

**Law as Mnemonic Infrastructure:
Archival Legal Discourses and Memory Battles in Romania**

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Abstract

This article examines law as mnemonic infrastructure, tracing how archival laws and policies in Romania shape the construction of its collective memory of communism and fascism. The four layers analyzed here—archival institutions, norms, processes, and practices—help produce a memory regime characterized by nationalism, the securitization of historical memory, and a selectively amnesic collective memory. Focusing on law as mnemonic infrastructure highlights indirect and structural pathways in the construction of memory regimes, with distinctive, if not always obvious knowledge and truth effects that help clarify the role of law in promoting or undermining hegemonic memory regimes.

Keywords

law and collective memory, memory laws, archival laws, communism, Holocaust, Romanian law, Romanian history, Foucault

Introduction

On May 26, 2022, the Romanian National Archives declared that in order to protect classified information, staff would henceforth verify all content before releasing it to users, which could result in delays or even denial of access to files. Historians and archivists swiftly

protested and mobilized. They argued that the secret services branch of the Ministry of Internal Affairs was cutting off researchers from accessing sensitive data from Romania's recent past under the guise of protecting classified information (the National Archives are formally part of the Ministry), blamed the National Archives for enforcing historical censorship, and contended that the Archives had become an extension of the secret services, with some historians and archivists already under investigation by the anti-terrorism unit for accessing, citing, or

memory regime: the legal framework of the National Archives by comparison to the National Council for the Study of the Securitate Archives (CNSAS), archival policies, and archival practices. Both law and archive are state-centric, both instruments and expressions of power, yet the legal regime of the archive is the necessary precondition in the construction of archival discourses. Next, archival infrastructure and policies create a second layer (of forgetfulness), with the archives very much the neglected child of the state. If archives are a state's "central memory institutions,"⁶ the Romanian state has been actively and directly engaged in selective memory construction, facilitating amnesia in vast areas, while simultaneously reinforcing national identity discourses through restricting access to archival material or simply cutting budgets. A final, more complex dimension comes from the direction of the archives, as I explore how archival practices draw the line between the juridical and the non-juridical and illuminate or obscure knowledge and collective memory production.

Methodologically, the article uses an ethnographic lens grounded in my archival research. I conducted five rounds of research in a local branch of the Romanian National Archives between 2007 and 2019, weeks-long, intensive data collection trips on three topics: property takings during the Holocaust and early communism, criminal law, and the Holocaust in the region. As methodological questions pertaining to researching these topics confronted archivally-constructed silences,⁷ they prompted me to rethink archival research from an ethnographic perspective and to reflect on the archive as a verb,⁸ subject rather than just source or passive repository.⁹ I further examined legislation, reports, drafts of legislation, and various publicly

⁶ Verne Harris, "The Archival Sliver: Power, Memory, and Archives in South Africa," *Archival Science* 2 (2002), 63-86, 65.

⁷ Michel-Rolph Trouillot, *Silencing the Past. Power and the Production of History* (Boston: Beacon Press, 1995).

⁸ Kate Eichhorn, *The Archival Turn in Feminism: Outrage in Order* (Philadelphia: Temple University Press, 2013).

⁹ Laura Helton, "Archive," in *Information: Keywords*, eds. Michelle Kennerly, Samuel Frederick and Jonathan E. Abel (New York: Columbia University Press, 2021), pp. 45-56.

mediated through other institutions, such as mass media.¹⁸ Law is also distinctive in terms of how it is politicized and instrumentalized in the construction of hegemonic memory regimes, aiming to sustain official memory and undermine communicative or other types of alternative memories. Explicitly or implicitly, law is expected to approve and promote the state's historical narrative and ignore others, producing legal amnesia or regimes of forgetfulness.¹⁹

also been weaponized to deny or minimize state responsibility, construct hegemonic memory regimes that silence counter or alternative collective memories, and undermine democracy and the rule of law.³²

This article proposes that memory legislation should be broadly understood as a technology of collective memory and forgetting, whether “through formal norms, as well as informal, institutionally-supported practices,”³³ discourses and mechanisms that enshrine, promote, or silence collective memories. As a technology of memory, memory legislation achieves its purpose directly, through specific memory content, or indirectly, through mechanisms and practices that shape the formation of collective memory—law as mnemonic infrastructure. I focus here on this second type of memory legislation, tracing the ways in which various actors come to shape collective memory. Memory legislation focused on content includes laws banning certain speech, many declarative laws (memorials, naming, curricular content, etc.), while examples of the latter, of law as mnemonic infrastructure, include most trials or transitional justice mechanisms (e.g., reparations, rehabilitations), as well as legislation not obviously about memory, such as access to information laws. Individual countries might have examples of specific pieces of memory legislation, but coherent or hegemonic memory regimes usually encompass both types of memory legislation. Mnemonic legislation also travels, both conforming to an increasingly shared global norm, and adhering to domestic memory politics.³⁴

Focusing on law as mnemonic infrastructure highlights indirect and structural pathways in the construction of memory regimes, illuminating the mutually constitutive relationship between law and collective memory as discursive and productive technologies of power, both

³² See Nikolay Kopolov, *Memory Laws, Memory Wars*; Marina Bán and Uladzislau Belavusau, “Memory Laws;” Sébastien Ledoux, “Memory Laws in Europe.”

³³ Eric Heinze, “Beyond Memory Laws,” p. 427.

³⁴ See Danielle Lucksted, “Memory Laws, Mnemonic Weapons: The Diffusion of a Norm across Europe and Beyond,” *Memory Studies* 15(6) (2022), 1449-1469.

steer us in one direction over another in terms of understanding the past,⁴⁵ often placing memory battles at the heart of current political battles.⁴⁶

The focus on archival laws, policies, practices, and legal discourses, with Romania as a case study, therefore offers a different entry point into the examination of the construction of collective memory, as it shifts attention to the infrastructure and legal mechanisms of memory production and their role in memory battles. How law shapes archival norms and institutions and the broader archival landscape in specific contexts produces wide swaths of remembering and forgetting, structuring state-approved memory regimes well beyond content-based memory legislation. In the case of Romania, one result is a dual-track, unequal, self-exculpatory memory regime rooted in nationalism, as well as the simultaneous normalization of communism and reinforcement of the totalitarian communist paradigm.

Collective memory and law in Romania

East European politics of memory is dominated by World War II and concomitant and subsequent totalitarian regimes.⁴⁷ Memory regimes regarding communism are by no means uniform, however, whether across the region or in Romania. Troebst (2010), for example, finds four main “cultures of remembrance” across the region, ranging from societies with a strong anti-communist consensus (such as the Baltic states), to societies where communism holds strong (with Russia the prime example), to societies that are ambivalent (e.g., Hungary, Poland) or apathetic (e.g., Romania, Bulgaria) regarding their communist past.⁴⁸ Other scholars contest

⁴⁵ Inga Markovits, “Selective Memory: How the Law Affects What We Remember and Forget about the Past,” *Law & Society Review* 35(3) (2001), 513-563.

⁴⁶ Uladzislau Belavusau and Aleksandra Gliszczy ska-Grabias, *Law and Memory*.

⁴⁷ See Nikolay Kopolov, *Memory Laws, Memory Wars*.

⁴⁸ Stefan Troebst, “Halecki Revisited: Europe’s Conflicting Cultures of Remembrance,” in *A European Memory? Contested Histories and Politics of Remembrance*, eds. Małgorzata Pakier and Bo Stråth (New York: Berghahn, 2010), pp. 56–63.

this classification, finding hybrid memory regimes in every one of these societies. Kaposov identifies a key tension between “the pan-European memory of the Holocaust and the regional concern with the memory of communism.”⁴⁹ He contends that memory regimes in the region, Russia included, are distinctive in two ways: the memory of the Holocaust is significantly less central compared to the West, as most Eastern Europeans think of themselves as victims, not perpetrators or complicit with Nazi and communist crimes; and as the clearest alternative to communism, liberal nationalism has come to define a more ambiguous stance toward past atrocities and more direct attempts to use history for nationalist mobilization than is found in the West.⁵⁰

Romania is a good illustration of this memory model. Romanian nationalism, grounded in concepts of ancestry, continuity, independence, and unity,⁵¹ has thrived in communism and post-communism, and has been embraced by right and far-right parties, most recently AUR.⁵² Various forms of Holocaust denial predominated in the 1990s,⁵³ with official acknowledgments of Romania’s responsibility in the Holocaust coming only in 2004, as the country was working towards EU membership.⁵⁴ The Elie Wiesel Commission for the Study of the Holocaust in Romania and its final report, issued in 2004, was a watershed moment for the collective memory of the Holocaust in Romania.⁵⁵ As a form of “memory from above,” however, official acknowledgments have not led to meaningful public debates or memory-making from below, in

⁴⁹ Nikolay Kaposov, *Memory Laws, Memory Wars*, p. 148.

⁵⁰ Nikolay Kaposov, *Memory Laws, Memory Wars*, pp. 144-145.

⁵¹ Vladimir Tism neanu,

communism with a generalized Stalinist and gulag-wide repression,” emphasizing to different degrees national identity, anti-communism, Romanian exceptionalism, victimhood, and heroism.⁶¹ More interestingly, as these authors note and surveys consistently capture, condemnation of communism and nostalgia for communism continue to co-exist.

Romania’s memory legislation stretches back to the communist period. Article 29 of the 1965 constitution, for example, directly banned anti-socialist speech and any organization or participation in groups with a fascist or anti-democratic character, while Article 166 of the 1969 criminal code punished “fascist propaganda” with up to 15 years in prison. Emergency Ordinance 31/2002 banned organizations and symbols with a fascist, racist, or xenophobic character, and the personality cult of perpetrators of crimes against peace of humanity, preserving the maximum 15 years prison time. Subsequent amendments (2005, 2006, 2014, 2015, 2018) expanded the scope of the law, adding explicitly Holocaust denial (in 2006) and later genocide, as well as bans on legionary and antisemitic activity. Romania’s law on national security 51/1991 broadly considers many of the same actions threats to national security. There are relatively few cases prosecuted on the basis of OUG 31/2002, however (about a dozen cases, less than ten at the High Court of Cassation and Justice level, according to its case law database).

The criminal code is the legal basis for the two main types of memory trials in the country, those dealing with the 1989 anti-communist Revolution, and separately those attempting to punish perpetrators of crimes committed during communism.⁶² Separately, in the wake of its

⁶¹ Monica Ciobanu, *Repression, Resistance and Collaboration in Stalinist Romania 1944-1964: Post-communist Remembering* (London and New York: Routledge Press, 2020), p. 8.

⁶² See generally Raluca Grosescu and Raluca Ursachi, “The Romanian Revolution in Court: What Narratives about 1989?” in *Remembrance, History, and Justice: Coming to Terms with Traumatic Pasts in Democratic Societies*, eds. Bogdan Iacob and Vladimir Tismeneanu, (Budapest: Central European University Press, 2015), pp. 257-293; Lavinia Stan, *Transitional Justice in Post-Communist Romania: The Politics of Memory* (Cambridge: Cambridge

of the Ministry of Internal Affairs (other state institutions, such as the Ministry of Foreign Affairs, and the Ministry of Defense, also have their own archives, and private archives also exist).⁶⁶ This is an important continuity with the socialist legal regime of the archives, and diverges from most other countries and the recommendation of the Model Law proposed by the International Council on Archives.⁶⁷ National Archives in most countries are commonly seen as a cultural institution, therefore they are either autonomous bodies, or are under the institutional purview of the Ministry of Culture or similar body.

Between 1862 and 1951, the Romanian National Archives were part of the Ministry of Religious

dependent financially and logistically on the county police.⁷¹ This system of double administration (local branches under both local police and central Archives office) is eerily reminiscent of the communist system of double subordination. One significant consequence of this lowly institutional status is the inability of the Archives to fulfill their functions, including document acquisition. The 2017 bill report estimates that the Archives have only about a third of the total national archival record. The budget of the Archives directly competes with the budgets of other Ministry divisions, and can hardly win when compared with various public order emergencies and needs. Overall, the Archives budget has never been higher than 0.5-percent of the annual budget of the Ministry, resulting in a chronically under-financed institution.⁷²

Despite post-1989 personnel changes, the institutional culture of the Archives is still rooted in anti-democratic Securitate values and priorities. Intelligence officers claim the authority to decide what documents can be released for research, Ministers of Internal Affairs across time have considered the Archives “theirs,” and generally do not understand the role of the archives in a democratic state.⁷³ The ethos of the Ministry, moreover, is secrecy, while the ethos of the Archives is the opposite, transparency, publicity, public access.⁷⁴ The local branch of the National Archives where I conducted my research, for example, is in the same building as the police. While the entrance is different, at the side of the building, the first person one sees when entering the archive is a police officer, on guard, asking for identification. The building itself is 1970s brutalist architecture, with a small entryway and a small study room, cold in the winter, sweltering in the summer.

⁷¹ Arhivele Na ionale ale României (ANR), “Strategia Arhivelor Na ionale 2015 – 2021,” last accessed March 2023, <http://arhivelenationale.ro>.

⁷² Ioan Drăgan, “Arhivele Na ionale în cadrul MAI-un sistem depozit de istorie,” <https://cluj24.ro/fost-sef-al-arhivelor-nationale-clujeanul-ioan-dragan-cere-iesirea-arhivelor-din-subordinea-mai-un-sistem-depozit-de-istorie-126480.html>, July 10, 2022.

⁷³ Dorin Dobrințu, “Noua direcție a adevărului.”

⁷⁴ Ioan Drăgan, “Arhivele Na ionale în cadrul MAI.”

The National Council for the Study of the Securitate Archives (CNSAS), on the other hand, is an autonomous body, with its own legal personality and budget, under the direct supervision of Parliament, and functions based on Emergency Ordinance 24/2008 regarding access to one's own file and the denouncement of Securitate.⁷⁵ Initially established in 1999 to

includes paper files, microfilms, audio, and video material).⁸⁰ The Council has produced over the past decade an open-access electronic database that increasingly includes various Securitate documents and excerpts from all types of secret police files, and it is very active on social media and in the public arena.

This two-track institutional structure directly informs the construction of the collective memory of communism, of a compromised memory regime. While the National Archives struggle for air, CNSAS has positioned itself into the main site for transitional justice in the

only selectively delivered their documents to the State Archives.⁸⁶ Post-1989, the archives of socialist organizations and state institutions were sometimes made public, but more often were either lost or destroyed, intentionally or unintentionally, due to indifference, complicity, or because they were not seen as potential sources of income.⁸⁷ During communism, daily life was recorded and exhibited at the local level, in sports clubs, factories, libraries, etc. The lack of funding and general support for these local archives and libraries post-1989 has often led to their loss.⁸⁸

The loss of archival content is not just an effect of the transition, but also an outcome of today's neoliberal logic and its institutional power structures that broadly dictate priorities on a utilitarian basis, with a spillover effect in defunding public archives, the rise of private archives, and the privatization of public records.⁸⁹ The neoliberal logic has been painfully obvious in the post-communist decline of the National Archives in terms of content management and infrastructure. The digitalization of the archives began in earnest only in 2015, for example,⁹⁰ over two-thirds of archival documents that ought to be part of the National Archives are not, and increasing numbers of documents need urgent restoration.⁹¹ Meanwhile, a 2006 executive order (OUG 39, annulled in 2013), promoted by the Minister of Internal Affairs, compelled the National Archives to take over payroll records for all companies that had been shut down, both shifting and undermining the central mission of the Archives at a time when they could least

⁸⁶ Cristian Vasile, "Arhivele Na ionale ieri i azi."

⁸⁷ Iosif Király, "When Document Becomes Art and Art Becomes Document. Several Art Projects Based on Photographic Collections or Archives," *Martor* 24 (2019), 173-182, 173; Katherine Verdery, "Ethnography in the Securitate Archive."

⁸⁸ Alexandru Iorga, "Archives as Ruins: Means of Understanding the Future in an Era of W s Art and Arn n

integrity, and independence of the Romanian state, according to constitutional and legal provisions; can hurt citizens' rights and liberties; or are in a poor state or have not been cataloged, preserved, and prepared.

Appendix 6 of Law 16 explicitly lists various time lines for the release of different types of records, including 90 years for legal documents, 50 years for foreign policy documents, financial documents, and private companies' records, and 100 years for medical documents, registry of birth, marriages and deaths, and documents concerning national safety and integrity. While Article 28 specifies the 30-year rule as the default, as well as exceptions to it, there are no exceptions for the terms and types of documents listed in Appendix 6, unlike similar legislation in German or French statutes, which were the model nBldedmanianCys the 30

implementation are mixed).

The proposed 2017 bill, by contrast, privileges a logic of access and openness. The bill reverses course completely regarding this restrictive access to documents and proposes a 25-year general term instead, with some exceptions. Exceptions are not necessarily problematic if they conform to freedom of information and privacy legislation, but general blanket exceptions, as listed in the current Appendix 6, are highly debatable. Yet the 2017 bill has stalled for years now. The Ministry of Internal Affairs has blocked the implementation of the new national strategy for the Archives (initially adopted by Government Decision 865/2015), and has changed its position on the bill repeatedly, eventually withdrawing its support in 2020 and 2021.¹⁰⁰ Again by comparison, the former Securitate archives belong to a different legal realm, as CNSAS has its own legal framework and has resolved many of its initial obstacles, such as slow acquisition of Securitate files, by the mid-2000s.¹⁰¹ Moreover, the CNSAS has made it part of its mission to digitize and openly publish entire files on their website, most recently, for example, nine volumes regarding the writer Paul Goma. This is not to suggest that the CNSAS has not been plagued by various issues over the years, some of them similar to those affecting the National Archives, from cataloguing to assisting researchers, tight control of information about sensitive topics, favoritism and clientelism, and the proportion of digitized documents available on their website.

Less obviously, there is a line of continuity with the communist regime's priorities and functioning, specifically the privileging of nationalism and communism, both in terms of what is preserved and what is ignored. National identity has been central to communist, pre- and post-communist regimes, and is a common theme across various fields, from museums to education.

¹⁰⁰ Ioan Drăgan, "Arhivele Naționale în cadrul MAI."

¹⁰¹ Drago Petrescu, "Law in Action in Romania."

The National Strategy, for example, identifies the role of the Archives in the construction of national identity as one of their key functions,¹⁰² a priority reflected in the types of educational efforts organized by the Archives (e.g., around the creation of modern Romania in 1918), differential treatment of records (e.g., restrictions to documents concerning Romania's "territorial integrity and independence" versus much broader access to communist party files and *fonds*), and the very institutional embedding of the Archives in the Ministry of the Interior.

The privileging of communism has more discrete knowledge effects. The communist regime directly interfered with the archives,¹⁰³

materials, and more about their initial classification by their creators. It is a formal, not substantive criterion, again eerily resembling prior communist practices while also re-inscribing the logic of the prior regime(s).

Statutory and regulatory restrictions are an effect of and subsequently reinforce nationalist and national security discourses traversing the communist and post-communist memory landscape. The result is an unequal memory regime, a selective regime of forgetfulness that actively nurtures the dissipation, over time, of non-privileged archives, documented in the archivists' own internal reports and the lack of consequences for violating the law on archives.¹⁰⁹ In a more cynical interpretation, perhaps, this is a transactional memory regime, where the surviving CNSAS archives are the price paid by the heirs of the communist regime for a more expansive amnesic regime that encompasses both Romanian fascism and communism.

Archival practices and the disciplining of the juridical

Archival practices constitute a distinctive, if more complicated layer in the construction of hegemonic memory regimes. Access to archives is shaped by the chain of decision-making throughout the records' continuum (e.g., methodology, priorities, openness),¹¹⁰ including archival classification, chain of custody, and the concept of the

juridical. I focus here on three examples: communist housing nationalization and expropriation, takings of Jewish property during the Holocaust, and criminal law on the ground.

Urban housing nationalization, primarily but not exclusively undertaken under Decree 92/1950, has been a legal, political, societal, and cultural crucible post-1989, and Romania a standout among all other post-communist countries. There have been at least 2 million disputes around restitution and compensation of houses and apartments nationalized under Decree 92 in the past three decades,¹¹¹ and almost half of all judgments concerning Romania before the European Court of Human Rights involve property disputes, specifically restitution of private property taken during communism.¹¹² This is not a marginal topic, in other words, in the Romanian context, and archival materials have been important tools in political battles and legal disputes.¹¹³

Decree 92/1950 is central for understanding housing nationalization and expropriation processes both during communism and today, as many of today's claimants have used the Decree's language and categories in their efforts to regain their property.¹¹⁴ Yet Decree 92/1950 is close to invisible in the archival record. During my first research trip, the study room archivist told me I could not access these archival documents, both because Appendix 6 of Law 16/1996 restricts access to documents related to "criminal matters" and "legal/judiciary and notary" records created within the last 90 years, and because a large amount of archival material had not yet been

making it difficult to ascertain if there were any documents on urban housing nationalization, and ultimately directing me to county and city administrative files.

I eventually found relevant materials (over 10,000 pages) in 187 files, scattered across 14 *fonds*. I classified and organized them around 15 topics, and my own inventory ran to over 50 pages. Decree 92/1950 had a significant presence in 32 files, but no file or *fond* of its own. It had no explicit presence in the archives, in other words, but only as a reflection emerging out of the hundreds of petitions contesting urban housing nationalization and their bureaucratic responses. Yet other expropriation efforts have a much more clearly delineated presence, such as Decree 81/1954, concerned with some restitutions.¹¹⁵

The highly fragmented nature of the housing nationalization records, of petitions and administrative responses, create archival opacity. While records in the archives contribute fragments under the best of circumstances, and never complete accounts, and “archival truth” is only one out of many possible “truths,”¹¹⁶ this specific opacity is legible in a context of continuity of power that cuts across communism and post-communism and is embedded in contemporary political and legal struggles around property. Although not directly inaccessible, the obscurity of the nationalization records in the archive poses distinct challenges to the effort of “reading against the grain” of archives and figuring out the story of resistance to nationalization and expropriation that the communist regime most certainly did not intend to tell. More than eight decades after those historical events, the archives are complicit in this past

nationalized or expropriated properties is entirely separate from “archival truth.”

Occasionally, the archival and legal truth regimes actively collide. Law 16 restricts access to records that can affect citizens’ rights and liberties, and the archivist was concerned about allowing me to see nationalization and expropriation files because of this legal restriction. I offered to create and submit a consent form, modeled after oral interview consent forms, promising to maintain the confidentiality of personal data included in archival records. This became an ethical conundrum once I began interviewing former owners and their lawyers, and I realized they were not aware of past petitions against nationalization in the archival records, filed by former owners’ parents or other close family members, and which I could not disclose.

Archivists’ interpretation of legal provisions governing access to archives is more complicated. The initial goal of Annex 6 of Law 16 was not to restrict access to materials, quite the contrary.¹¹⁸ In practice, the interpretation and application of the access provisions was driven by other factors, such as keeping away some researchers, or isolating “sensitive topics,” and was often dependent on the relationships between archivists and researchers. The letter of the law was respected, but not its spirit.¹¹⁹ Archival personnel, moreover, interpret legal provisions differently, which can result in somewhat contradictory results: research on the Holocaust can be impeded if the material is classified as “legal” or “criminal,” yet material that perhaps ought to be restricted under Law 16 is open to researchers if classified in an unrestricted category. The ad-hoc arrangement between myself and the archivist regarding access to nationalization and expropriation files allowed my access to records, following a logic of opening and transparency, but also raising ethical concerns. On the other hand, determining what counts as “juridical” or “legal documents” just as often precluded access, and was particularly challenging when

¹¹⁸ Dumitru Lăcătui, “Acceptăm să se declassifice! Dar să nu se schimbe nimic!”

¹¹⁹ Dorin Dobrințu, “Noua direcție a adevărului.”

“archival categories” of the juridical differed from legal ones and how law understands its own categories.

The plunder of Jewish property during the Holocaust in Romania happened not just through expropriation, but also indirectly, through individuals and companies profiting from below market property sales by desperate Jewish owners.¹²⁰ Finding records of these sales and more generally of war time expropriation of Jewish owners, as well as their resistance to Romanianization, pose a different set of challenges. The files of the National Romanianization Center, in charge of expropriating Jewish property in Antonescu’s Romania, are part of the National Archives and has been open to researchers since 2007, as have other Holocaust collections (following international pressure). Access was inconsistent over the years, however, and not all documents are available. In Banat, the regional Court of Appeals issued hundreds of court decisions regarding expropriations, abusive sale contracts, firings, etc. If their archival classification is as “legal documents,” they fall under the 90-year rule per Appendix 6. Thus, I was allowed to see the inventory, but not the decisions or files themselves, despite the fact that my research took place in the summer of 2019, immediately after the adoption of Law 53 in March 2019, which declassified all archival documents pertaining to Romania’s Jewish community, regardless of who created them or when.

Court decisions regarding the implementation of anti-Semitic legislation adopted both before and during the Second World War fall into a different kind of archival limbo. Much of that legislation could be contested in administrative court. Administrative courts in the Romanian civil law tradition are a special branch of the judiciary, dealing only with lawsuits involving the state. While from a legal perspective they are undoubtedly part of the judiciary, the archivist

¹²⁰ See broadly Ștefan Cristian Ionescu, *Antonescu’s Romania: A History of the Holocaust in Romania* (London: Palgrave Macmillan, 2015); Tuvia Friling, Radu Ioanid, and Mihail Ionescu. *Final Report of the International Commission of the Holocaust in Romania* (Iași: Polirom, 2004).

interpreted them differently at various points in time: once, as belonging to the administration, which benefited me, as I was then allowed to read the decisions, but another time as judicial bodies, which precluded my access to the very same files.

Individual documents or files were also governed by archival categories of the juridical, and occasionally produced contradictory results. Court decisions concerning nationalization were sometimes classified as “administrative documents” by virtue of their inclusion in *fonds* or files of administrative records, while administrative decisions and other documents on expropriations of Jewish property were classified as judicial by virtue of their inclusion in Court of Appeals files. Yet the very same documents, if duplicates exist, may be accessible through other files, such as chamber of commerce files. “May” depends on how closely the archivist examines the files before allowing access. Words like “criminal” or “legal” or “court” (but not necessarily “poli

performing their legal-administrative function as repository of the state and selective memory keeper. The archive and the archivists are far from passive custodians, as they are gatekeepers who actively shape “what it means to access the past.”¹²²

The irony here is that the privileging of the (anti)-communist archival discourse post-1989 is directly stymied by the archival record itself. If a key concern is to bring to light the human rights abuses of the communist regime, the obscurity of the nationalization process makes it very difficult to “activate” these abuses through the archival record.¹²³ Researchers are left to engage in their own interpretive exercises and triangulation, piecing together stories the archives obscure.¹²⁴

Conclusion

This article makes a case for law as mnemonic infrastructure, focusing not on the content of memory laws, but on institutions, processes, and practices, with archival laws, policies, practices, and legal discourses in Romania as a case study. This kind of memory legislation has distinctive, if not always obvious knowledge and truth effects. Understanding these effects should help us understand better their role in the construction of hegemonic memory regimes

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normalizing. The outcome is a collective memory that is constitutive in the creation of a new, post-communist, neoliberal, European identity,¹²⁵ predicated upon structural amnesia and state-society consensus about the role and place of communism in Romania's past and future. The comparisons and contradictions examined here, along statutory, institutional, and discursive dimensions, point to distinctive archival logics, from a logic of surveillance and repression during communism, to a logic of democratic opening, transparency, and accountability today.¹²⁶ Yet this is not a linear story, as a regime of selective forgetfulness (the National Archives laws and policies) overlaps with and is counter-posed to one of democratic opening and transparency (CNSAS), with consequences for transitional justice efforts, collective memory, and knowledge construction.

For the collective memory of the Holocaust, statutory restrictions and archival practices very directly shape knowledge construction regarding the Holocaust at local levels, reinforcing strong currents of anti-Semitism and Holocaust denial.¹²⁷ The regime of selective forgetfulness and self-exculpatory collective memory regarding Holocaust property takings (followed by early communist processes of nationalization and expropriation, affecting much of the same property) immensely complicate transitional justice processes today, whether restitution, compensation, or some sort of reparations.¹²⁸ Furthermore, these archival discourses feed into those privileging the construction of national identity and myths of national victimization, looping back into trivializing or minimizing the Holocaust and rehabilitating fascist leaders. This unequal memory

¹²⁵ See Paul Connerton, "Seven Types of Forgetting," *Memory Studies* 1(1) (2008), 59-71.

¹²⁶ Similarly to Weld's analysis for Guatemala, Kirsten Weld, *Paper Cadavers*.

¹²⁷ See, e.g., Michael Shafir, "Unacademic Academics;" Alexandru Climescu, "Law, Justice, and Holocaust Memory in Romania."

¹²⁸ Monica Ciobanu and Mihaela Ierban, "Legitimation Crisis, Memory, and United States Exceptionalism: Lessons from Post-Communist Eastern Europe," *Memory Studies* 14(6) (2021), 1285-1300.

construction continues to silence entire groups of victims,¹²⁹ highlights just how much archival discourses are embedded in politics and power structures, and cautions us about the potential of archives in the quest for justice.¹³⁰

The institutionally, structurally, and materially fragile memory infrastructure analyzed in this article indicates that various memory agents are unequally equipped to promote their respective memory discourses, with the state a clear front runner (distinctly from specific political elites), and other memory agents, primarily historians, researchers, and civil society activists struggling for greater control over memory narratives. More subtly, the overall neglect of the National Archives, combined with the emergence of CNSAS as a decisive actor in memory construction and knowledge production regarding Securitate, reinforce the totalitarian paradigm of communism and the association of the communist period predominantly with Stalinist repression.¹³¹ The hegemonic memory regime that is emerging ceases to pit different discourses about communism against each other, and reconciles them by signaling out early communism and the role of the Securitate—Stalinist repression as traumatic collective memory, but also exceptional collective memory, while simultaneously norm"

The politics of memory is the politics of accountability, and this dual or triple-track memory regime can offer some measure of “dealing with the past” while avoiding the problem of mass complicity. It is a negotiated, compromised collective memory regime that has something for (almost) everyone. The official memory regime itself is split along these lines, as the official condemnation of communism promoted by the Tismăneanu Report and of fascism expressed by the Wiesenthal report, and the functioning of the CNSAS are the price paid by the state for embracing a normalizing discourse vis-à-vis communism and marginalizing transitional justice measures in response to the Holocaust. As Ciobanu notes, there are eerie continuities with the communist nationalist discourses of Ceaușescu’s era.¹³²

Finally, from this perspective, post-communist nostalgia is not a reaction to the official memory regime or a counter or alternative memory, but its product, a direct result of constructed, structural amnesia and the limited condemnation of communism.¹³³ Communist nostalgia serves specific functions in this politics of memory and accountability, as a site of memory creation—constructing meaning for past experiences; collective identity creation—shared experiences during communism; and recovery of past emotions, whether great hardship and survival, simpler times, less stress, etc.¹³⁴ Ultimately, however, it is an “abdication of personal responsibility,” in Svetlana Boym’s words, and in Romania’s case, a constitutive element in the normalization of communism.¹³⁵

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¹³² Monica Ciobanu, *Repression, Resistance and Collaboration in Stalinist Romania*, p. 4.

¹³³ See Mihai S. Rusu, “Battling over Romanian Red Past;” Florin Poenaru, “Contesting Illusions,” pp. 143-5.

¹³⁴ Lei Ouyang Bryant, “Music, Memory, and Nostalgia: Collective Memories of Cultural Revolution Songs in Contemporary China,” *China Review* 5(2) (2005), 151–75.

¹³⁵ Svetlana Boym, “Nostalgia and Its Discontents,”

Ciobanu, Monica, *Repression, Resistance and Collaboration in Stalinist Romania 1944-1964: Post-communist Remembering* (London and New York: Routledge Press, 2020).

Cirjan, Mihai Dan,

Punzalan, Ricardo L. and Michelle Caswell, "Critical Directions for Archival Approaches to Social Justice," *The Library Quarterly* 86(1) (2016), 25-42.

Rumschöttel, Hermann, "The Development of Archival Science as a Scholarly Discipline," *Archival Science* 1(2001), 143-155.

Rusu, Mihai S., "Battling over Romanian Red Past. The Memory of Communism between Elitist Cultural Trauma and Popular Collective Nostalgia," *Romanian Journal of Society and Politics* 18(1) (2015), 24-48.

Rusu, Mihai S., "Transitional Politics of Memory: Political Strategies of Managing the Past in Post-Communist Romania," *Europe-Asia Studies* 69(8) (2017), 1257-1279.

Saryusz-Wolska, Magdalena, Joanna Wawrzyniak, and Zofia Wóycicka, "New Constellations of Mnemonic Wars: An Introduction," *Memory Studies* 15(6) (2022), 1275-1288.

Savelsberg, Joachim and Ryan King, "Law and Collective Memory," *Annual Review of Law and Social Science* 3 (2007), 189-211.

Schwartz, Barry, "Rethinking the Concept of Collective Memory," in *Routledge International Handbook of Memory Studies*, eds. Anna Lisa Tota and Trever Hagen (London: Routledge, 2016), pp. 9-21.

Urban, Mihaela, *Subverting Communism in Romania. Law and Private Property 1945-1965* (Lanham, MD: Lexington Books, 2019).

Shafir, Michael, "Unacademic Academics: Holocaust Deniers and Trivializers in Post-Communist Romania," *Nationalities Papers* 42(6) (2014), 942-964.

Stan, Lavinia, *Transitional Justice in Post-Communist Romania: The Politics of Memory* (Cambridge: Cambridge University Press, 2013).

Stănescu, Mircea, "Suntem în război: cu memoria și istoria țării noastre," accessed September 2022, <https://mircea-stanescu.blogspot.com>.

Timbus, Mircea, "Serviciul regional Arad al Arhivelor Statului (1951-1956)," *Revista Arhivelor* 1(2011), 54-64.

Tismăneanu, Vladimir, *Stalinism for All Seasons: A Political History of Romanian Communism* (Berkeley: University of California Press, 2003).

Iu, Ilarion,

Waldman, Felicia, Anca Tudorancea, Adrian Cioflânc , Carol Iancu, Adriana Radu, Bogdan-Florin Romanda , *Istoria Evreilor. Holocaustul. Manual pentru clasa a XI-a/ a XII-a* (Bucharest: Corint, 2024).

Wallace, David, “Defining the Relationship between Archives and Social Justice,” in *Archives, Recordkeeping, and Social Justice*, eds. David A. Wallace, Wendy M. Duff, Renée Saucier, and Andrew Flinn (London: Routledge, 2020).

Weld, Kirsten, *Paper Cadavers. The Archives of Dictatorship in Guatemala* (Durham, NC: Duke University Press, 2014).

Zerubavel, Eviatar, *Time Maps: Collective Memory and the Social Shape of the Past* (Chicago: University of Chicago Press, 2003).

Zhurzhenko, Tatiana, “Legislating Historical Memory in Post-Soviet Ukraine,” in *Memory Laws and Historical Justice: The Politics of Criminalizing the Past*, eds. Elazar Barkan and Ariella Lang (New York: Palgrave Macmillan, 2022), pp. 97-130.