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Institution and Inclination
in the Post-Socialist Space:
Genocide as "Memory Intervention"

Institution and Inclination in the Post-Socialist Space: Genocide as "Memory Intervention". This article investigates memory discourses around communism in Ukraine and Romania and the manner in which accountability for the past has been mobilized to shape authoritative trauma based memorializations, public appropriations, and increasingly standardized manners of indexing the past. In the last decade, both countries have gone through successive attempts — through memory legislation, historical commissions and historiography — to include these negative historical narratives into an ideational redress in the postsocialist period. Alongside national connotations, I argue that trauma based political projects around memory have become an important site where the narrative of a "European" state is produced. In both national contexts, representations have appropriated and benefitted from more liberal-center representations of memory, which now match the pan-European paradigm of "totalitarianism" introduced by the Prague Declaration on European Conscience and Communism passed by European Council. This article focuses however on one of the consequences of this transnational dynamics of for representing a renewed, European political space, namely the usage of and appeal to legal notions of memory, such as "genocide", in both public discourse and historiography.

Keywords: remembrance, European memory, legalism, trauma

Учреждение и склонность в постсоциалистическом пространстве: геноцид как «вмешательство в память» В этой статье исследуются дискурсы памяти, сформированные вокруг коммунизма в Украине и Румынии и способы мобилизации ответственности за прошлое для формирования авторитетных мемориализаций на основе травм, государственных ассигнований и все более стандартизированных способов индексирования прошлого. В последнее десятилетие обе страны прошли

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через последовательные попытки (мемориальные законы, исторические комиссии и историографию) включить эти негативные исторические повествования в идейные преобразования в постсоциалистический период. Я утверждаю, что наряду с национальными коннотациями, именно основанные на травме и сформированные вокруг памяти политические проекты стали важным местом, где создается повествование о «европейском» государстве. В обоих национальных контекстах представления были усвоены и подданы влиянию более либеральных представлений о памяти, которые теперь соответствуют панъевропейской парадигме «тоталитаризма», введенной Пражской декларацией о европейской совести и коммунизме, принятой Европейским советом. В этой статье, тем не менее, основное внимание уделяется одному из последствий этой транснациональной динамики для формирования представления возобновленного европейского политического пространства, а именно: использование и обращение к правовым понятиям памяти, таким как «геноцид», как в публичном дискурсе, так и в историографии.

Ключевые слова: память, европейская память, легализм, травма

> Liberalism may well be what Emerson calls a party of memory rather than a party of hope.[1]

Introduction and theoretical orientations

Collective memory is playing an increasingly prominent role in the redress following the demise of authoritarian political systems. Since the 1980s and the growing attention towards international humanitarian governance, freedom of speech and social justice, governments worldwide use official interpretations of the past to rehabilitate compromised state authorities. Contested pasts become thus mediators of renewed notions of citizenship and rights. This apologetic narrative of "politics of regret"[2] — an often controversial shift from states as victors to their role as perpetrators — transforms violent pasts into highly symbolic narratives of risk and warning and represent an imagined future of that which the new polity stands against. Museums, memorials and political discourse also affirm such remembrance practices by building discourses around the category of the victim, seen as a guarantee of a truthful and unbiased representation of the past. In this regard, transnational memory practices based on human rights and integration[3] have also gradually supported these particular narratives as a way to reconsider the lines of a political community one belongs to.

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[1] J. Shklar, "Liberalism of fear", [in:] N.L. Rosenblum, *Liberalism and Moral Life*, Cambridge-London 1989, p. 8.

[2] J. Olick, *Politics of Regret: On Collective Memory and Historical Responsibility*, London 2007.

[3] As introduction into this growing debate see Chiara de Cesari and Ann Rigney (eds.), *Transnational Memory*, Berlin 2013.

One example of a foundational political heritage is the European "totalitarian" memory politics placing communism alongside Nazism[4]. Ever since the Prague Declaration[5] was passed by the European Council in 2008, several authors have pointed out that the ubiquitous traumatic readings of European recent pasts — and the implicit politics of international recognition — are however subverting the initial goals of redress. A pitfall for instance, according to Bo Strath, is to assume that a common ideology attached to the teleological narrative of the EU/Europe — which in 2012 President Herman Van Rompuy's called "from war to peace"[6] — is necessarily a strengthening process[7]. In effect, such attempt of reconciling political national cultures through a shared cultural historical "lesson" can be undiscerning in its reproduction of a top-down memory politics and also easy to politicize further[8]. On one hand, it reproduces an idea that traumatic readings of the past automatically lead to an ongoing process of reflection and redress. On the other hand, it diverts attention from the fact that several Eastern European governments pursued the idea of political recognition[9] through the 2008 Prague Declaration to a canonization of a shared traumatic political heritage as solidarity. In other words, these processes also implied a strategic mutual legitimization. For the new EU aspiring members, the strong post-socialist identity politics driven by the — cultural and political — "return to Europe"[10] was in fact attached to the political belonging of membership. In this sense, this memory project meant to redeem the relation between the political subject and the state in effect reproduces an idea of community based on sameness,

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[4] The Prague Declaration on European Conscience and Communism, signed in 2008, was followed in 2009 with the European Day of Remembrance for Victims of Stalinism and Nazism and in 2011 by the educational project Platform of European Memory and Conscience.

[5] "[t]he very term has become so charged and carries such a weighty emotional load, that almost any attempt at definition is likely to run up against any number of interest groups demanding their pet issue for inclusion or exclusion". — Mark Levene, *Genocide in the Age of the Nation State*, London 2005, p. 203. For similar views, see, for example, Dirk Moses, "Conceptual blockages and definitional dilemmas in the 'racial century': genocides of indigenous peoples and the Holocaust, *Patterns of Prejudice*, 36 (4), 2002 — Issue 4, pp. 14–16; and Dan Stone, *The Historiography of Genocide*, London 2004, p. 130.

[6] Available here: http://europa.eu/rapid/press-release_SPEECH-12-930_en.htm (access: 17.02.2017).

[7] B. Strath, "Methodological and substantive remarks on myth, memory and history in the construction of a European community", *German Law Journal* 2006, no. 2, pp. 255–271.

[8] M. Malksoo, "Criminalizing communism: Transnational mnemopolitics in Europe", *International Political Sociology* March 2014, vol. 8(1), pp. 82–99; and A. Gliszczyńska-Grabias, "Communism equals or versus Nazism?", *East European Politics & Societies and Cultures* 2016, vol. 30(1), pp. 74–96.

[9] See Ch. Maier, "Consigning the twentieth century to history: Alternative narratives for the Modern Era" *American Historical Review* 2000, vol. 165, no. 3, pp. 807–831, or *Hot Memory… Cold Memory. On the Political Half-Life of Fascist and Communist Memory*.

[10] See T. Judt, *Postwar*, New York 2005; and C. Leggewie and A. Lang, A-K. Lang (eds.), *Der Kampf um die europäische Erinnerung*, Berlin 2011; J.P. Himka, J. Beata (eds.), *Michlic Bringing the Dark Past to Light, The Reception of the Holocaust in Post-communist Europe*, Nebraska 2015.

in particular cultural and political, which is dependent on the inclusion-exclusion dynamics of the concept of a "nation".

The implications of setting memory "right" — and aligning memorial discourses to human rights liberal based representations — that this article teases out — draw on internal processes concerning the past in Romania and Ukraine. In the Ukrainian context after the 2004 so-called "Orange revolution", the consolidation of the Yanukovych government was reinforced by a clear demarcation from the past. Similarly, the Romanian elections of 2004 also sparked debate over a change of the enduring dependencies with the past; the change of the PSD (social democrats) with the Traian Basescu presidency and liberal-democrat government were expected to influence the public representation of the recent past. In the following years, attempts to classify communism as a traumatic but now defeated heritage of the state became instrumental to an ideal of being "European".

Yet, both the 2007 EU accession in Romania and the 2008 "Stabilisation and Association"-type agreement also strategically returned to legal dimensions of collective memory, be it laws concerning the Holocaust, usages of "genocide" concerning the communist experience and a historiographical discourse aligned to the political project. Whereas the mobilization around the recognition of crimes of communism in the European political legacy was internationally perceived as a move to expand and hone cultural discourses of Europeaness in eastern Europe[11], internally it also mobilized laggard attempts of historical justice concerning communism[12]. The way transnational dimensions of memory interfered in these two national contexts was different, but nevertheless abiding to the European memory narrative.

In this context, the recalibrations of an idea of nation suggested that such memory oriented languages were in fact a platform to discuss constitutionalism[13] as bind of community: the focus was not only on the memory of victims of past abuse but also on the status of a victim as a moral and civic underpinning of a (now European, no longer post-socialist) community[14]. In Ukraine, this continued what Kasianov describes as "nation building" strategies[15]. Gradually strengthening soon after the political changes of 1991, the idea of political sovereignty and emancipation was amply used by President Leonid Kravchuk by stressing the "totalitarian past" and

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[11] See B. Nienass, "Postnational relations to the past: A »European Ethics of Memory«?", *International Journal of Politics, Culture, and Society* 2013, vol. 26 (1), pp. 41–55.

[12] See R. Grosescu, R. Ursache, "The Romanian Revolution in Court: What narratives about 1989", [in:] V. Tismaneanu, B. Jacob (eds.), *Remembrance, History and Justice, Coming to Terms with Traumatic pasts in democratic Societies*, Budapest 2015.

[13] I refer to the rapport between memory and constitutionalism, outside the confines of the category of the nation in the line of Jan Werner Muller, *Constitutional Patriotism*, Princeton 2007.

[14] S. DeLue, "The enlightenment, public memory, liberalism, and the post-communist world", *East European Politics and Societies* 2006, vol. 20, no. 3, pp. 395–418.

[15] G. Kasianov, "The Great Famine of 1932–1933 (Holodomor) and the politics of history in contemporary", [in:] S. Troebst (eds.), *Postdiktatorische Geschichtskulturen im Süden und Osten Europas*, Berlin 2010, p. 2.

emphasizing the 1932–1933 famine in order to condemn crimes of totalitarian nature. As a way of political legitimation, for instance, the 1993 decree "On Measures in Connection with the Sixtieth Anniversary of the Holodomor in Ukraine" terms the "Holodomor" into official national and legal political and category. Historian A. Kasianov: "totalitarianism as the enemy would mean the state revival could be easily blamed on the past." This classification curtailed political or ideological interpretations and inevitably became the vanguard of memory perspective driven by a comprehensive trial of communism, both legally and discursively.

This perspective was also widely circulated in Romanian political circles in 1990s as the decade (and its aftermath) saw a bitter fight of non-governmental liberal circles to expose members of the former regime and to thus set the historical record straight, and an escalation in anti-communist discourses framed around claims for justice. Memory lingered as one of the narratives of the 1989 events as being merely contextual, as an unfinished revolution[16]. The 2006 Declaration of Condemnation of Crimes of Communism, passed two weeks before formally joining the European Union, was widely commended precisely because it was seen as a long sought success of these pressures.[17] Practices of anti-communist mobilizations around legal framings of the communist experience chiseled thus what today is the political European narrative that formalizes negative histories into a state-citizen bond. Uladzislau Belevusau[18] for instance describes how representations of the Shoah and the ethics of "never again" today have been assimilated into international legislations concerning hate speech and discrimination. Victimhood, in this case, is seen to ease the relation between memory and social and state justice but also destabilizes ethnic or group identities as culprits. These echo attempts to emancipate discourses on the past which are perceived as being tainted by a nationalist discourse[19].

Memory Laws and Europeanization

There is a double bind in an event whose afterlife reproduces its traumatic effects. Susceptible to be co-opted for various political agendas, it cloaks the moral predicament of this memory with an aura of inevitability of this past. The mobilization of legal ascriptions of genocide as a representation of the communist past

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[16] J. Mark, *The Unfinished Revolution, Making Sense of the Communist Past in Central-Eastern Europe*, New Haven 2011.

[17] It marked a consistent debate between left leaning circles (see the collection of essays *Iluzia anticomunismului*, Chisinau 2008) and more conservative memory active civil organisations (like the Group for Social dialogue).

[18] U. Belevusau, "Fighting hate speech through EU law", *Amsterdam Law Forum* 2012, vol. 4(1), pp. 20–30.

[19] D. Moses, "Conceptual blockages and definitional dilemmas in the 'racial century': genocides of indigenous peoples and the Holocaust", *Patterns of Prejudice* 2002, 36:4, pp. 7–36.

has been a case in point. In 2006, the Verkhovna Rada of Ukraine, after successive attempts of legalizing a historical status for the Holodomor, approved, during the Viktor Yuschenko administration, the denomination of the 1932–1933 famine in the USSR as an "act of genocide of the Ukrainian people"[20], and for denial of which also assigned a 3 year penal punishment. Because of mounting criticism formulated by the opposition parties against the improper usage of the Geneva convention terminology on "genocide", the final text of the bill incorporated a definition of the Ukrainian famine as "criminal actions of the repressive totalitarian Stalin regime directed toward the mass destruction of part of the Ukrainian people and other peoples of the USSR as a result of the man-made Holodomor of 1932–33"[21]. The main opposition to the bill came from the Party of Regions (consolidated around Viktor Yanukovich), which argued the event should rather just be perceived as "tragedy", less as a demand for justice. Several months later, the government made successive attempts to legislate the denial of both "Holodomor and the Holocaust"; still under debate today, this particular memory law has since featured steadily on the governmental agenda of the Poroshenko administration.

A crisis of legitimacy of the government — in relation to Russia — would indeed have been countered by employing "genocide" because it legitimizes a national bind based on ethnicity. Indeed, by "international affirmation", as Johan Dietch argues[22], transnational legal languages were in fact co-opted; in this case, the correlation with "genocide" implicitly takes this event of Ukrainian history into the sphere of international law and can thus serve to strengthen the Ukrainian ethnicity claims on the basis of international law[23]. In this regard, constructing this correlation taps into the preemptive potential of memory and is further supported by the uniqueness of the Holocaust in international law. By association, it thus inscribes the 1932–1933 famine as a recognized and classified history of political violence. Such remembrance perspective therefore also become a strategy: it places the past outside the sphere of national politicization and thus encourages a sense of political community on the basis of law-regulations and law-contained politics. It is indicative that the classifications of the Holodomor as "crime against humanity" by the European Parliament and by the Council of Europe in 2008 were widely presented as triumphs of the government's policies. The 2006 law also spearheaded efforts to increase the number of governments currently recognizing it as genocide. Such "juridification" of memory through law echoes ideas of responding to a lack of remembrance, constructing a new cultural perspective of integration through law. It thus echoes what Judith Shklar defines as "the ethical attitude that holds moral conduct to be a matter of

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[20] Embassy of Ukraine to Canada, *Law of Ukraine* no. 376–V "On Holodomor of 1932–33 in Ukraine", http://canada.mfa.gov.ua/en/ukraine-%D1%81%D0%B0/holodomor-remembrance/holodomor-remembrance-ukraine/holodomor-law-ukraine- (access: 2.09.2016).

[21] *Law of Ukraine* no. 376–V "On Holodomor of 1932–33 in Ukraine."

[22] See Johan Dietrich.

[23] See also broader discussions in D. Bloxham, *Genocide on Trial*, Oxford 2001.

rule following, and moral relationships to consist of duties and rights determined by rules"[24] and becomes as such an incremental part of the cultural construct of a European identity.

Transnational constraints have been indeed a central dimension of memory juridification. Both the Yushchenko and the Poroshenko administrations continued a long standing international campaign for the designation of the Holodomor as genocide initiated by the Ukrainian diaspora in the last decade of the Cold War, in Canada and the USA. In April 1988, the United States Commission into the Ukrainian Famine submitted its final report to Congress. Declaring the famine to be man-made, the sixteenth finding of the report concluded that "Joseph Stalin and those around him committed genocide against Ukrainians in 1932–1933". The final report of the United States Commission was followed by that of the International Commission of Inquiry. Their historical perspective owes to a rise of interest concerning legal implications of the Shoah, as the debate coincided with the controversial proceedings of the Ivan Demianiuk case[25]. Legal interpretations of memory therefore instantiate and acknowledge a sense of dislocation from the (national) past and reinforce that a sense of break is necessary for a reaffirmation of the state. The debate about memorialization demonstrates the development of this process: the grand narrative focusing on the Ukrainian ethnic nation's struggle for its own state is now matched by a transnational memory project that legitimizes through identity politics. The issue has been at the forefront of the American-Ukrainian community activity nowadays and the Holodomor Memorial to Victims of the Ukrainian Famine-Genocide of 1932–1933 in Washington was approved and later built in 2015, and yearly commemoration across the Atlantic recount the progressive commemoration habitude in Ukraine. Such transnational "retrospective politics" around the victims in fact comes to resolve a crisis over memory: by maintaining a rather abstract historical territory of commemoration it is able to work towards consensus and thus inspire political debates based on a seemingly constitutional basis.

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[24] J. Shklar, *Legalism, Law, Morals, and Political Trials*, Cambridge 1986.

[25] J.P. Himka, "Johan Dietsch, Making Sense of Suffering: Holocaust and Holodomor in Ukrainian Historical Culture; Stanyslav Vladyslavovych Kul´chyts´kyi, Holod 1932–1933 rr. v Ukraini iak henotsyd/Golod 1932–1933 gg. v Ukraine kak genotsid (The 1932–33 Famine in Ukraine as a Genocide)" (review)", *Kritika: Explorations in Russian and Eurasian History* 2007, vol. 8(3), pp. 683–694.

The case of including Ukrainian victims[26] of the USSR famine into the post-1989 Ukrainian state biography[27] represents however a distinct departure from the civic oriented perspective in which representations of collective memory are codified through law, ever since the 1990s. Starting with the French Gayssot Act (1990) and followed by other Holocaust denial legislation in Europe these were meant to introduce a corrective reading of the social and cultural conventions that perpetuated usages of minimization and hate speech (such as antisemitism) and affirmative perspectives on a violent past.[28] Memory, as such, is meant to maintain a continuation between such histories and contemporary misgivings of democracy. The Ukrainian case continued this direction only that the recognition of victims of past state political violence did not only become an acknowledged platform to affirm a state's democratic value but also to support its presence internationally[29]. Daniel Levy suggests there is a moral and political capital for a democratic political project attached to the memory of the Shoah.[30]

Yet, in Ukraine itself, an array of nationalizing discourses[31] on both left and right of the political spectrum[32] appropriated its explicit contemporary anti-Russian implications. The following year, the government passed the law "On Condemning the Communist and National Socialist (Nazi) Totalitarian Regimes and Prohibiting the Propagation of their Symbols" in a widely supported move to criminalize communism and "the public denial, particularly in the mass media, of the criminal nature of the Communist totalitarian regime of 1917–1991 in Ukraine and the Na-

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[26] The number of victims caused by the famine is a deeply contested issue, also in lack of reliable historical information. One of the primary data consists of the 1937 census ordered by Stalin, whose official publication was stopped due to the lower number that expected of the population and the implicit incriminating evidence towards the effects of the famines. In 2015, a team of researchers inspected new demography material and estimated 4.5 million excess deaths. http://dse.org.ua/arhcive/24/1.pdf. Timothy Snyder, who has done extensive research in Ukraine, place the number of dead at roughly 3.3 million, Catherine Merridale advances a similar number and a contextual explanation in C. Merridale, "The 1937 census and the limits of Stalinist rule", *The Historical Journal* 39, 1996, no. 1, pp. 225–240.

[27] See D.R. Marples, *Heroes and Villains: Creating National History in Contemporary Ukraine*, Budapest 2007; T. Olszanski, "Yushchenko's historical policy — A tentative assessment", *Eastweek CES*, January 27, 2010, http://www.osw.waw.pl/en/publikacje/eastweek/2010-01-27/yushchenkos-historical-policy-a-tentative-assessment (access: 2.09.2016).

[28] Y. Gutman, "Memory laws: Escalating exclusion or limited state power" *Law and Society Review* 50, 2016, no. 3, pp. 575–607, 582; see also U. Belavusau, "Hate speech and constitutional democracy in Eastern Europe: Transitional and militant? (Czech Republic, Hungary and Poland)", *Israel Law Review* March 2014, vol. 47(1), pp. 27–61.

[29] See A. Assmann, "Europe: A community of memory," *GHI Bulletin* 2007, no. 50.

[30] D. Levy, N. Sznaider, *Human Rights and Memory*, Philadelphia 2010.

[31] For nationalizing as durable social-political process reframing accepted theories of nationalism see R. Brubaker, "Nationalizing States Revisited: Projects and Processes of Nationalization in Post-Soviet States", *Ethnic and Racial Studies* 2011, vol. 34(11), pp. 1785–1814.

[32] G. Kasianov, *The Great Famine of 1932–1933 (Holodomor) and the Politics of History in Contemporary*, [in:] S. Troebst (eds.), *Postdiktatorische Geschichtskulturen im Süden und Osten Europas*, Berlin 2010, pp. 619–641.

tional-Socialist regime". In this case, a Europe-sanctioned equation between Nazi and communist crimes is now in fact shaping nationalist connotations over the past by centering national narratives around the period of independence and sets a continuity of national struggle through time[33]. This national paradigm also fits well with the young Ukrainian state's ideological stance for much of the 1990s, when attempts to create a strong Ukrainian identity translated into anti-imperialist rhetoric aimed at cultural separation from Russia[34].

The slim opposition to this string of laws challenged the Russian dimension of this law but nevertheless showed that the ethnic lines of defining the Holodomor manage to construct a consensus around the contemporary narratives of statehood as a "post-genocide' time. In fact, this perspective coincides with older policies to keep all political groups centered around a general negative view on the past throughout the post-1989 period[35]. The Kuchma regime was appeasing rather than investigative. Up to 2000, policies concerning history writing were careful not to impose canons on national history, but much rather to maintain a status quo around the history of Ukrainian statehood (with special stress on the times of Bohdan Khmelnytsky and his heirs and on the state of 1917–1920), a history of the communist left and the history of World War II. In contrast, the recognition as genocide was rather ethically and politically defined by Viktor Yushchenko as the political task of a new generation of political actors — also to mark the renewal of the institutional environment[36] — by arguing for mandatory duties and rights of remembrance. Memory thus conveys a new field of manifestation of sovereignty, one which is defined by relations to the outside, or what John Agnew's describes as *integrative sovereignty*: as power which has obvious territorial and infrastructural aspects with boundaries both defining its limits and shaping the contours of its interior[37]. Law no. 2558 passed in 2015 consequently allows to *de facto* institutionalize the Ukrainian Insurgent Army (UPA) as national heroes by "honoring the memory of fighters for Ukrainian independence in the 20th Century."

Wilfried Jilge noticed the tendency to construct new statuses of victims[38] based on new "national Holocausts"[39]. Indeed, the connection of the legacy of communism with the Shoah was used in Hungary in 2010, Czech Republic in 2001, Poland in 2010. Yet, as much as this has been contested for its implicit effect on the hist-

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[33] See also T. Zhurzhenko, "A divided nation? Reconsidering the role of identity politics in the Ukraine crisis", *Die Friedenswarte*, vol. 89, no. 1–2 (2014), Special Issue "Die Ukraine-Krise", pp. 249–267.

[34] G. Kasianov, "'Nationalized' history: Past continuous, present perfect, future…"; G. Kasianov, P. Ther (eds.), *A Laboratory of Transnational History: Ukraine and Recent Ukrainian Historiography*, Budapest 2009, p. 23.

[35] G. Kasianov, *The Great*…, pp. 622–623.

[36] Ibid., p. 626.

[37] See A. John, *Globalization and Sovereignty*, New York 2009.

[38] See also N. Sznaider, A. Baer, *Memory and Forgetting in the Post-Holocaust Era: The Ethics of Never Again*, New York 2017.

[39] W. Jilge, "Zmahannya zhertv", *Krytyka* 2006, no. 5.

ory of the Shoah, the usage of such pan-European memory imagination aligns the Ukrainian case with a tradition of relating to the Holocaust memory as an active affirmation of renewed democracies. Viktor Yushchenko, then prime minister of Ukraine linked in the official speech at the Stockholm International Forum on the Holocaust in 2000 the Holocaust to the Holodomor.[40] In almost all his triumphant international speeches (to the U.S. Congress, the European Parliament, etc.) in 2005, when Yushchenko was fêted as the leader of the democratic "orange revolution," he made sure to mention the famine of 1932–1933. In 2004, the Romanian prime minister Nastase was offering an equally corrective perspective when arguing in front of the Commission for Genocide Prevention "We are the first country in Central and South-Eastern Europe to establish, in 2001, a National Council for Combating Discrimination, complying already with the European Union's directives". The 2006 Condemnation of the Crimes of Communism in Romania was widely acknowledged as a democratic benchmark since its passing in December 2006.

When examining the Romanian dealings with the history of the Holocaust, similarly contested national narratives around the past reached a conciliatory ground in a pro-European perspective, often based on cultural identifications. Although the Romanian government never explicitly made use of the totalitarian perspective in law, debates around recent memory legislation de facto did converge around the latter. With the 2015 amendment, the Romanian government passed a law forbidding "the organisations, symbols and actions with fascist, legionary, racist or xenophobic undertones and promoting the cult of individuals guilty of genocide, crimes against humanity and war crimes"[41]. The Romanian government condemned and legislated the issue of the Holocaust twice, after the 2006 law in which the Holocaust denial was attached to legislation on extremist views banning "the public contestation or negation of the Holocaust and its effects". In contrast to the former, the new law also is explicit about the Romanian participation in the Shoah and the new text includes the initial formulation with "approval, justification and minimization" of the Holocaust. The law was amply disputed internally, yet several of its main proponents defended its application primarily because of its relevance for its political potential of opening a similar legal inquiry into the aftermath of communism. The former head of the Institute for National Memory was arguing for instance that it would allow for a criminalization of the presence of Nicolae Ceausescu and substantiating a notion of "cultural genocide"[42].

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[40] Available here: http://www.government.se/49b72c/contentassets/66bc8f513e67474e96ad70c-519d4ad1a/the-stockholm-international-forum-conferences-2000-2004 (access: 2.09.2016).

[41] Law 2015/2015 available here: http://www.dreptonline.ro/legislatie/legea_217_2015_modifi-care_OUG_31_2002_interzicere_organizatii_simboluri_caracter_fascist_rasist_xenofob_promovare_cultul_persoanelor_vinovate_infractiuni_contra_pacii_omenirii.php (access: 13.05.2017).

[42] Accessible here: http://adevarul.ro/news/politica/cultul-ceausescu-fost-interzis-lege-iohan-nis-promulgat-legea-initiata-crin-muraru-asistam-nasterea-jurisprudente-domeniu-1_55b23b7cf5eaa-fab2ce5bee0/index.html (access: 2.09.2016).

The same constitutional intention was present in the 2002 memorial law proposition initiated by the Nastase government in response to the public minimization of the Holocaust in several official statements arguing the treatment of prisoners was similar in the communist and Shoah context. This type of minimization that Michael Shafir and Vladimir Solonari[43] have more recently argued, encourages the whitewashing of the involvement of state authorities making use of the "totalitarian" confluence in contemporary political and memory discourses. Such situation has also been easily perpetuated because of its political potential of the post-1989 polity: in 2002, passing the law mirrored and responded to the 2000 European Stockholm declaration and implicitly reinforced a political perspective linking memory to the status of future NATO and EU member. The international outcry concerning the government's unwillingness to normalize this charged perspective official prompted the national government to initiate the Elie Wiesel Commission — meant to carry out research and to clarify the history of the Shoah — in 2003. In 2009 the Holocaust memorial was inaugurated in Bucharest. A similar unwillingness of emphasize local involvement was discussed in the Ukrainian case, where for instance textbooks do not emphasize that in Babi Yar there were predominantly Jewish victims or the context of local collaboration[44]. Similar to the Romanian case, when policy changed around 2000, the Shoah was primarily framed as an "outside phenomenon, belonging to Germany"[45]. The centerpiece of both contexts is the question of the communist repression and political violence.

Post-memories of communism in the new, post-1989 political configuration have used ethics of victimhood to negotiate the perceived silences on the recent past imposed by successive governments unwilling to engage with the recent past. The 1990–1996 period was instrumental in this direction, and by 2000 a notion of "cultural genocide", for instance, was repeatedly employed in the extensive debates around transitional justice in an attempt to express a radical narrative of victimhood. Yet, this notion was activated by two opposing pulls: summarily used to uphold the death verdict for Nicolae Ceausescu on December 25th[46] and extended in the following year to several other heads of the Romanian Communist Party, the terminology was meant to epitomize a political evil. Its reemployment in 2013 when the trial of Alexandru Visinescu and Ion Ficior (the first juridical investigation of the former political prisons commanders) saw severe contestations of its usage genocide, particularly because of the lack of substantial historical investigation on the communist

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[43] See M. Shafir, "Unacademic academics: Holocaust deniers and trivializers in post-Communist Romania", *Nationalities Papers* August 2014, p. 1–23; and "The »Second Nürnberg«: Legend vs. myth in postcommunism (I)", *Holocaust. Studii și cercetări* 2014, issue 7, pp. 109–144; V. Solonari, *Purifying the Nation: Population Exchange and Ethnic Cleansing in Nazi-Allied Romania*, Baltimore 2009.

[44] J. Dietsch, "Textbooks and the Holocaust in independent Ukraine: an uneasy past", *European Education* 2012, vol. 44(3), pp. 67–94.

[45] J. Dietsch, *Making Sense of Suffering: Holocaust and Holodomor in Ukrainian Historical Culture*, Lund: Lund University Press 2006, p. 33.

[46] R. Grosescu, R. Ursache, op. cit., p. 264.

repressions and the 1989 events. Civil rights groups and non-state memory actors argued the recourse to a language of "genocide" screened an intention of temporization of the legal procedures by national authorities[47]. In general public discussion concerning this case, the term was disputed both because of its conflicted memorial implications attached to 1989, and because the genocide qualification[48] triggered among legal scholars and historians a debate regarding the implications of using such legal terminologies to actually move forward rather than perpetuate differences on the past.

Legal languages as "intervention" into national representations

In 2006, Ukrainian scholar Stanyslav Kulchytskyi summarizes the type of dependency between the moral grounds of law and historiography when arguing for the moral obligation of scholars is to provide evidence for political and legal experts that the Holodomor was an act of genocide. This should exercise potency for the present: "This is our moral obligation before the memory of millions of our countrymen who have failed as a result of the terror by hunger"[49]. The fact that affirmations of genocide are a counter reaction to the minimization of crimes also touches on the shortcomings of the fact that conversations around perpetratorship are limited either to the former Soviet elite or transposed on the whole communist system as historical event[50]. Memory practices are thus elevated to acts of defiance, at least in that they make memory political in their injunction to refuse to forget. Historian Myroslav Popovych argues, for instance: "I don't know whether you can call this famine memory, but it is certainly a total aversion to totalitarian mentality"[51]. Enduring anti-communist discourses have also often built on using tropes in assessing the past to mobilize memory by paying close attention to stories and imaginaries of victims to counteract revisionisms and shortcomings of the polity on recent history perception. A similar position is that of anti-communist historian agendas in Romania, in particular with the victim driven moral perspectives on the past, expressed for

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[47] http://www.evz.ro/dan-voinea-despre-acuzatia-de-genocid-in-cazul-tortionarului-alexandru-visinescu-incadr-1055934.html (access: 7.02.2017).

[48] About representation, see for instance N. Mookherjee, "'Never again': aesthetics of 'genocidal' cosmopolitanism and the Bangladesh Liberation War Museum", *Journal of the Royal Anthropological Institute* 2011, 17(1).

[49] S. Kulchytskyi, *Holod 1932–1933 rr. v Ukraini iak henotsyd/Golod 1932–1933 gg. v Ukraine kak genotsid* [*The 1932–33 Famine in Ukraine as a Genocide*], Kyiv 2005, p. 199.

[50] S. Yekelchyk, "Bridging the past and the future: Ukrainian history bridging the past and the future: Writing since independence", *Canadian Slavonic Papers* June 1 2011, vol. 53 (2–4), pp. 559–573.

[51] See I. Shtogin, "A post-genocidal society", *Radio Free Europe Ukraine*, http://www.rferl.org/a/commentary_Ukraine_Postgenocidal_Society/1357424.html (access: 7.02.2017).

instance by official memorial institutions (such as the Institute for National memory and Memory of Exile) and by research focusing on historical justice[52].

Yet in 2008, a transnational dimension was present in the slogan "Ukraine Remembers, the World Recognizes," the campaign reached its peak in November 2008 on the seventy-fifth anniversary of the famine of 1932–1933. The national Book of Memory, in which the names of all those who perished in the famine of 1932–1933 was the main outcome, entailing an extensive participation of tens of thousands of people throughout Ukraine. By November 2008, one national and eighteen regional volumes of the Book of Memory had been prepared, containing data about more than eight hundred thousand victims of the famine.

As far as the recent communist past is concerned, Romanian historiography has responded to governmental changes in politics of memory (in particularly in 1996 and 2004) by appropriating the intrinsic link between appeals for transitional justice processes and a counter mainstream political discourse. Most of appeals to the historical "truth" over the decade following the events of 1989 were meant to expose and complete that which was rendered invisible by national governments. The transnational dimension in this case in point represented a dislocation of the past. A case in point is the reception of the 2005 edition of Stephane Courtois *Black Book on Communism*, where the comparative historiographies of the communism and national socialism, although amply debated and criticized, inspired a detailed cartography of victims, repression mechanism and ideological analysis based on the equal political recognition of victims in Europe. The wide circulation of the book in Poland, Hungary, and Romania shows how deeply the perspective resonated with the post-communist national narratives on the past. The translation of the "Black Book of Communism" generated, for instance, an appendix of 50 pages detailing abuse perpetrated by the former regime, and it was widely documented by civil society organizations active at the time of its publishing, which also encouraged the development of "memory as justice" perspective[53].

The usage of "genocide" as a reaction to the widespread politicized memory culture was also meant to showcase the victim's perspective in order to disturb the state-driven line of avoiding recognition, responsibility or debate concerning the past. It is, in this sense, a valuable tool to reject the communist past, rather than integrate the later into a more complex type of memorial negotiation. From this perspective, the legal usage of genocide was included in the *Final Report of the Presidential Commission for the Study of the Communist Dictatorship in Romania* (2006/2007) expected

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[52] See for instance scholarship and public interventions by prof. Vladimir Tismaneanu, political scientist and head of the research team editing the Report accompanying the Condemnation in Parliament, historian Marius Oprea.

[53] In particular the Group for Social Dialogue (Grupul pentru dialog social), founders of the Sighet Memorials for Victims of Communism and Resistance fighters. See also B. Bevernage, "Transitional justice and historiography: challenges, dilemmas and possibilities", *Macquarie Law Journal* 2014, pp. 9–11.

to encode a *de facto* criminalization of communism. Ahead of the European integration, this historical commission responded to the mounting criticism concerning the lack of investigation concerning perpetratorship, persistence of state structures pre- and post-1989, and compensation for victims. Motivated as a "synthesis of understanding traumatic history through an academic praxis… and empathizing with the people who suffered"[54], its perspective on recognition of victims operated a vocabulary of anti-communism juxtaposing historical trauma with renewed state biographies ahead of the EU accession. The legal vocabulary of the report in itself — which, although part of a transitional justice process, has duly transformed into a historiography source — also bypassed exclusively national (and thus contested) perspectives by leaning on the transnational "totalitarian" perspective when discussing the attack to a national collectivity triggered by authoritarianism. More particularly, its ambivalence in using "cultural genocide" (as victim perspective and to place the perpetrator safely into the past) shows how anti-communist discourses encourage a particular militancy of history in relation to national experience.

Conclusion

The discussion about Romania and Ukraine has shown how instrumentalizing a legal connotation of memory, such as genocide, in national discourses stems from its potential to encode the past in a transnational register of narratives of justice, and is effectively used to recalibrate perspectives on a former authoritarian state into a new construct. Yet, trauma, in this case, also reclaims categories of nation and ethnicity without in fact denying liberal discourses where the victim guarantees human rights and a general skepticism towards state narratives. Such dynamics marks both the starting of a point for the generalization of the category of the victim, while implicitly obscuring other crucial distinctions, that would expose and engage more sensitive categories such as bystanders or complicity. While this vernacularization of genocide and the Holocaust as a memory topoi[55] changes its potential to represent individual violations caused by state intervention by emboldening a political project, it also cultivates an interpretation of anti-communism as "resisting victimhood"[56], that is a form of victimhood framed to resist the perceived lack of clarity over the 1989 political transformation

Even if not explicit, victimhood and trauma around the Shoah as memory perspectives, now European and transnational re-draw "identifications" of the post 1989

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[54] https://www.wilsoncenter.org/sites/default/files/RAPORT%20FINAL_%20CADCR.pdf (access: 7.02.2017).

[55] See D. Levy, N. Sznaider, *Human Rights and Memory*, Penn. State 2010; N. Sznaider, A. Boer, *Memory and Forgetting in the Post-Holocaust Era: The Ethics of Never Again*, New York 2016.

[56] See M. Candea, "Resisting Victimhood in Corsica", *History and Anthropology* December 1 2006, vol. 17(4), pp. 369–384.

space concerning communism. Expediting the idea of a post-1989 sovereign and renewed polity has been in particular supported by holding the communist past as a negative, yet unifying, building block for the present. If in Ukraine nationalist intentions framed by Europeanizing discourses — a paradoxical position defined by Peter Vermeersch as "backdoor nationalism"[57] — ingrain ethnicity in the aftermath of historical injustices, in Romania the nationalizing intention is less explicit. Its conservative political intention resembles what J. Shklar deems as "liberalism of fear", as a means of "putting cruelty first as a perpetual reminder of the contextual perspective on history. Its normative negativity, grounding itself in a universal emotion, fear, and especially the fear of cruelty (in the past state) thus aims for a future-oriented, rather than genealogical, interpretation of the past. Both, however, are equally preserving and perpetuating conflicted perspectives on the past, equally minimizing their political transformative potential and in fact made safe through the advent of law.

Bibliography

2002 "Hot Memory… Cold Memory. On the Political Half-Life of Fascist and Communist Memory." http://www.iwm.at/transit/transit-online/hot-memory-cold-memory-on-the-political-half-life-of-fascist-and-communist-memory/.

2014. "The 'Second Nürnberg'. Legend vs. myth in postcommunism (I)." *Holocaust. Studii și cercetări.* issue 7. 109–144.

Agnew, J. 2009. *Globalization and Sovereignty*. New York: Rowman & Littlefield Publishers. online edition.

Assmann, A. 2009. "Europe: A community of memory". *GHI Bulletin.* no. 50. 2007.

Belavusau, U. 2014. "Hate speech and constitutional democracy in Eastern Europe: Transitional and militant? (Czech Republic, Hungary and Poland)." *Israel Law Review* 47(1). https://doi.org/10.1017/S0021223713000241. 27–61.

Bevernage, B. 2014. "Transitional justice and historiography: challenges, dilemmas and possibilities." *Macquarie Law Journal* 1. http://hdl.handle.net/1854/LU-5765503. 7–24.

Candea, M. 2006. "Resisting Victimhood in Corsica." *History and Anthropology* 17(4). DOI: 10.1080/02757200600914045. 369–384.

DeLue, S. 2006. "The enlightenment, public memory, liberalism, and the post-communist world." *East European Politics and Societies* 20(3). DOI: 10.1177/0888325405275985. 395–418.

Dietsch, J. 2006. *Making Sense of Suffering: Holocaust and Holodomor in Ukrainian Culture.* Lund: Lund University Press.

Dietsch, J. 2012. "Textbooks and the Holocaust in independent Ukraine: an uneasy past." *European Education* 44(3). DOI: 10.2753/EUE1056-4934440303. 67–94.

Final Report of the Presidential Commission for the Study of the Communist Dictatorship in Romania. https://www.wilsoncenter.org/sites/default/files/RAPORT%20FINAL_%20CADCR.pdf.

Foucault, M. 1971. *The Archaeology of Knowledge and the Discourse on Language.* trans. S. Smith. New York: Pantheon Books.

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57 J.E. Fox, P. Vermeersch, "Backdoor Nationalism", *European Journal of Sociology / Archives Européennes de Sociologie / Europäisches Archiv für Soziologie* 1 January 2010, vol. 51 (2), pp. 325–357.

Fox, J., Vermeersch, P. 2010. "Backdoor Nationalism." *European Journal of Sociology / Archives Euro-péennes de Sociologie / Europäisches Archiv für Soziologie* 1 January. vol. 51(2). http://www.jstor.org/stable/23998984. 325–357.

Grosescu R., Ursache, R. 2015. "The Romanian Revolution in Court: What narratives about 1989." [in:] V. Tismaneanu, B. Iacob (eds.). *Remembrance, History and Justice, Coming to Terms with Traumatic pasts in democratic Societies.* Budapest: Central European University Press.

Gliszczyńska-Grabias, A. 2016. "Communism Equals or Versus Nazism?" *East European Politics & Societies and Cultures* 30(1). DOI: 10.1177/0888325415570966. 74–96.

Himka, J.P., Michlic J.B. (eds.). 2015. *Bringing the Dark Past to Light. The Reception of the Holocaust in Post-communist Europe.* Lincoln: University of Nebraska Press.

Himka, J.-P. 2007. "Johan Dietsch, Making Sense of Suffering: Holocaust and Holodomor in Ukrainian Historical Culture; Stanyslav Vladyslavovych Kul´chyts´kyi, Holod 1932–1933 rr. v Ukraini iak henotsyd/Golod 1932–1933 gg. v Ukraine kak genotsid (The 1932–33 Famine in Ukraine as a Genocide)." *Kritika: Explorations in Russian and Eurasian History* 8(3). 683–694.

Jilge, W. 2007. "Competition Among Victims? The Image of the Other in Post-Soviet Ukrainian Narratives on World War II.", [in:] E. Barkan, E.A. Cole, and K. Struve (eds.). *Shared History — Divided Memory: Jews and Others in Soviet Occupied Poland, 1939–1941.* Leipzig: Leipziger Universitätsverlag.

Kasianov, G. 2010. "The Great Famine of 1932–1933 (Holodomor) and the Politics of History in Contemporary." [in:] S. Troebst (eds.). *Postdiktatorische Geschichtskulturen im Siiden und Osten Europas.* Berlin Göttingen: Wallstein Verlag.

Law of Ukraine no. 376–V. "On Holodomor of 1932–33 in Ukraine." http://canada.mfa.gov.ua/en/ukraine-%D1%81%D0%B0/holodomor-remembrance/holodomor-remembrance-ukraine/holodomor-law-ukraine.

Leggewie, C., Lang, A.K. (eds.). 2011. *Der Kampf um die europäische Erinnerung.* Berlin: Beck Paperback.

Levene, M. 2005. *Genocide in the Age of the Nation State:* Volume 1: *The Meaning of Genocide.* London: I.B.Tauris.

Levy, D., Sznaider, N. 2010. *Human Rights and Memory.* Pennsylvania: Pennsylvania University Press.

Maier, C. 2000. "Consigning the twentieth century to history: Alternative narratives for the modern era." *American Historical Review* 165, no. 3. DOI: 10.2307/2651811. 807–831.

Malksoo, M. 2014. "Criminalizing communism: Transnational mnemopolitics in Europe." *International Political Sociology* 8(1). DOI: 10.1111/ips.12041. 82–99.

Mark, J. 2011. *The Unfinished Revolution. Making Sense of the Communist Past in Central-Eastern Europe.* New Haven: Yale Publishing House.

Marples, D.R. 2007. *Heroes and Villains: Creating National History in Contemporary Ukraine.* Budapest: Central University Press.

Merridale, C. 1996. "The 1937 census and the limits of Stalinist rule." *The Historical Journal* 39:1. DOI: 10.1017/S0018246X00020744.

Mookherjee, N. 2011. "'Never again': aesthetics of 'genocidal' cosmopolitanism and the Bangladesh Liberation War Museum." *Journal of the Royal Anthropological Institute* 17(1). http://www.jstor.org/stable/23011426.

Moses, D. 2002. "Conceptual blockages and definitional dilemmas in the 'racial century': genocides of indigenous peoples and the Holocaust." *Patterns of Prejudice.* 36:4: DOI: 10.1080/003132202128811538.

Muller, J.W. 2007. *Constitutional Patriotism.* Princeton: Princeton University Press.

Nienass, B. 2013. "Postnational relations to the past: A 'European Ethics of Memory'." *International Journal of Politics, Culture, and Society* 26(1). DOI 10.1007/s10767-013-9137-8. 41–55.

Olick, J. 2007. *The Politics of Regret.* New York: Routledge.

Olszanski, T. 2010. "Yushchenko's historical policy — A tentative assessment." *Eastweek CES*. January 27. http://www.osw.waw.pl/en/publikacje/eastweek/2010-01-27/yushchenkos-historical-policy-a-tentative-assessment.

Shafir, M. 2014. "Unacademic academics: Holocaust deniers and trivializers in post-communist Romania." *Nationalities Papers*. August. DOI: 10.1080/00905992.2014.939619. 1–23.

Shklar, J. 1989. "Liberalism of fear." In N.L. Rosenblum. *Liberalism and Moral Life*. Cambridge: Harvard University Press.

Shtogin, I. 2008. "A post-genocidal society", *Radio Free Europe Ukraine*. http://www.rferl.org/a/commentary_Ukraine_Postgenocidal_Society/1357424.html.

Solonari, V. 2009. *Purifying the Nation: Population Exchange and Ethnic Cleansing in Nazi-Allied Romania*. Baltimore: Johns Hopkins University Press.

Strath, B. 2006. "Methodological and substantive remarks on myth, memory and history in the construction of a European community." *German Law Journal* 2. http://www.heinonline.org/HOL/Permalink?a=dXZhLm5s&u=http%3A%2F%2Fwww.heinonline.org%2FHOL%2FPage%3Fhandle%3Dhein.journals%2Fgermlajo2005%26size%3D2%26collection%3Djournals%26id%3D73. 255–271.

Sznaider N., Baer A. 2017. *Memory and Forgetting in the Post-Holocaust Era: The Ethics of Never Again*. New York: Routledge.

Voinea D., 2015. "Despre acuzatia de genocid. Evenimentul Zilei". July 25. http://www.evz.ro/dan-voinea-despre-acuzatia-de-genocid-in-cazul-tortionarului-alexandru-visinescu-in-cadr-1055934.html.