Press.
- (2005) *Preventing Surprise Attacks: Intelligence Reform in the Wake of 9/11*. New York: Rowman and Littlefield Publishers.
- (2006) *Uncertain Shield: The U.S. Intelligence System in the Throes of Reform*. New York: Rowman and Littlefield Publishers.
- (2007) *Countering Terrorism: Blurred Focus, Halting Steps*. New York: Rowman and Littlefield Publishers.
- (2008) *How Judges Think*. Cambridge: Harvard University Press.
- (2009) *A Failure of Capitalism: The Crisis of '08 and the Descent into Depression*. Cambridge: Harvard University Press.
- (2010) *The Crisis of Capitalist Democracy*. Cambridge: Harvard University Press.

* * *

American Memories: Atrocities and the Law. By Joachim J. Savelsberg and Ryan D. King. New York: Russell Sage Foundation, 2011. 264 pp. \$37.50 cloth.

Reviewed by Ron Levi, Department of Sociology, University of Toronto

Maurice Halbwachs survived for 8 months in the Buchenwald concentration camp. He died of dysentery in Block 56 of Buchenwald's *kleines lager*, or "Little Camp," in 1945 (Semprum 1994: 27). Separated by barbed wire even from the remainder of Buchenwald, the most extreme conditions of starvation, disease, forced labor, torture and medical experimentation were visited upon inmates. The Buchenwald crematorium, throughout this time, was visibly located above inmates held in the *kleines lager*.

"Does the world know what happened to us?" survivors of Buchenwald are recalled asking repeatedly, on the day in which U.S. troops entered the camp in April 1945 (Fox 2013). How all the more unspeakable, then, that among the dead of Buchenwald was Maurice Halbwachs, the French sociologist whose signal contribution was giving life to the concept of collective memory, and the social process of witnessing, remembering, and commemorating the past (Halbwachs 1950).

In *American Memories: Atrocities and the Law*, Savelsberg and King build on Halbwachs' thinking to examine the role that legal institutions can play in forging collective memories of atrocities. In the process, Savelsberg and King develop an inventive and rigorous sociology of law and of politics in the process. They argue that collective memory is strengthened in those cases when legal

institutions gain traction, and weakened in those cases when legal institutions are circumvented or discounted. For Savelsberg and King, there is a further implication here: building on parallel work in political science, they suggest that through their effects on collective memory, legal institutions, such as trials, may help prevent atrocities and mass violence.

American Memories thus develops a bold agenda that places significant stock in the power of legal institutions to shape the content, tone, and depth of collective memory. In the process, Savelsberg and King adopt the normative claims of several legal scholars on atrocities, providing empirical hooks for the claim that courtroom trials can generate an influential social record of horrific events. Yet *American Memories* goes further than this: Savelsberg and King demonstrate that this official and state-sanctioned memory tends to spill over beyond the legal field, tracking how legal interpretations influence a broad repository of how atrocities are remembered across nearby fields, such as journalism, education, and diplomacy. Building on case studies from My Lai, Haditha, the prosecution of Slobodan Milosevic at the International Criminal Tribunal for the former Yugoslavia, and a comparative analysis of hate crime legislation in the United States and Germany, Savelsberg and King provide evidence that when legal strategies are pursued most vigorously—with the prosecution of senior officials—we gain deeper and longer-standing collective memories of atrocity.

Across these cases, Savelsberg and King provide evidence that legal narratives carry long-term weight—but that these require high-level prosecutions to successfully shape collective memory. *American Memories* relies on grade school textbooks to demonstrate that the legal narrative persists in the case of My Lai, but with narrow impact, a pattern seen even more starkly with the low-level prosecutions for Haditha in Iraq. In contrast, the prosecution of Slobodan Milosevic demonstrates that in the context of prosecuting a head of state, a legal narrative was successful in shifting the narrative of diplomats: here Savelsberg and King are at their most compelling, elegantly demonstrating not only the “staying power” of the legal frame, but also its capacity to shift the debate. *American Memories* finally shows how this can in turn lead to greater legal effect, by signaling how institutionalized memories can lead to increased legal intervention against hate crimes.

By developing in two directions at once—by considering the role of law as a system of thought, and by developing methodological strategies to measure the relationship between law and collective memory—Savelsberg and King successfully extend the boundaries of Halbwachs’ own work on point. Their system-based approach to law, which appears to implicitly draw on a Luhmannian approach that emphasizes a specific logic to how law thinks and

communicates, takes a different reference point than Halbwachs' relational view of the role of "legal space," and particularly the role of private law relations, in constructing collective memory. Their methodological emphasis—including analyses of newspaper accounts (for the Milosevic prosecution), legislation and commemorative practices (in the United States/Germany comparison), or educational textbooks (for the My Lai case)—advances the project by identifying the relative strength and effect of legally informed memory. This orientation toward what Halbwachs referred to as "touts concrets," (Marcel 1999) or concrete findings, is one that Halbwachs himself sought to emphasize, beginning with his early research on the Parisian working class (Halbwachs 1912), here extended through a resolutely empirical approach to collective memory.

American Memories delivers innovative empirics while also stressing an ethical commitment to our collective need and capacity to remember. Perhaps in the process, *American Memories* risks echoing the claims made by those most invested in the legalization of this field—that legal mechanisms, and indeed criminal trials, are the go-to approach for responding to atrocities because of their power to document, adjudicate, and potentially deter future violations.

Within the legal field, *American Memories* tends to downplay the role of lawyers as strategic actors focusing on instrumental goals—. For Savelsberg and King, strategic position-takings seem to be reserved to the terrain of politics and diplomats, with the legal field regarded as the terrain of norms, rules, and ideals (see, e.g. p. 104). A tendency to carve out professional politics over-privileges legal ideals and also tends to reproduce institutional outcomes that are in fact the result of competitions within the legal field. For instance, the current zeitgeist within the human rights community has moved to an emphasis on prosecutions for massive human rights violations. With it, the emphasis of *American Memories* similarly concentrates on the logic of criminal prosecutions and trials for atrocities, rather than approaches such as amnesties, peace agreements, or truth commissions—which are regarded by Savelsberg and King as outside the toolkit of legal institutions. Yet these too are shot through with law and legal regulation, such as the *Promotion of National Unity and Reconciliation Act* in South Africa, the legal bases that underwrite peace agreements and amnesties, or the form of legality that pervades newspaper reporting in journalistic accounts of atrocities such as that of My Lai. Civil suits demanding compensation for atrocities are proliferating. How this legal variation informs collective memory is kept outside of *American Memories*: but work on truth commissions, for example, suggests that they enjoy some capacity to generate and solidify new narratives and social imaginaries.

Politics within the field of state power are also potentially underplayed within *American Memories*. While Savelsberg and King indicate that regime change is important in identifying when a criminal trial for atrocity will occur, in their model the real action for collective memory is seen as happening through trials themselves. But the relative importance between trials and the preceding regime change is not always evident: after all, on November 21, 1945, the opening of the Nuremberg trials was indeed reported on the front page of the *New York Times*, but in a thin column largely outflanked by other stories (McLaughlin 1945). That the Tribunal-focused legal framing of Milosevic won out over a competing diplomatic frame may similarly be connected to political change. The current entrée and the struggles of the International Criminal Court to find a role that productively engages in ongoing conflicts demonstrates the close link between regime change and the capacity for prosecution. Or from the other side of the looking glass: as the largely ignored trial of Saddam Hussein demonstrates, despite prosecution at the top of the chain of command, prosecutions—even with regime change—may not in and of themselves lead to a deep well of collective memory of atrocity.

Similarly, the questions of state legitimacy and state power are themselves deeply embedded in the decision to invest in the visibility of law and legal institutions to respond to atrocities—so that what may be doing the work is less the power of the legal institution itself, than the economic, institutional, or political factors that lead states to invest in legalization. Savelsberg and King's comparison of Germany and the United States is particularly telling: these are states with markedly different political and administrative histories, and with different ways of organizing the state and pursuing statecraft. Yet Germany in the post-*Shoah* context also had a highly constrained set of opportunities through which to act and gain legitimacy, and the decision to invest heavily in structures of commemoration that include legal trials held within Germany was a reflection of the German state's struggle to engage its past, as well as to reorient a domestic public and an international community during a time of reconstruction. The sheer scale of atrocity is a central issue, combined with a need—past and present—to deploy law to symbolic ends in that process.

Where do we come to in *American Memories*? Savelsberg and King provide here an innovative and impressive approach to the method of collective memory, to test the effect of trials across an array of sites and case studies. We see through them the capacity of legal institutions to remake the stories and memories that we all work with. Indeed, as we see in the current conjuncture, the power of law may extend far beyond trials. Even when cases are not referred to the International Criminal Court, its presence is now

one of the elements in play, and actors across an array of sectors are alert to the increasing potential for individual prosecution for atrocity. How these legal frames, within and beyond courts, will affect collective memory of atrocity is not yet known. But *American Memories* generously provides us with the array of theoretical and empirical tools—and perhaps most importantly, reinvigorates Halbwachs to insist on the *scholarly sensibility of asking how we collectively witness*—that we will need to pursue that question.

References

- Fox, Margalit (2013) “Rabbi Herschel Schacter Is Dead at 95; Cried to the Jews of Buchenwald: ‘You Are Free,’” *New York Times*. March 26.
- Halbwachs, Maurice (1912) *La classe ouvrière et les niveaux de vie: Recherches sur la hiérarchie des besoins dans les sociétés industrielles contemporaines*. Paris: Librairie Felix Alcan.
- Halbwachs, Maurice (1950) *La Mémoire Collective*. Paris: Presses Universitaires de France.
- Marcel, Jean-Christophe (1999) “Maurice Halbwachs à Chicago ou les ambiguïtés d’un rationalisme durkheimien,” 1 *Revue d’Histoire des Sciences Humaines* 47–68.
- McLaughlin, Kathleen (1945) “Allies Open Trial of 20 Top Germans for Crimes of War,” *New York Times*. November 21.
- Semprum, Jorge (1994) *L’écriture ou la vie*. Paris: Galimard.