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**Criminalizing Communism:  
Transnational Mnemopolitics in Europe<sup>1</sup>**

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The eastern enlargement of the European Union has intensified calls for reconstructing a common European remembrance of the continent's multiple totalitarian legacies. Various political initiatives to condemn, along with counter-attempts to re-legitimize, the legacy of communism have emerged at the pan-European level. Each has an ambition to leave an imprint onto the symbolic moral order and the legal regime of the broader European community. This article builds a conceptual framework for understanding the contestation of political and juridical regulation of the transnational remembrance of totalitarian communist regimes in Europe. Engaging critically the concept of cosmopolitanization of memory, it is argued that mnemonic identity in Europe is undergoing transformation via new claims on “European memory” made by various East European actors, seeking recognition of the region’s particular historical legacies as part of the pan-European normative verdict on twentieth-century totalitarianisms.

**Keywords:** transnationalization, criminalization, communist regimes, recognition, mnemopolitics

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In December 2010, the European Commission rejected calls made by six East European countries<sup>2</sup> to criminalize the denial of crimes perpetrated by communist regimes, in the same way a number of EU countries have banned the public condoning, denial, and gross trivialization of the Holocaust. The EU Council Framework Decision on combating racism and xenophobia (2008) does not cover crimes directed against a group of persons defined by reference to criteria other than race, color, religion, descent or national or ethnic origin, such as social status or political convictions. As the denial of crimes committed by totalitarian communist regimes is likewise largely absent in national legislations of EU member states, with the exceptions of the Czech Republic, Poland, Hungary, Lithuania, and somewhat less explicitly Latvia, the Commission concluded that the necessary legal conditions for adopting an additional legislative instrument for tackling the respective crimes at EU level had not yet been met (European Commission Report 2010). As is often the case, the legal justification hides further political controversies: many suspect the undertaking to include international crimes against social and political groups (which comprise the bulk of the so-called “communist crimes”) into the European Union's area of legal coverage to be a thinly-veiled attempt at mitigation of East Europeans' own complicity with the Holocaust (Guerreiro in European Parliament debate 2009b; Katz 2009). Seeking equal legal treatment of totalitarian crimes of different origin is accordingly regarded as political relativism, threatening to “dilute the unique nature of the Nazi crimes” (Ford in European Parliament debate 2009b).

Recent years have indeed witnessed intensified attempts of various East European actors at political condemnation and criminalization of totalitarian communist legacy by means of national, European and/or international law. At a pan-European level, this has resulted in a sequence of political declarations, legal initiatives, and resolutions by the Council of Europe

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<sup>2</sup> Lithuania, Latvia, Bulgaria, Hungary, Romania, and the Czech Republic.

(CoE), the European Court of Human Rights (ECtHR), the Organization for Security and Cooperation in Europe (OSCE), and the European Union, condemning totalitarian communist regimes in various ways. As the debates held in these multiple political fora demonstrate, the pursuit to influence the normative and institutional formation of a pan-European remembrance of communist regimes has hardly gone unchallenged. The meaning of communist legacy for the “European memory” has emerged as a political issue of substantial controversy and significance. How to make sense of this struggle over criminalizing totalitarian communist regimes in Europe? On which basis is the institutionalization of the “memory” of totalitarian communism being called for? What discourses are invoked in the respective pan-European mnemopolitical debates?

Exploring the translation of the initiatives to condemn totalitarian communist regimes into the symbolic moral order and the legal regime of the broader European community brings to the fore an overlooked aspect of transnational mnemopolitics in Europe. It is not that the existing research has ignored the normative power of constructing a “common European memory” – indeed, it has paid considerable attention to it (Littoz-Monnet 2012; Jarausch 2010; Karlsson 2010; Leggewie 2010; Pakier and Stråth 2010; Challand 2009; Spohn and Eder 2005). Rather, the current works have largely failed to theorize the normative implications of the mounting calls for juridification of “remembering” communism for the dynamics of the transnational mnemopolitics in Europe, nor have they adequately captured the role of the East European actors in the process (cf. Closa 2011, 2010a, 2010b). While there is a growing acknowledgement of the transformation and pluralization of European memory regimes in the literature (Levy and Sznajder 2007:174), the diversification of the mnemonic inventory in Europe remains yet to be substantiated with the analyses focusing on the new trajectories of remembrance intersecting with the established mnemonic code of the Holocaust.

This article develops a conceptual framework in order to begin to fill this void. Taking account of the various calls to criminalize and counter-attempts to re-legitimize the legacy of totalitarian communist regimes<sup>3</sup> in Europe, I sketch out a condensed genealogy of the formation of a common assessment, or “memory,” as it is often dubbed, of communist legacy at four main pan-European fora,<sup>4</sup> paying particular attention to the increasing volume of the juridifying discourses.<sup>5</sup> A genealogy – what Nietzsche (1967) conceived as ‘effective history’ (*wirkliche Historie*) and Foucault (1984) as a ‘history of the present’ – aims to describe how the present became logically possible (Bartelson 1995:7), or to illuminate a contemporary phenomenon that is deemed to be problematic from the perspective of the past (Elbe 2001:260-263). As a Foucaultian genealogical approach is specifically concerned with interpreting the sources of moral discourses (Price 1995:85-86), and demonstrating the diversity and specificity of battles between different interpretations of social phenomena (Vucetic 2011:1301), it is particularly well suited for explaining the scattered emergence of a pan-European discourse of remembering communism. A genealogical inquiry of the pertinent debates from the CoE and the ECtHR to the OSCE and the European Union highlights how something is reclaimed from the past – in this case communist legacy – for reinvigorating a particular understanding of “common European values” in the present, or indeed, questioning “the value of these values themselves” (see Nietzsche 1967:20). The legal debates disclose the attempted translation of specific national and regional experiences into pan-European norms and practices, providing a window into understanding law as a medium of collective remembrance, aimed at furnishing a particular

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<sup>3</sup> Many critics regard the epithet “totalitarian” a hypocritical, if necessary, nod at soothing the Eurocommunists since Europe is allegedly yet to know a *non-totalitarian* communist regime. This is well reflected in the debates analyzed in this article, making a frequent case about the *ontological* criminality of communism as a house of political thought, rather than seeking to determine the degree of repressiveness contingent to actual communist regimes.

<sup>4</sup> While the calls to acknowledge and condemn the criminal legacy of communism occasionally embrace a global audience (aiming at China in particular), these initiatives are beyond the scope of this paper.

<sup>5</sup> The interpretations of the paper draw on Foucaultian discourse analysis which takes discourses not only to contain linguistic expressions, but also to generate modes of power and exclusion, emphasizing thus the relationship between the formation of discursive practices and wider processes of social and cultural change.

sense of European community (cf. Levy and Sznajder 2010:18). Embracing four pan-European fora enables to examine the overlaps and mutual reinforcement of the tropes of condemnation across distinct organizations, and illuminate recognition-seeking, struggle for mnemonical hegemony, contingency, and resistance in the operation of the emerging moral discourse. Zooming out of the European Union is therefore essential for incorporating the respective pan-European debates with the active presence of the representatives of the Russian Federation as a political and legal successor of much of the communist experiment in Europe (cf. Rostoks 2011). This approach tallies with the so-called “three E”-definition of genealogy – that is, a reference to episodes, examples and effectiveness in bringing about a particular normative assessment of the past in the context of the present (Vucetic 2011:1300). The empirical account offered here is necessarily episodic for tracking down a more comprehensive evolution of the discourse appealing on the remembrance of communism through a condemning prism would have necessitated a considerably broader focus, with a wider range of discursive genres and fora, starting at least with the critical debates related to the publication of *The Black Book of Communism* in France in 1997 (1999 in English) and the German *Historikertreit* in the late 1980s.

I propose two non-exclusive contexts through which the debates over the pan-European condemnation of totalitarian communist regimes may be theorized. First, the way East European actors of various stripes have taken the so-called Holocaust template and modeled their own quest for determining the contents of the “European memory” accordingly warrants a critical interrogation of the concept of “cosmopolitanization of memory,” underpinned by the remembrance of the Holocaust as the universal ethical problem (Levy and Sznajder 2010). As a mnemonic signifier, Holocaust is an example of the transnational memory discourse, putting pressure on the national narratives and reshaping them thereof (Berger 2012:31). If communism was supposed to “embody, exemplify and spread a kind of universal, therefore universally

comprehensible, culture” (Snyder in Judt 2012:239), this article seeks to fathom whether a universalist ethos of a similar kind is informing the contemporary anti-communist movement in Europe. I maintain that the pan-Europeanization pursuits of the mostly East European recollections of communism offer an intriguing case of transnational remembrance in the making. Lessons drawn from the Second World War (WWII) and the Nazi atrocities once laid the foundation for the European project, making it thus “a peculiar kind of monument to the Second World War” (Müller 2010:30), with Holocaust recognition as “contemporary European entry ticket” (Judt 2010:803). The campaign for the pan-European condemnation of totalitarian communist regimes calls *inter alia* for the revision and substantive enlargement of the existing constitutive narrative of the European Union, raising therefore potentially uncomfortable questions for some about the West European complicity with the East European post-war plight under the communist rule. The remembrance of WWII and communist legacy are thus closely connected in Europe for the very centrality of WWII as the founding event of the European project.<sup>6</sup>

Secondly, I suggest that the East European politics of seeking pan-European condemnation of totalitarian communist regimes in explicitly universalist, moral, and increasingly legal terms is an evocative example of expressing political grievances over insufficient recognition of the region’s particular historical legacies. Seeking condemnation of totalitarian communist regimes, and furthermore, the criminalization of the denial of crimes committed by these regimes at the pan-European level interrogates, in particular, the hegemonic mnemonic narrative of the pre-eastern enlargement European Union with its exclusive denouncement of the Holocaust. As the debates in multiple pan-European fora demonstrate, the struggle for the universal condemnation of totalitarian communist regimes is a sub-strand of

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<sup>6</sup> The intertwining of the remembrances of WWII and the communist legacy is characteristically manifested in the discourses criticizing the pan-European condemnation of totalitarian communist regimes as the undertaking of “the losers of the Second World War” (Guerreiro in European Parliament debate 2009b).

human rights movement which strives to expand the official pan-European category of criminal totalitarianism. This pursuit (which in fact reaches back to the very origins of the Cold War) is based on an assumption of the universal dignity of all victims, regardless of the perpetrator regime. It stems from a position of ethical cosmopolitanism, maintaining that a shared sense of Europeanness should make the historical injustices caused by totalitarian communist regimes a universal concern for all Europeans.

The politics of recognition comprises, particularly at EU level, of the attempts to broaden the base of the “universal lessons” of totalitarianism in Europe in order to turn the particular East European experiences with totalitarian communist regimes into a part of the established European mnemonic “master narrative.” This is exemplified, for instance, by the predominantly East European membership of the all-party Reconciliation of European Histories Group in the European Parliament, chaired by the Latvian representative Sandra Kalniete, and aimed at “including the experience of the post-communist nations into common narrative of the European History.”<sup>7</sup> The numerical preponderance and vocality of East European interventions in the respective debates at the PACE and the European Union is further reflective of this struggle for recognition (see Rostoks 2011:196-197, for a detailed account). Important public hearings and international conferences on the subject of crimes committed by totalitarian regimes have been organized under the aegis of the Slovenian, Czech, Hungarian, and Polish EU Presidencies in 2008-2011. The calls for the pan-European condemnation of totalitarian communist regimes explicate a move from the re-nationalization of memories (that was typical to the immediate aftermath of communism in Eastern Europe) to post-nationalist aspirations. These initiatives also constitute a demand for political justice of a particular kind. By seeking recognition to the inclusion of their encounters with communism into the established European

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<sup>7</sup> See [eureconciliation.wordpress.com/about/](http://eureconciliation.wordpress.com/about/) (accessed August 5, 2013).



mnemonic narrative of the twentieth-century totalitarianisms, the East European mnemonic actors concurrently seek recognition for their agency as Europeans (Mälksoo 2009).

While the experiences and assessment of communism in Eastern Europe have been hardly homogeneous (Judt 2010), this politics of recognition is also designed to legitimate a particular regime of truth in the countries making the pertinent claims. It is therefore important to notice that although the fault lines of “European memory” along the Cold War East-West dichotomy are regularly emphasized in the respective debates, the mnemonic unity is nonetheless illusory on both sides. The alleged anti-communist consensus varies greatly in the post-communist countries of Eastern Europe (Troebst 2010). Likewise, the discourse of the various spokespersons seeking to condemn totalitarian communist regimes frequently obfuscates the distinctly heterogeneous views among the so-called “Western public opinion” on the issue, breaking down the binary between fiercely anti-communist “East” and indifferent “West.”<sup>8</sup> While no tidy symmetry exists between different assessment of communist legacy in the East and West of Europe, it is nonetheless undeniable that before the eastern enlargement of the European Union, the institutionalized European remembrance remained largely silent on the issue.

A shift we are currently witnessing towards adopting a condemning stance about communist legacy owes a lot to the interpretation of European values and identity as opposed to the tenets of totalitarianism. This sentiment was evocatively captured by a Czech politician Alexander Vondra as a President-in-Office of the Council of the European Union in the

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<sup>8</sup> As characteristically reflected in the exchanges of fervently anti- and pro-communist arguments by the representatives of a single ex-communist country in PACE (Czech Republic’s Němcová and Konečná being the case in point). The activities of Dovid Katz, a Yiddish scholar based in Lithuania, against purported “Holocaust obfuscation” accompanying the movement seeking pan-European condemnation of communist crimes is another example.

European Parliament debate on “European conscience and totalitarianism,” claiming that the European Union:

stands for everything that is the opposite of totalitarianism. For those of us who emerged from the grip of Communism, membership of the European Union is one of the main guarantees that we will never again revert to totalitarianism. /--/ It is something to be valued and never taken lightly. A collective conscience and memory of the past is a way of reinforcing the value of the present (European Parliament debate 2009a).

The empirical part of the paper dissects the specific claims on “European memory” which vary from seeking equal legal treatment of communist and Nazi crimes to calls for the overall condemnation of communism as a strand of political thought. These claims can be regarded as communication tools for venting resentment about the alleged imbalance of representation and power between the “new” and “old” members of the European Union, between the traditional and emergent actors in European politics. Regardless of the universalist framing of this struggle by the proponents of its cause, the pursuit of diverse East European actors for the right to a place in a shared European memoryscape of twentieth-century totalitarianisms has often been understood as a particularistic project, deliberately challenging the hegemonic mnemonic narrative currently informing the contemporary European identity, broadly conceived. A genealogical inquiry into pan-European struggles to bring about a political, moral, and legal condemnation of totalitarian communist legacy enables to probe the diverse ways the pertaining discourses constitute the subject positions of different East

European actors in pan-European mnemopolitics, and problematize the production of these discourses as a form of normative power.

It is through “memory,” after all, that a political community validates and reproduces, but also challenges itself (Levy and Sznajder 2010:4). “Memory” refers here to the officially endorsed, or politically coordinated and sanctioned remembrance of the past, manufactured by elites and shaped by institutional control. The “common memory” in question is really more a pan-European self-representational strategy, a form of discursive power rather than a cognitively shared collective remembrance. I approach the “European memory” as a particular discourse which is based on social and political negotiations and bargaining; requires considerable social work, and is therefore also reflective of the power relationships that constitute it (Pakier and Stråth 2010:6-7). As a genealogical approach is more concerned about an interpretation of what kind of politics is promoted by a moral system, rather than seeking to account for the conscious intentions of actors engaged in the process, it does not presume a necessary convergence between discursive and material, or structural power (Price 1995:88).

While “memory” is the term generally used in the discourses under purview, the notion of remembrance is preferred here for the latter's emphasis on processuality instead of a fixed storage space. “Remembrance” is particularly apposite for this study due to its accent on the active process of remembering, as reflected in the sought institutionalization of the guidelines outlining the suggested public relationship to Europe's multiple totalitarian pasts. Likewise, the recognition pursued in transnationalizing the predominantly East European condemnation of totalitarian communist regimes can only be understood as a dynamic process, rather than a static notion, for “even if obtained and institutionalized politically, [recognition] is always subject to new contestation” (Cooke 2009:29). Pan-European political declarations, legal initiatives, and international court decisions are thus taken as an exemplary embodiment or attempted

reification of certain remembrance practices, as the putative “common European memory” in flesh.

The ensuing section locates the subject matter against the backdrop of the argument on mnemonical cosmopolitanization as recently developed in political sociology. The contention over determining the nature of the largely East European claims for recognition in the context of the struggle for condemning totalitarian communist regimes is addressed next. The workings of the conceptual framework are then illustrated with a brief genealogical cut into pan-European fora that have contributed, to a different degree, to the construction of the remembrance of communist legacy through a condemning normative prism. The chosen examples, adumbrated here for the purposes of brevity, that together constitute a part of the latest episode in the transnational mnemopolitics in Europe, enable us to delineate an emerging discourse on “remembering communism” in contemporary Europe.

### **Constructing a Cosmopolitan Memory?**

Cosmopolitanization of memory is often regarded as a co-product of the European integration (Spohn and Eder 2005; Beck, Levy, and Sznajder 2009; Levy and Sznajder 2010). This is only symptomatic against the backdrop of the academic study of the European Union that is full of references to its alleged *sui generis* nature. The expected emergence of a shared memoryscape of Europe, with a harmonization of moral and political attitudes and remembrance practices in dealing with different pasts, is a characteristic expression of an assumption about the European Union's fundamentally reshaping role of the traditionally national patterns of social remembrance.

In light of recent critical revisions of the argument of mnemonical cosmopolitanization (Levy, Heinlein, and Breuer 2011), there are two relevant observations to take on board for making sense of the politics of pan-European condemnation of totalitarian communist regimes. First, just as it is the case with the “memory imperative” of the Holocaust (Levy and Sznajder 2002:101), the consolidation attempts of the condemnation of totalitarian communist regimes underscore the urgency of the respective remembrance for the future of Europe. Likewise, an attempted Europeanization in relating to “communist crimes” is built on a cosmopolitan ethic, or the “acknowledgement of some notion of common humanity that translates ethically into an idea of shared or common moral duties toward others by virtue of this humanity” (Lu 2000:245). Secondly, a major argumentative thread in the respective calls seeks the recognition of the history and the memories of the “Other” (or the incorporation of the historical experiences of East European countries in the pan-European “lessons” of totalitarianism and war), resonating with the so-called methodological cosmopolitanism, aimed at including the “otherness of the other” (Levy and Sznajder 2002:103). As a Polish Member of the European Parliament Adam Bielan has captured both strands of the discourse: “We must remember that understanding the past of the whole of Europe, and not only its western part, is the key to building a common future” (European Parliament debate 2009b).

The “Holocaust template” has a strong resonance in the pan-European debates over the condemnation of totalitarian communist regimes. The way Holocaust was turned into a cosmopolitan equivalent of the “evil” in the Western historical consciousness has provided inspiration for further criminalizers of other historical legacies in their own pursuits for international recognition of their particular past experiences (Luik 2008). That is why the “Holocaust analogy” has become a sword for some and a shield for others in the contention about the reconstruction of a new moral order regarding the universal condemnability of

totalitarian communist regimes along with Nazism.<sup>9</sup> The critics disapproving of the way this analogy has been appropriated in the emerging normative discourse on communist regimes have denounced the pertinent East European-led mnemopolitics as an attempt at the kind of interpretive reversal that Foucault (1984:85-86) described as “seizing the[] rules, to replace those who had used them, to disguise themselves so as to pervert them, invert their meaning, and redirect them against those who had initially imposed them.”

### **The Politics of Recognition**

The struggle for pan-European moral and political condemnation of totalitarian communist regimes and the equal legal treatment of communist and Nazi crimes, driven largely by East European actors, features as the politics of recognition. Charles Taylor (1992) has distinguished between two meanings of the politics of recognition, arguably in the form of a historical sequence: the politics of equal dignity and the politics of difference. While the first kind of the politics of recognition focuses on the commonly shared by all human beings (such as human rights), the politics of difference is related to social movements seeking to protect and celebrate distinct identities instead. Accordingly, the politics of equal dignity seeks the establishment of an identical set of rights and immunities, while the politics of difference (even though underlying its demand is a principle of universal equality) has a more particularistic tang to it, for “what we are asked to recognize...is precisely this distinctness that has been ignored, glossed over, assimilated to a dominant or majority identity” (Taylor 1992:38-39). Taylor's argument's set-up is essentially the nation vs the universal, whereas the transnational but not universal drops out.

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<sup>9</sup> It is noteworthy, against that backdrop, that The Task Force for International Cooperation on Holocaust Education, Remembrance, and Research has recently established a specialized committee to address “comparative genocide.”

While a concern for recognition of communist legacy as part of the European remembrance of totalitarianism is not universally shared within Europe, it cannot be quite captured within the framework of the politics of equal dignity. Yet, for all its appeals on universal values and emphasis on the right of the victims of totalitarian communist regimes for equal dignity and respect (see Bruzga 2008), it hardly fits Taylor's category of the politics of difference either. Following Maeve Cooke's (2009:79-80) emphatic deconstruction of Taylor's binary, it is fair to claim that the largely East European actors-driven transnational mnemopolitics of condemning totalitarian communist regimes entails *both* the elements of the politics of equal dignity *and* a demand for recognition of a substantive value of the East European encounters with communism for the normative foundations of the European community. It is thus not the issue of seeking recognition of the East European difference (or identity politics) that is at stake here. Rather, while demanding pan-European recognition for the universally condemnable qualities and capacities of totalitarian communist regimes, this struggle also calls for the recognition of the value of the distinctly East European experience that has not been universally shared in Europe. As such, the logic of East European politics of recognition is similar to the functioning principle of mnemonic cosmopolitanism: it is not *either* universalism *or* particularism, but *both* a push for a universal condemnation of communist legacy *and* a call for a simultaneous recognition of the specifically East European contribution to the European remembrance of totalitarianism.

As the empirical discussion demonstrates, condemnation of the crimes of communist regimes is generally sought in an abstract manner, or as formal recognition (Cooke 2009:81), and less frequently for the value of a substantive end (or concrete good). Seeking the establishment of the right to be a recognized part of a pan-European “memory” by legal provisions via the official institutional condemnation of the communist regimes, and the criminalization of the denial of their crimes thus runs parallel to a campaign for simply winning

more prominent public acknowledgment of the crimes of totalitarian communist regimes (reflected *inter alia* in the pan-European commemoration and memorialization policies; see Closa 2010a:13). Hence, the struggle for including the legacy of totalitarian communist regimes under the denouncing gaze of the pan-European institutions of various kinds breaks down the binary suggested by Taylor (1992) according to which the politics of equal dignity corresponds to a type of social movement in which a concern for legal issues is paramount, while the politics of difference is related to social movements in which the principal issues are identity-related (Cooke 2009:77). Moreover, as the spheres of recognition-seeking, criminal justice, and identity-building tend to overlap (Closa 2011:18), it might be difficult to distinguish in practice the nature of desired goods in the process of recognition-seeking. As Carlos Closa, who directed the European Commission-solicited *Study on how the memory of crimes committed by totalitarian regimes in Europe is dealt with in the Member States* (2010b), has suggested by way of the example of the former communist states, claims on criminalizing the denial of crimes committed by totalitarian communist regimes are primarily seeking recognition for sanctioning a certain kind of behavior as a crime, rather than striving for specific punishments or actual criminal proceedings (Closa 2011:20). “Criminalizing communism” is therefore more about recognition-seeking of the East European actors' equal standing in the European community; their right to be a recognized part of “European memory,” and less about the practical potency of the criminalizing measure as such.

The following empirical illustrations highlight that this is nonetheless the moot point for the actors seeking the condemnation of communist legacy in Europe and those perceiving this struggle as an anti-Russian movement in moral disguise. The former strive to unite Europe through an appeal to universal judgment on the communist experience of Eastern Europe and the need for equal dignity of the victims of different totalitarian regimes. Their claim to a “right to memory” (that is occasionally accompanied by a demand to hold equal rights under the law,



or equal respect for equal suffering) indicates the degree to which the institutionalized European recognition is constitutive of their subjectivity as Europeans. The latter emphasize the particularity of the respective interpretation instead, understanding the condemnation campaign as a modern right-wing political revenge strike on the left,<sup>10</sup> as well as a vicious, if emancipatory, blow by mostly Russia's former East European dependents on their despised ex-colonial "master." The proponents of the pan-European condemnation of communist regimes claim to seek recognition in the first instance as an abstract universal right. Meanwhile, their critics suspect concrete legal and political consequences mainly to the detriment of contemporary Russia.

The pan-Europeanization of the condemnation of totalitarian communist regimes has been further criticized as an attempt to sway the focal position of the Holocaust in the European memoryscape, to debate its significance as a constitutive event. This thread of criticism sees the venture as a deliberate ploy to relativize the criminalizers' own participation in the Holocaust as actually driving their search for recognition, camouflaged behind their employment of the language of universal human rights and values of human dignity. That is the case in spite of the official discourse of the criminalizers of totalitarian communist regimes taking exquisite care in the respective wordings, by emphasizing the uniqueness (and hence the particularity) of the Holocaust.<sup>11</sup>

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<sup>10</sup> Critics have pointed to the alleged abuse of this lever by the European People's Party (EPP) against its left-wing political opponents in the European Parliament.

<sup>11</sup> The result - as the founding document of the Platform of European Memory and Conscience evocatively shows - is a curious mix of both claims. While the underlying rationale for the Platform is indeed the comparability and equivalence of Nazi and communist crimes, a nod at the core narrative informing the hierarchical remembrance of the twentieth-century totalitarianisms is nonetheless made at the very beginning of the establishing agreement by taking a dutiful notice of "the exceptionality and uniqueness of Holocaust" see <http://www.memoryandconscience.eu/wp-content/uploads/2011/12/Agreement-and-Statute-of-the-Platform1.pdf> (accessed August 5, 2013).

The two conceptual lines outlined above bear on the following empirical examples in distinct ways. A critical cosmopolitan perspective is helpful for illuminating the mnemonical transformations in contemporary Europe as it provides a diagnostic capacity for analyzing the interplay between the agendas of particularistic origin and universalistic drive in the transnational mnemopolitics over the remembrance of multiple totalitarian legacies in Europe. Understanding this pursuit as a struggle for recognition sheds further light on the predominantly East European rationale in this politics. As both parts of the suggested conceptual framework are informed by the interaction between a cosmopolitan ethic and processes of particularization, they are mutually reinforcing.

### **Europeanizing the Remembrance of Communist Legacy in Europe**

The following empirical section identifies and delineates the dynamics of the contending discourses on communist legacy, pinpointing the features of totalitarian communist regimes that have come to be regarded as essential in disputes over (1) the definition of their legitimate remembrance; (2) their labeling and evaluation, and (3) (legal) standards of judgment to be applied across the main pan-European political and legal fora (cf. Price 1995: 89).

#### *Parliamentary Assembly of the Council of Europe*

The Council of Europe has been a pioneering organization among the pan-European fora in which the search for political condemnation of totalitarian communist regimes has borne fruit. To date, the Parliamentary Assembly of the Council of Europe (PACE) has produced two important resolutions on the matter. The first of these is of a more general character, dating back to 1996 (Resolution 1096). The second, and arguably the most comprehensive resolution on the matter to date (Žalimas 2010) was issued on January 25, 2006 whereby the Council of

Europe strongly condemned crimes of totalitarian communist regimes, implicitly recognizing genocidal intent behind the communist liquidation policies of certain groups of people (Resolution 1481/2006; cf. Resolution 1723(2010)). The Assembly furthermore called on all communist or post-communist parties in its member states to “clearly distance themselves from the crimes committed by totalitarian communist regimes and condemn them without any ambiguity.”

While the full draft recommendation for a 2006 PACE resolution by the Swedish rapporteur Göran Lindblad<sup>12</sup> was issued with great majority by the Political Affairs Committee, it nonetheless did not receive the necessary two-thirds majority of the votes cast in the Parliamentary Assembly as the group of communist parties, including prominent Russian representatives, vehemently opposed the resolution. This turned out to be the main contingency in framing the undertaking rather cautiously as the “need for” international condemnation of crimes of totalitarian communist regimes instead of calling a spade a spade, as well as contributed to the obstruction of the draft recommendation calling on European governments to adopt a similar stance. The draft recommendation had indeed foreseen furthergoing measures than the resolution adopted by the Assembly eventually contained, ranging from the carrying out of legal investigations of individuals engaged in “communist crimes” to the creation of pertinent commemoration and memorialization policies.

The debates accompanying the adoption of the Resolution 1481/2006 nonetheless reveal a straightforward call for the Europeanization of the treatment of communist legacy, if we take our cue from Beck, Levy, and Sznajder (2009:120), who claim that Europeanization means “to struggle for institutional answers to the barbarity of European modernity,” and the construction

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<sup>12</sup> Today, Göran Lindblad is the President of the Platform of European Memory and Conscience.

of a “cosmopolitan Europe” thus “the institutional self-critique of the European way.” A typical trinity of the arguments is presented in support of condemning totalitarian communist regimes: the need to raise the general public awareness of the criminal legacy of communist regimes (see Mihkelson; Herkel; Němcová in the Report of the Fifth Sitting of 2006 Ordinary Session); the desire to morally retribute the victims (for the legal and economic restitution remains, due to the distance in time, in most cases unachievable anyway); and to politically condemn the ideology and methods of totalitarian communism in order to avoid the possible re-emergence of this model of governance in the future (Saks; Němcová, *ibid.*).

Representatives from the Baltic states, Bulgaria, Ukraine, and the Czech Republic further emphasized the symmetry between the Nazi and communist crimes, and pointed to the vital connection between the willingness to approach one's own history critically and the potential of true democratization, clearly alluding at the prospects of democracy in Russia in that light. Opinions diverged on whether or not the communist ideology should be deemed guilty as such: while there were voices among the pro-condemnation group arguing relentlessly that communism could “never be reformed and is absolutely incompatible with the notion of democracy” (Němcová, *ibid.*), others preferred to leave the thorny issue for intellectual discussion and out of the debate over the PACE report.

What was generally presented as at stake by those representatives calling for the condemnation of the crimes of totalitarian communist regimes in the debates leading to the adoption of the respective resolution was really not criminal justice over the perpetrators, or reparatory justice to materially repair and compensate for prior wrongs, but rather historical justice – the creation of historical accountings of communism in order to redefine the European experience of totalitarianism more comprehensively, and to reconstruct a common European identity accordingly. The arguments presented in support of the international condemnation of

totalitarian communist regimes spoke very much for the connection between a particular relationship to communist legacy and modern European sensibilities. They highlight a request for a formal acknowledgement of equal dignity for the victims of totalitarian communist regimes rather than seek recognition for the value of a substantive end.

As any disciplining discourse, the attempted condemnation of totalitarian communist regimes drew considerable resistance from numerous national and ideological quarters. Greek, Cypriot, Czech, and Russian representatives, some of them with explicitly communist party affiliation, reached for a standard defense in support of the communist cause in the PACE debate of January 25, 2006, reminding of the Soviet Union's role in the fight against Nazism and the allegedly consequent impossibility of equating the legacies of the Soviet and Nazi regimes. Not only was it claimed to be “unacceptable to equate the word 'communist' with crime” for the impossibility to “criminalize class struggle” (Kanelli, *ibid.*), but “the sacrifice of the lives of twenty millions Russians” could never be forgotten either (Christodoulides, *ibid.*). The critics read Lindblad's draft resolution as a text aimed at “stigmatization of the communist ideology as such,” and therefore, a “merely political declaration and a dangerous and unworthy attempt for rewriting of history” (Konečná, *ibid.*). The push for international condemnation of totalitarian communist regimes was accordingly labeled “a reactionary and ideological campaign” (Konečná, *ibid.*); “a desperate attempt by conservative and extremist forces to defocus the people of Europe from their day-to-day problems” (Christodoulides, *ibid.*). A Russian communist representative Gennady Zyuganov even reproached the condemnation-campaign as a push to “revert back to fascism” (*ibid.*) Depicting the condemnation of totalitarian communist regimes in exclusive either/or terms vis-à-vis the condemnation of Nazism, the critics denounced the universalistic appeal of the campaign.

While the adopted resolution was, at the end of the day, quite austere in the light of the demands of the vehement anti-communists, as well as legally non-binding, the European Court of Human Rights, established under the auspices of the Council of Europe, has managed to address the calls for criminal justice for the victims of the communist crimes in a more sustained and comprehensive manner. From the standpoint of international law, a political resolution, like PACE's 1481/2006 could be considered as merely a subsidiary tool or additional source to interpret relevant rules of international law regarding the qualification of the international crimes committed by the communist regimes as crimes against humanity, war crimes, or genocide (Žalimas 2010:8). ECtHR rulings, however, are binding to the states who are contracting parties to the European Convention on Human Rights. They have thus given a more concrete substance to criminalizing communism, functioning as a symbol of recognition-seeking for the value of distinctive experiences with communism for the normative reformation of the European community.

### *European Court of Human Rights*

The legal basis for international condemnation of the crimes of communist regimes can be found from the customary international law principles recognized in the Statute of the Nuremberg International Military Tribunal, and the jurisprudence of this Tribunal.

The debate over holding the standard formulated at Nuremberg to be universal in the context of WWII acquired wider resonance for the overall pan-European assessment of totalitarian communist legacy with the consecutive rulings of the ECtHR in the case of *Kononov v. Latvia*. The former Soviet partisan Vasily Kononov had been convicted by the Latvian courts for leading a group of Soviet partisans who killed nine inhabitants of the eastern Latvian village of Mazie Bati on May 27, 1944 for their alleged collaboration with the Germans occupying the

country at the time. The 2008 judgment by the ECtHR's former Third Section found Latvia to be in violation of Article 7 of the European Convention on Human Rights which enshrines the prohibition of retroactive application of criminal law when convicting the Kononov for a war crime. As Judge Egbert Myjer of the Netherlands put the crux of the matter in the concurring opinion to the chamber's judgment: "...the Nazis and their collaborators were entirely in the wrong and those who fought against the Nazis...were completely in the right" (Judge Myjer 2008). Only two years later, however, the Grand Chamber of the ECtHR reversed the previous judgment of the Court's Third Section. Symptomatically to the dividing lines of the debate, the Russian Federation intervened in the process before the Grand Chamber as a third-party state in support of Kononov, while Lithuania stepped in for Latvia.

Contra the openly discriminatory understanding of war crimes that had informed the original ECtHR ruling in the *Kononov case*, the Grand Chamber upheld the war crimes conviction of Kononov by the previous rulings of the Latvian courts. Thereby, the Court established an important precedent in applying the Nuremberg standards also to the winners of WWII, approving the measuring of all international crimes committed in the context of the war by the universal normative benchmark regardless of their perpetrators' allegiance to the supposedly more rightful *jus ad bellum* (Mälksoo 2011). The successful Latvian appeal thus constituted a major victory for the broader politics of seeking recognition to the distinct East European experiences with twentieth-century totalitarian regimes and the legal treatment of communist crimes on par with the crimes of the Nazis. Sandra Kalniete, a Latvian chair of the European Parliament's informal group Reconciliation of European Histories welcomed the Grand Chamber's judgment as a step towards historical justice.<sup>13</sup> The Russian Ministry of

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<sup>13</sup> See <http://eureconciliation.wordpress.com/2010/05/18/a-pivotal-judgment-of-the-echr-no-impunity-for-perpetrators-of-war-crimes-sandra-kalniete-mep/> (accessed August 5, 2013).

Foreign Affairs (2010), in its turn, called the Court's final judgment "a very dangerous precedent" that represented

an attempt to cast doubt on several key legal and political principles that emerged following the Second World War and the postwar settlement in Europe, particularly with regard to the prosecution of the Nazi war criminals...[T]he Grand Chamber has actually agreed today with those who seek to revise the outcome of World War II and whitewash the Nazis and their accomplices...[T]he decision seriously damages the credibility of the Council of Europe in general and may be viewed as an attempt to draw new dividing lines in Europe and to destroy the continent's emerging consensus on pan-European standards and values.

The debates and repercussions of the *Kononov case* in the ECtHR provide an emblematic illustration of the fundamental divide between the universalistic and particularistic assessments of the communist crimes, emphasizing the ongoing contestations over the hegemonic mnemonic narrative of twentieth-century totalitarianisms and war in Europe at large. This case exemplifies vividly the multiple "fronts" of the East European struggle for seeking political and legal recognition of communist crimes. Moreover, the discussions surrounding the *Kononov case* confirm the observation about how justice established in trials addressing human rights abuses can itself become a new form of remembrance, and the inaugurated law, consequently, a medium of collective memory (Levy and Sznajder 2010:18-19). As Levy and Sznajder remind us (2007:166), it was "ultimately...the memory of the Second World War and not the Holocaust that stood at the center of both the Nuremberg trials



and the nascent idea of a European community.” The final ruling of the ECtHR in the *Kononov case* could accordingly be read as a codification of an emerging remembrance at the European level, as it encapsulates the intertwining of the remembrance of WWII with the broader assessment of communist legacy for Europe. In this sense, “the jurisprudence serves a fixative role,” as the finality of legal judgment can eventually help to settle contested histories (Buyse and Hamilton 2011:6). Judgments, such as the ECtHR Grand Chamber's ruling in the *Kononov v. Latvia* case, are hence transformative opportunities for the wider European assessment of the crimes committed by communist regimes.

### OSCE

Yet another such transformative opportunity was provided by the OSCE Parliamentary Assembly's (PA) adoption of the Resolution “On Divided Europe Reunited: Promoting Human Rights and Civil Liberties in the OSCE Region in the 21st Century” in 2009 at the annual session of the Assembly in Vilnius. This resolution, also known as the Vilnius Declaration, kicked straight into the hornet's nest by comparing the two major totalitarian regimes in twentieth-century Europe, “the Nazi and the Stalinist, which brought about genocide, violations of human rights and freedoms, war crimes and crimes against humanity.” While acknowledging the uniqueness of the Holocaust, the resolution reminded the OSCE participating states of their commitment “to clearly and unequivocally condemn totalitarianism.” The declaration further supported the initiative of the European Parliament to proclaim August 23, the day of signing the Molotov-Ribbentrop Pact in 1939, as “a Europe-wide Day of Remembrance for Victims of Stalinism and Nazism,” and urged its member states to increase awareness of totalitarian crimes. The Vilnius Declaration encouraged all OSCE members to take a “united stand against

all totalitarian rule from whatever ideological background” and criticized the “glorification of totalitarian regimes, including the holding of public demonstrations glorifying the Nazi or Stalinist past.”

Critics from the Russian Duma and elsewhere interpreted the Vilnius Declaration as an assault of the established historical memory (cf. Kurilla 2009), as yet another adventure of the “east European far right” (Katz 2010a), constituting “the new code for double genocide, Holocaust obfuscation and the special brand of east European antisemitism” (Katz 2010b). As a Guardian columnist evocatively concluded this line of criticism, “The pretense that Soviet repression reached anything like the scale or depths of Nazi savagery...is a mendacity that tips toward Holocaust denial” (Milne 2009). Characteristically to the operation of a moral discourse on communist regimes, the Vilnius Declaration epitomizes the contestation for mnemonic hegemony in Europe, featuring further the resistance from various quarters to the attempted reconfiguration of the pertinent pan-European narrative. While the critics symptomatically depict the condemnation of totalitarian communist regimes as a zero-sum problem vis-à-vis the Nazi crimes, the proponents emphasize the recognition of this particular legacy for the integrity of the normative foundations of Europe, and a prerequisite for its future thereof.

### *The European Union*

Most prominently, the eastern enlargement of the European Union provided an enabling condition for the institutionalization of a moral assessment of communist legacy. Since the 2005 European Parliament (EP) resolution “The Future of Europe Sixty Years after the Second World War,” the European Union has become an evocative arena for making parallel claims on recognition of the substantive value of the largely East European encounters with communism

for the historical consciousness and “conscience” of the European community, along with the accompanying calls for a more abstract normative condemnation of the totalitarian regimes of different stripes.

The key milestones in the process include European Parliament's 2008 and 2009 hearings on crimes committed by totalitarian communist regimes, the proclamation of August 23 as European Day of Remembrance for Victims of Stalinism and Nazism in 2008, and a subsequent EP resolution calling for the implementation of this day of commemoration (2009). The adjacent debates have been replete with calls to close the gap between the victims of Nazism and communism and to get rid of the double standards in regard to Nazi and communist regimes. Indicative of the East European mnemonical recognition-seeking in this venture, the resolution on European conscience and totalitarianism (2009) was tabled by mostly East European (Baltic, Polish, Czech, Hungarian, and Romanian) representatives (the co-sponsors also included Belgian, German, and Swedish politicians). This resolution succeeded an earlier Prague Declaration on European Conscience and Communism, adopted on June 3, 2008 after an eponymic international conference at the Czech Senate. The Prague Declaration, in turn, resonated with the prior debates at PACE, emphasizing the quintessential themes of Europeanizing the remembrance of the criminality of communist regimes by underscoring the importance of the (right) remembering of the past for shaping the (right) future; the impossibility of the European unification without the “reunification” of its history, and repeating the common accusation about the unbalanced books of communism and Nazism. In unprecedentedly strong and assertive language, the signatories which included Václav Havel, Joachim Gauck, Göran Lindblad, and Vytautas Landsbergis, among others, called for the “recognition of communism as an integral and horrific part of Europe's common history,” as well as “European and international pressure for effective condemnation of the past communist crimes and for efficient fight against ongoing communist crimes” (Prague Declaration 2008).

The EU-wide campaign for the condemnation of totalitarian communist legacy is likewise underpinned by the assumption that Europe would not be united as long as West and East do not agree on a common understanding of the shared history of communism and Nazism (Pleštinská; Romagnoli in European Parliament debate 2009b). Allegedly, it is the mental and spiritual enlargement of the European Union that is at stake here, “the enlargement of European awareness of the massive crimes against humanity,” and “the integration of European historic perception...of prejudices and different views of history” (Kalam in European Parliament debate 2009a; cf. Figel calling for “an expansion of awareness, an expansion of memory and an expansion of respect and responsibility,” *ibid.*).

The demands for concrete legal goods in the struggle for the pan-European condemnation of totalitarian communist regimes are increasingly expressed through looser transnational formats, particularly after the unsuccessful East European appeal on broadening the coverage of the EU Council Framework Decision on combating racism and xenophobia (2008). The Declaration on Crimes of Communism (2010), the signatories of which range from politicians to former political prisoners and current human rights advocates, is an emblematic illustration of this trend. The Platform of European Memory and Conscience, established in Prague in 2011 in order to provide an umbrella institution for organizations dealing with research, documentation, awareness raising and education about totalitarian regimes in twentieth-century Europe, is yet another. Reflecting its predominantly East European origins, the Platform currently embraces relevant institutions from Bulgaria, Czech Republic, Estonia, Germany, Hungary, Latvia, Lithuania, Netherlands, Poland, Romania, Slovakia, Slovenia, and Sweden. The creation of a supranational judicial body for legal settlement of communist crimes remains high on the Platform's political agenda, punctuating the shifting accent of the campaign from historical to criminal justice, or from a general condemnation of totalitarian communist regimes to a more concretely defined recognition-seeking with tangible legal implications.

The Declaration on Crimes of Communism (2010) accordingly called for the establishment of a new international court with a seat within the European Union for the crimes of communism in order to condemn them “in a similar way as the Nazi crimes [and] the crimes committed in former Yugoslavia...were condemned and sentenced,” for leaving the crimes of communism unpunished would mean “disregard of and thus weakening of international law.” While the declaration emphasized that communism needs to be condemned in a similar way as Nazism has been, the signatories pointed out that they were nonetheless “not equating the respective crimes of Nazism and communism” which “should each be studied and judged on their own terrible merits.” They did highlight explicitly, however, that “[c]ommunist ideology and communist rule contradict the European Convention of Human Rights and the Charter of Fundamental Rights of the EU.” Calling upon the European Commission and European Council of Justice and Home Affairs to adopt a Framework Decision introducing a pan-European ban on excusing, denying or trivializing the crimes of communism, the underlying message of the Declaration highlighted how the fulfillment of this ambition would crown the transnational endeavor to equalize the juridified remembrance of the two main totalitarian legacies in Europe.

### **Conclusion**

A genealogical approach contains some useful pointers in the direction of an international political sociology of the emerging European remembrance of totalitarian communism. The transnational in this struggle remains yet to be adequately populated in future research. An inquiry to the sources and meanings of the nascent pan-European remembrance of totalitarian communist regimes has underscored recognition-seeking, struggle for mnemonical hegemony, contingency, and resistance in the operation of this moral discourse.

The argument I have made here is that the shifting dynamics in contestation of the normative condemnation of communist legacy in Europe – from earlier PACE debates to recent efforts to extend the EU's legal coverage to criminalize the denial of totalitarian communist crimes – are indicative of the changing edifice of the European response to its twentieth-century encounters with totalitarianism. The discursive linkage of communist regimes with criminality has enabled to reinforce their moral illegitimacy and incompatibility with the “European values”. While the flow of political declarations by various European organizations supporting the condemnation of totalitarian communist regimes has been quite noteworthy, the legal score card of institutionalizing the denouncement of communist regimes has nonetheless remained rather checkered. The attempted Europeanization of the condemnation of totalitarian communist regimes has remained politically contentious. Yet, the gradual consolidation of a broadly anti-totalitarian stance as an important part of “European memory” of the twentieth century has left the Russian Federation among the few active resisters of this frame.

As moral universalism, post-nationalist aspirations, and a legalizing drive continue to inform the largely East European-led endeavor to form a pan-European condemnation of totalitarian communist regimes, the conceptual mold of mnemonical cosmopolitanization remains useful for understanding the process of subjecting national memories of communism to a common remembrance patterning (see Levy and Sznajder 2007:160). The emerging discourse owes much to the concerted efforts of various East European actors to increase public awareness and endorse abomination about the crimes of communist regimes.

The ongoing argument over the place that the communist legacy should occupy in Europeans’ collective sense of themselves is reflective of the wider politics of recognition for making East European experiences part of a shared mnemonic inventory of the enlarged European community. The European Union, in particular, has become “a recognition order” of

sorts (Closa 2010:17). The transnational mnemopolitics of condemning communist regimes in Europe illustrates the mutual constitution of particular attachments and cosmopolitan orientations (cf. Levy, Heinlein, Breuer 2011:140). As such, it constitutes a good site for a genealogical reflection, highlighting the jolted emergence of a pan-European remembrance of communist regimes as indictment.

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