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 publishing documents classified as "secret" from the communist period.[1] Subsequently, Government Decision 1481 from December 14, 2022 declassified all "strictly secret" and "secret" documents issued before February 15, 1972, and partially declassified the rest (1972 to 1989).

On its face, this conflict is legible as a memory battle between unequally positioned memory agents—historians and archivists on one side, specific state institutions on the other side, with the weaker side surprisingly prevailing.[2] Underlying it, however, is the construction of the historical and collective memory of communism through archival laws, policies, practices, and discourses. This archival assemblage points away from agency and memory warriors and toward the role of law as mnemonic infrastructure more broadly, specifically how legal mechanisms, practices and processes shape the construction of collective memory.

This article examines the role of law as a technology of memory at the intersection of sociolegal and collective memory scholarship. The broader theoretical framework is Michel Foucault's understanding of modern power and its technologies—power as productive, relations

[1] Dumitru Lăcătușu, "Acceptăm să se declasifice! Dar să nu se schimbe nimic!" *Observator Cultural*, December 2, 2022; Mircea Stănescu, "Suntem în război: cu memoria și istoria țării noastre," accessed September 2022, https://mircea-stanescu.blogspot.com.

[2] Jan Kubik and Michael Bernhard, *Twenty Years after Communism: The Politics of Memory and Commemoration* (Oxford: Oxford University Press, 2014); Magdalena Saryusz-Wolska, Joanna Wawrzyniak, and Zofia Wóycicka, "New Constellations of Mnemonic Wars: An Introduction," *Memory Studies* 15(6) (2022), 1275-1288.

of power not restricted to the state or political institutions, but dispersed, local and productive, and the focus on strategies and mechanisms of power, the ways in which power is exercised, rather than who possesses it.[3] In this sense, law is a technology of power, and memory legislation essential in the construction of hegemonic memory regimes. While content-based memory laws, such as laws banning genocide denial, have been extensively studied,[4] significantly less attention has been paid to other types of memory legislation, and in particular legislation that indirectly shapes collective memory.

I use Romania as a case study of how archival laws, as one such type of memory legislation, construct collective memory, focusing on institutional frameworks, statutory restrictions, and archival gaps and interpretive practices. The outcome is a memory regime characterized by three features: nationalism, the securitization of historical memory (subsuming the archive to the logic of national security),[5] and a selective, self-exculpatory, occluded collective memory of both communism and fascism. The hegemonic memory regime of communism that emerges reconciles two formerly competing memory discourses of communism—exceptional totalitarian versus normalizing. For the collective memories of both communism and fascism, contradictory archival logics generate both amnesia and selective historical openings, what I call a compromised, negotiated memory regime.

The first section of the article focuses on the relationship between law, archive, and collective memory, and briefly outlines the relationship between law and collective memory in the Romanian context. The following three sections examine layers in the production of this

[3] Michel Foucault, *Power/Knowledge*, ed. Colin Gordon (New York: Pantheon Books, 1980); *Discipline & Punish. The Birth of the Prison* (New York, Vintage Books, 1975, 1995).
[4] See Nikolay Koposov, *Memory Laws, Memory Wars: The Politics of the Past in Europe and Russia* (Cambridge: Cambridge University Press, 2018); Uladzislau Belavusau and Aleksandra Gliszczyńska-Grabias, *Law and Memory: Towards Legal Governance of History* (Cambridge: Cambridge University Press, 2017).
[5] Tatiana Zhurzhenko, "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.

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.

available documents, announcements, and social media reports and campaigns. I also attended public events, such as a historians' roundtable from 2022, and had extended conversations over the years with both historians and archival personnel.

Law, memory, archive

Collective memory is knowledge about the past that is shared and reinforced by and within a group, what its members know, believe, and feel about the past, how they assess the past, and how they integrate it in their present lives.[10] It reflects the distribution of power and present-day interests, and is always in flux and contested.[11] As groups themselves are also not static and their relative power status changes, layers of collective memory emerge, anchored in different groups or different levels, which are also often conflicted.[12] Layers of European memory, for example, include both regional and transnational memories (e.g., Holocaust, communism, the world wars) and sub-regional memories (e.g., Holodomor),[13] as well as more localized memories.

The concept of memory regimes harnesses the connection between collective memory and power to clarify why and how certain collective memories prevail and others fade. It encompasses not just organized ways of remembering specific events or processes, whether

[10] See Jeffrey K. Olick and Joyce Robbins, "Social Memory Studies: From "Collective Memory" to the Historical Sociology of Mnemonic Practices," *Annual Review of Sociology* 24 (1998), 105-140; Joachim Savelsberg and Ryan King, "Law and Collective Memory," *Annual Review of Law and Social Science* 3 (2007), 189-211, 191-192; Barry Schwartz, "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, 10.
[11] Maurice Halbwachs, *On Collective Memory*, trans. L.A. Coser (Chicago: Chicago University Press, 1992); Eviatar Zerubavel, *Time Maps: Collective Memory and the Social Shape of the Past* (Chicago: University of Chicago Press, 2003); Joachim Savelsberg and Ryan King, "Law and Collective Memory;" Barry Schwartz, "Rethinking the Concept of Collective Memory," p. 10.
[12] Jerzy Jedlicki, "Historical Memory as a Source of Conflicts in Eastern Europe," *Communist and Post-Communist Studies* 32 (3) (1999), 225-232; Magdalena Saryusz-Wolska, Joanna Wawrzyniak, and Zofia Wóycicka, "New Constellations of Mnemonic Wars: An Introduction."
[13] Claus Leggewie, "Seven Circles of European Memory," *Eurozine*, December 20, 2010, https://www.eurozine.com/seven-circles-of-european-memory/.

official/cultural, or unofficial/communicative,[14] but also their relation to power and its sorting of discursive practices through particular techniques or procedures. Memory regimes are produced by specific power regimes, and can thus range from hegemonic, to counter-memory, alternative memory, unarticulated or passive collective memories.[15] The production of memory regimes and the management of collective memories are then tied to understanding technologies of producing collective memory and collective forgetting, from types of discourses to mechanisms that construct what is worth remembering and forgetting (drawing from Foucault's discussion of regimes of truth).

Exploring the construction of memory regimes has primarily belonged to historians, with contributions from sociology, political science, anthropology, and cultural studies. The role of law in the construction of collective memory regimes has been less studied, with the notable exception of memory laws that directly regulate speech, such as Holocaust denial.[16] Yet law's meaning-making power extends more broadly to the construction of history and memory, whether directly, such as through memory laws, in court, or through various transitional justice mechanisms (such as truth commissions), or indirectly, such as by regulating access to and dissemination of knowledge about the past.[17]

Savelsberg and King consider law distinctive from other technologies of memory because it is ritualistic, selective--privileging individual, rather than larger forces and narratives, and

[14] Jan Kubik and Michael Bernhard, *Twenty Years after Communism*, pp. 15-17; Jan Assmann, "Collective Memory and Cultural Identity," *New German Critique* 65 (1995), 125-133.
[15] Berthold Molden, "Resistant Pasts versus Mnemonic Hegemony: On the Power Relations of Collective Memory," *Memory Studies* 9(2) (2016), 121-142.
[16] See primarily Nikolay Koposov, *Memory Laws, Memory Wars*; Uladzislau Belavusau and Aleksandra Gliszczyńska-Grabias, *Law and Memory*.
[17] See Joachim Savelsberg and Ryan King, "Law and Collective Memory," laying the groundwork for this exploration; Uladzislau Belavusau and Aleksandra Gliszczyńska-Grabias, *Law and Memory*, for in-depth chapters on memory laws.

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]

The legal regulation or governance of collective memory has nonetheless increasingly encompassed more targeted and systemic approaches, while becoming even more politicized and instrumentalized. Memory legislation includes "laws or resolutions adopted by national or supranational institutions, which govern the interpretation of historical events,"[20] basically any legislation regulating the past and "enshrin(ing) state-approved interpretations of historical events."[21] Memory legislation can be punitive (punishing specific statements about the past, such as prohibitions of Holocaust denial), more broadly normative or regulatory (enshrining some kind of obligation, such as rehabilitation and compensation laws), or declaratory (e.g., recognizing a historical event).[22] At its broadest, declarative legislation ("memory laws from the periphery," as Koposov calls it) can encompass everything from laws on monuments, commemorations of historical events or figures, decommunization laws, renaming streets, official holidays, museums, education, access to archives, amnesty, etc.[23]

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[18] Joachim Savelsberg and Ryan King, "Law and Collective Memory," pp. 200-7.
[19] Kanika Gauba, "Rethinking 'Memory Laws' from a Comparative Perspective," *The Indian Yearbook of Comparative Law (*2019), 233-249; Nicola Henry, "Silence as Collective Memory: Sexual Violence and the Tokyo Trial," in *Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited*, eds. Yuki Tanaka, Timothy L.H. McCormack, and Gerry Simpson (Leiden: Brill, 2011), pp. 263–282.
[20] Sébastien Ledoux, "Memory Laws in Europe: What Common Horizon Are We Journeying Towards?" *Observing Memories* (2021), 34-41, 35. https://hal.science/hal-03913277/document.
[21] Uladzislau Belavusau and Aleksandra Gliszczyńska-Grabias, *Law and Memory*, p. 1.
[22] Sébastien Ledoux, "Memory Laws in Europe;" Emanuela Fronza, "The Criminal Protection of Memory: Some Observations about the Offense of Holocaust Denial," in *Genocide Denials and the Law*, eds. Ludovic Hennebel and Thomas Hochmann (Oxford: Oxford University Press, 2011), pp. 155-182; Sevane Garibian, "Pour une lecture juridique des quatre lois « mémorielles »," *Esprit* 2 (2006), 158–173.
[23] Nikolay Koposov, *Memory Laws, Memory Wars*, p. 6; Marina Bán and Uladzislau Belavusau, "Memory Laws," *Bloomsbury History: Theory and Method* (2022). DOI: 10.5040/9781350927933.122.

Based on political motivations, a separate typology distinguishes between self-inculpatory (the state's honest reckoning with the past) and self-exculpatory mnemonic legislation (official narratives denying the state's responsibility for the past, frequently displaying a shaky relationship to the truth),[24] often as the result of supranational memory politics (e.g., criminalizing communist crimes in response to Russian developments).[25] Content-based memory laws, specifically those banning genocide denial, are at the core of memory legislation.[26] "Laws affecting historical memory" might better encapsulate the broader scope of so much other legislation regulating collective memory,[27] as well as legislation that is not facially about collective memory, but nonetheless has a significant impact on it, such as laws pertaining to citizenship or minority protection (quasi-memory laws).[28]

Memory laws, whether broadly or narrowly construed, are one example of the juridification of societies.[29] A generous understanding of memory legislation connects it to the rights to memory, truth, and justice vis-à-vis transitional justice, as developed by the Human Rights Committee and the Inter-American Court of Human Rights.[30] In the European context, memory laws, particularly those governing the Holocaust, have been important for building a European identity and countering amnesia as a mode of democratic politics, while de-communization laws mattered for pacifying post-communist societies.[31] Yet memory laws have

[24] Eric Heinze, "Should Governments Butt Out of History?" *Free Speech Debate,* March 12, 2019. https://freespeechdebate.com/discuss/should-governments-butt-out-of-history/.
[25] Maria Mälksoo, "Militant Memocracy in International Relations: Mnemonical Status Anxiety and Memory Laws in Eastern Europe," *Review of International Studies* 47(4) (2021), 489-507; Nikolay Koposov, *Memory Laws, Memory Wars.*
[26] Nikolay Koposov, *Memory Laws, Memory Wars,* p. 6.
[27] Eric Heinze, "Beyond Memory Laws: Towards a General Theory of Law and Historical Discourse," in *Law and Memory: Towards Legal Governance of History*, eds. Uladzislau Belavusau and Aleksandra Gliszczyńska-Grabias (Cambridge: Cambridge University Press, 2017), pp. 413–34, 415.
[28] Marina Bán and Uladzislau Belavusau, "Memory Laws."
[29] Nikolay Koposov, *Memory Laws, Memory Wars,* p. 12.
[30] Grażyna Baranowska and Aleksandra Gliszczyńska-Grabias, ""Right to Truth" and Memory Laws: General Rules and Practical Implications," *Polish Political Science Yearbook* 47(1) (2018), 97-109.
[31] Sébastien Ledoux, "Memory Laws in Europe," p. 38.

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 Koposov, *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.

essential to the creation of hegemonic memory regimes.[35] Focusing on institutions, processes, and discourses, as opposed to memory content, allows us to trace the construction of memory regimes through law beyond isolated or specific cases of collective memory or memory legislation, identify some of the fault lines between official, alternative, or counter-memory regimes, and clarify the role of law in promoting or undermining hegemonic memory regimes.

Law and archive

Laws regulating archives are perhaps the most important example of legislation as mnemonic infrastructure. Statutory restrictions, archival policies and practices highlight gaps, silences, and erasures shaping the production of memory and the constitution of different types of truth and memory regimes. Michel Foucault defined both truth and archive in somewhat similar, strikingly procedural, legalist, formalist terms: truth is "a system of ordered procedures for the production, regulation, distribution, circulation and functioning of statements,"[36] while the archive is "the law of what can be said," "the general system of the formation and transformation of statements."[37] Helton reminds us that studies of "the archive" often begin with the etymology of the word, arkheion, the place from which "law" emanates.[38] "Law" as power is the object and the subject, the *Grundnorm* and the source of the discursive logic central to archives. At their origin, archives were "arsenals of regal rights and claims," fundamentally instruments of government that followed a legal logic and borrowed from legal concepts, such as

[35] See Joachim Savelsberg and Ryan King, "Law and Collective Memory."
[36] Michel Foucault, "The Political Function of the Intellectual," *Radical Philosophy* 17 (1977). https://www.radicalphilosophy.com/article/the-political-function-of-the-intellectual.
[37] Michel Foucault, *The Archeology of Knowledge and the Discourse on Language* (New York: Pantheon Books, 1972), p. 129.
[38] Laura Helton, "Archive," p. 45.

accuracy, evidence, *le respect des fonds*, the concept of provenance, archival impartiality, etc.[39] And yet "the archival record is but a sliver of social memory," in fact "a sliver of a sliver of a sliver,"[40] because reality is unknowable, because the process is shaped by the act of recording itself, and because archival records reflect the reality shaped by the people engaged in their creation, management, and use. The sliver that ultimately emerges "is an extraordinary creation of remembering, forgetting, and imagining … at once expression and instrument of power."[41]

While rarely explicit on content, archival laws govern access to archives, stealthily opening and closing doors to the construction of collective memory. If memory legislation overall and at its core is about the state's relationship with its past,[42] archival legislation sets up the ground rules of the memory game. The archive is a site of power/knowledge, truth, and memory production,[43] as much a process of absence and forgetting as one of remembering, inherently limited and selective. Yet memory and forgetting in Eastern Europe, like other post-authoritarian or post-colonial contexts, are distinctive in that they are bound by practices, systems, and especially documents "selectively produced and preserved by violent and coercive" regimes.[44] Laws, policies, and practices regulating and controlling archival access and content in post-communist and post-fascist contexts directly shape collective memory, constructing certain types of truth and memory regimes that may serve elite interests, or legitimate the present, or

[39] Hermann Rumschöttel, "The Development of Archival Science as a Scholarly Discipline," *Archival Science* 1(2001), 143-155, 145; Mihai Dan Cirjan, "Plaintiffs, Historians and Pensioners inside the Archives - Scaring up Some Notions for a Critical Historiography," *Studia Universitatis Babes-Bolyai-Sociologia* 59(1) (2014), 93-117.
[40] Verne Harris, "The Archival Sliver," pp. 64-5.
[41] Verne Harris, "The Archival Sliver," p. 85.
[42] Marina Bán and Uladzislau Belavusau, "Memory Laws;" Maria Mälksoo, "'Memory Must Be Defended': Beyond the Politics of Mnemonical Security," *Security Dialogue* 46(3) (2015), 221-237.
[43] Renisa Mawani, "Law's Archive," *Annual Review of Law and Social Science* 8(2012), 337–65; Michel Foucault, *The Archeology of Knowledge.*
[44] Renisa Mawani, "Law's Archive," p. 341.

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 Gliszczyńska-Grabias, *Law and Memory*.
[47] See Nikolay Koposov, *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. Koposov 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 Koposov, *Memory Laws, Memory Wars*, p. 148.
[50] Nikolay Koposov, *Memory Laws, Memory Wars*, pp. 144-145.
[51] Vladimir Tismăneanu, *Stalinism for All Seasons: A Political History of Romanian Communism* (Berkeley: University of California Press, 2003).
[52] Sergiu Gherghina, "Still on the Fringes? Far-Right Parties and Identity in Romania," in *The Many Faces of the Far Right in the Post-Communist Space: A Comparative Study of the Far-Right Movements and Identity in the Region* (Centre for Baltic and East European Studies, 2022), pp. 128-134.
[53] Michael Shafir, "Unacademic Academics: Holocaust Deniers and Trivializers in Post-Communist Romania," *Nationalities Papers* 42(6) (2014), 942-964.
[54] Raul Cârstocea, "Between Europeanisation and Local Legacies: Holocaust Memory and Contemporary Anti-Semitism in Romania," *East European Politics and Societies* 35(2) (2021), 313-335.
[55] Tuvia Friling, Radu Ioanid, and Mihail Ionescu, *Final Report of the International Commission of the Holocaust in Romania* (Iaşi: Polirom, 2004).

part because the memory and legacy of communism were much more of a priority. The Report did open the door to a new optional subject in high schools, focusing on Jewish history and the Holocaust, introduced in 2005 with mixed success.[56] In 2021, this became part of the mandatory curriculum, but the implementation is still ongoing. The first high school textbook on the subject was approved by the Ministry of Education in March 2024.[57]

Memory studies scholars working on Romanian communism have found that there is no single memory regime in the country, no multi-layered, comprehensive collective memory of communism that makes space for the memory of the 1950s terror and repression, the calmer 1970s, and the privations of the 1980s, or recognizes elite-driven memory regimes versus popular memory.[58] Rusu's typology of the politics of memory in Romania distinguishes between competing memories discourses, roughly chronologically, from the early 1990s politics of amnesia and silencing the past, through the later confrontationist strategies and politics of anamnesis, to mastering the past through criminalization and demonization (embodied by the 2006 Tismăneanu Report on Romanian communism).[59] He calls for a refocus on understanding the past through comparative, historicized, and contextualized analysis.[60]

Monica Ciobanu identifies two competing memory regimes in the country, promoted by different memory agents: the communist heirs' discourse that encouraged amnesia, blame shifting, and the future, versus the civil society driven, anti-communist discourse that "equated

[56] Ilarion Ţiu, "Memoria Holocaustului în societatea contemporană. Studiu de caz: introducerea disciplinei Istoria evreilor. Holocaustul în planul-cadru pentru liceu," *POLIS* XII(1) (2024), 99-115.
[57] Felicia Waldman, Anca Tudorancea, Adrian Cioflâncă, Carol Iancu, Adriana Radu, Bogdan-Florin Romandaș, *Istoria Evreilor. Holocaustul. Manual pentru clasa a XI-a/ a XII-a* (Bucharest: Corint, 2024).
[58] See Alexandru Gussi, "Political Uses of Memory and the State in Post-Communism," *Studia Politica: Romanian Political Science Review* 13(4) (2013), 721-732; Mihai S. Rusu, "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; Mihai S. Rusu, "Transitional Politics of Memory: Political Strategies of Managing the Past in Post-Communist Romania," *Europe-Asia Studies* 69(8) (2017), 1257-1279; Simona Mitroiu, "Recuperative Memory in Romanian Post-Communist Society," *Nationalities Papers* 44(5) (2016), 751-771.
[59] Comisia Prezidenţială pentru Analiza Dictaturii Comuniste din România [CADCR], *Raport Final (*2006) https://www.wilsoncenter.org/sites/default/files/media/documents/article/RAPORT%20FINAL_%20CADCR.pdf.
[60] Mihai S. Rusu, "Transitional Politics of Memory," pp. 1272-1277.

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 Tismăneanu, (Budapest: Central European University Press, 2015), pp. 257-293; Lavinia Stan, *Transitional Justice in Post-Communist Romania: The Politics of Memory* (Cambridge: Cambridge University Press, 2013); Alexandru Climescu, "Law, Justice, and Holocaust Memory in Romania," in *Holocaust Public Memory in Postcommunist Romania*, ed. Alexandru Florian (Bloomington, IN: Indiana University Press, 2018), pp. 72-95; Monica Ciobanu, *Repression, Resistance and Collaboration in Stalinist Romania*.

failed lustration, Romania turned to public disclosure as a form of transitional justice, relying on the legislation regulating both access to the files and the Securitate archives.[63] Both types of memory trials have received a fair amount of scholarly attention, as has the Romanian Council for the Study of the Securitate Archives. Less attention has been paid to the institutional and legislative landscape pertaining to archives and how they structure Romania's memory regimes. The following sections focus primarily on the National Archives, counterposing them to the National Council for the Study of the Securitate Archives (a comparison of degree, rather than kind).

The National Archives as a prison of memory

"The past is a scarce resource,"[64] made even scarcer by an institutional framework still embedded in the communist regime's paranoid national security logic and secrecy, and a contradictory legal framework that ironically uses Romania's NATO membership to obscure the past. Four pieces of legislation are relevant here: National Archives Law 16/1996, Law 544/201 regarding access to information of public interest, Law 182/2002 regarding classified information (and its implementing Government Decision 585/2002), and Emergency Ordinance 24/2008 regarding access to one's secret police file. A bill that would fundamentally reshape the legal regime of the National Archives has been lingering in Parliament since 2017.[65]

The "totalitarian reflex," in the words of the 2022 historians' open letter protesting the May announcement, sees dangers to Romania's national security in every corner and is reflected by the institutional architecture and life of the National Archives. The National Archives are part

[63] Cynthia Horne, "What is Too Long and When is Too Late for Transitional Justice? Observations from the Case of Romania," *Journal of Romanian Studies* 2(1) (2020), 109-138.
[64] Arjun Appadurai, "The Past as a Scarce Resource," *Man* 16 (1981), 201–19, 201.
[65] This is the front runner, among five bills, found on the main page of the National Archives: "Proiectul Legii Arhivelor şi Expunerea de Motive." Last accessed March 2023. http://arhivelenationale.ro.

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 Affairs and Public Instruction.[68] In 1951, the State Archives became part of the Ministry of the Interior, following the Soviet model, and functioned fundamentally as a repressive institution of counter-memory (the name changed to National after 1989). Until 1991, its directors were generals, "quietly" retired in that position, who treated the Archives as a military institution. It is only since 1991 that the leadership has come from the civilian population.[69] The result, as a former Director of the National Archives observed, was the militarization of the Archives, externally and internally, as the institution internalized this military approach.[70]

Since 2009, the National Archives have been progressively downgraded within the Ministry of Internal Affairs, at both central and local levels, where local branches are entirely

[66] Community-based archives also shape collective memory, for example, the Center for the Study of the History of the Jewish Community (CSIER) has a major archival collection used by researchers in the study of Jewish history and the Holocaust.
[67] Only the Czech and Slovak Republics have the same institutional arrangement.
[68] Arcadie Bodale and Suzana Iuliana Bodale, "O nouă viziune despre rolul Arhivelor Naţionale: conştientizarea tinerilor asupra importanței patrimoniului arhivistic (conceptul de Arhive educative)," *Revista Arhivelor* 1 (2012), 9-22.
[69] Cristian Vasile, "Arhivele Naționale ieri și azi," *Observator Cultural*, December 2, 2022.
[70] Dorin Dobrincu, "Noua direcție a adevărului: distrugerea memoriei istorice românești," *Contributors.ro*, May 29, 2022.

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 *raison d'etre* 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.

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[71] Arhivele Naționale ale României (ANR), "Strategia Arhivelor Naționale 2015 – 2021," last accessed March 2023, http://arhivelenationale.ro.
[72] Ioan Drăgan, "Arhivele Naționale în cadrul MAI-un sistem depășit de istorie," https://cluj24.ro/fost-sef-al-arhivelor-nationale-clujeanul-ioan-dragan-cere-iesirea-arhivelor-din-subordinea-mai-un-sistem-depasit-de-istorie-126480.html, July 10, 2022.
[73] Dorin Dobrincu, "Noua direcție a adevărului."
[74] Ioan Drăgan, "Arhivele Naționale 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 manage secret police files access, screen political candidates and office holders, and publicly disclose evidence of collaboration with the Securitate, CNSAS had a rough start, with little funding, no building, no access to files, weak political support, and little credibility.[76] Political and constitutional setbacks have both narrowed and solidified the institution's powers. These include primarily the Constitutional Court's finding of unconstitutionality of Law 187/1999 governing access to one's secret police files and CNSAS' functions, and the subsequent 2008 legislation replacing Law 187.[77] The rejection of full-fledged lustration and of punishment of secret police collaborators resulted in the CNSAS transforming itself from "a vetting agency into a fact-finding commission,"[78] imaginatively interpreting its mandate to develop research and education activities about the actions of the former secret police.

CNSAS is not fully in control of all Securitate files (many were lost, destroyed, etc.), but it has made steady progress over the years, and claims to be currently the third largest such archive in the region, after Germany and Poland.[79] Since 2005, when it received more than a million files, until today, its archival holdings have grown to about 85,000 linear feet (which

[75] See www.cnsas.ro.
[76] Cynthia Horne, "What is Too Long and When is Too Late for Transitional Justice?," p. 118; Simona Mitroiu, "Recuperative Memory in Romanian Post-Communist Society."
[77] Constitutional Court Decision 51/2008, *Monitorul Oficial* February 6, 2008, 2-8; Law 293/2008, *Monitorul Oficial* November 28, 2008, 1-4.
[78] Dragoș Petrescu, "Law in Action in Romania, 2008–2018: Context, Agency, and Innovation in the Process of Transitional Justice," *Journal of Romanian Studies* 2(2) (2020), 195-218, 200.
[79] Consiliul Național pentru Studierea Arhivelor Securității (CNSAS), *2021 Annual Report*, last accessed December 2022, http://www.cnsas.ro/documente/rapoarte/Raport%20CNSAS%202021.pdf, p. 58.

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 country. In its own words, "in the absence of transitional justice, archives are a type of justice, providing information about the repression, the abuses of the Securitate and the terror imposed by the communist party."[81] CNSAS, like the Tismăneanu Report, signals openness to the past, to transparency and (limited) accountability, while the National Archives resemble a memory fortress, constructed to preclude, obstruct, obscure. As many historians remember, during communism one was not even allowed to take a picture of the Archives' building, and phones and laptops were not allowed inside well into the 2000s. This "cult of secrecy," as the historian Cristian Vasile calls it,[82] reinforces the contrast between the two institutions, which is a direct result of their legal embeddedness and has clear memory and knowledge effects: the darkest corners of the communist regime are potentially illuminated (totalitarian collective memory), while everything else is consigned to amnesia.

Archival policies and the decay of memory

Archival policies reinforce the securitization of the historical memory created by this

[80] Katherine Verdery, "Ethnography in the Securitate Archive," *Acta Univ. Sapientiae. Social Analysis* 4 (1-2) (2014), 7-29, 9; *CNSAS*, supra note 73, at 62-65.
[81] CNSAS, 2021 Annual Report, p. 10.
[82] Cristian Vasile, "Arhivele Naționale ieri și azi."

institutional framework. The National Archives never had a golden age, and since 1989, a (neoliberal) transitional discourse has hollowed them out at the level of infrastructure, staff, funding, and archival content, making the decay of state memory apt both literally and metaphorically. Silenced memories on topics with contemporary resonance, such as the communist takings or the Holocaust in Romania, emerge from a long chain of archival decision and non-decision making embedded in broader institutional structures, part of a records' continuum that is itself a technology of power.[83]

The transitional logic, both to and from communism, has distinctly privileged the future over the past, and resulted, in one estimate, in a definitive loss of over 80-percent of archival records.[84] During my research trips, the archivists were deeply concerned about the lack of personnel, poor storage, and therefore potential loss of processed and not processed documents. This is reflected throughout time. A study of the Arad archives during the early 1950s, for example, notes multiple examples of neglectful, at best, or intentional, at worst, document destruction, on top of loss of documents due to war and natural calamities. A butcher from Săvârșin, a small village, used documents from the local city hall archives, sold to him by the mayor, to wrap the meat. The Teleki family archive and library were thrown into a wood and coal shed after the family was expropriated, making way for a state cooperative. Documents from other nationalized or expropriated properties were simply sold as wastepaper. Various village authorities stored their archives in rooms or sheds that left them vulnerable to rodents and the weather.[85]

During much of the communist period, state institutions and the Communist Party itself

[83] See Sue McKemmish, "Placing Records Continuum Theory and Practice," *Archives & Museum Informatics. Archival Science* 1 (4) (2001), 333-359.
[84] Arcadie Bodale and Suzana Iuliana Bodale, "O nouă viziune despre rolul Arhivelor Naţionale," p. 11.
[85] Mircea Timbus, "Serviciul regional Arad al Arhivelor Statului (1951-1956)," *Revista Arhivelor* 1(2011), 54-64.

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 Naționale ieri și 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 Wrecks," *Martor* 24 (2019), 43-54, 50.
[89] Ricardo L. Punzalan and Michelle Caswell, "Critical Directions for Archival Approaches to Social Justice," *The Library Quarterly* 86(1) (2016), 25-42, 30.
[90] Ioan Drăgan, "Arhivele Naționale în cadrul MAI."
[91] ANR, "Strategia Arhivelor Naționale," pp. 31-32.

afford it.[92]

The Archives' own National Strategy documents the "nearing collapse" of the archives,[93] continuing a trend begun in the 1980s. Nearly 80-percent of the buildings require reparations, only a minority are adequate for document storage—a third, for example, have no heating system, and there is no single modern archival storage facility in the country, and overall staffing loss reached 60-percent, while needs have increased.[94] In 2017, the number of employees reached a lower level than in 1990, and has continued to drop. Arguably, more progress was made in the 1970s than since 1990 in terms of new archival storage facilities and buildings.[95] One of the five bills restructuring the Archives is advanced by a private organization, in effect aiming to privatize the National Archives.

Law, secrecy, and national security

The archive limits "what can be said," and together, "law and archive" unabashedly express and implement state power.[96] Which doors open and which close, thus the state's selective memory construction project, is most clearly delineated by statutory content. Restrictions to accessing archival materials in the National Archives and its local branches, albeit inconsistently applied, are a combined result of Law 16/1996 and statutes and regulations concerning classified information, namely Law 182/2002 and Government Decision (HG) 585/2002. Article 30 of Law 16, hotly debated at the time of the statute's adoption,[97] specifies which documents are not accessible to researchers: those that concern the safety, territorial

[92] Ioan Drăgan, "Arhivele Naționale în cadrul MAI."
[93] ANR, "Strategia Arhivelor Naționale," p. 5.
[94] ANR, "Strategia Arhivelor Naționale, pp. 31-32.
[95] Ioan Drăgan, "Arhivele Naționale în cadrul MAI."
[96] Cynthia Kros, "Rhodes Must Fall: Archives and Counter-Archives," *Critical Arts* 29(sup1) (2015), 150-165, 150-152.
[97] Dumitru Lăcătușu, "Acceptăm să se declasifice! Dar să nu se schimbe nimic!"

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 for the Romanian law.[98] This effectively puts research into almost all law-related matters going as far back as before the Second World War out of reach, at least at first glance.

Law 182/2002 and HG 585/2002, both concerning classified information, not only take a broad lens in terms of what counts as classified information, but also give priority to NATO rules in cases of conflict, a provision eagerly used to foreclose access to archival documents, most recently in May 2022. Moreover, both the statute and its implementing regulation ignore the problem of information classified before 1989 by various communist bodies and their declassification, therefore access, a particularly worrisome omission given the penchant of the communist regime to consign to secrecy a large array of documents.[99] This was at the crux of the 2022 archival battle, and was partially resolved by Government Decision 1481 from December 2022, formally declassifying some of this information (although informal reports of its

[98] Bogdan Dumitru Aleca, "O analiză a procedurii privind accesul la informare şi cercetarea documentelor aflate în păstrarea Arhivelor Naţionale şi câteva concluzii referitoare la aplicarea ei," *Revista Arhivelor* 1-2 (2015), 23-42.
[99] Cătălin Botoșineanu, "O himeră și un abuz legislativ. Documentele clasificate în cadrul Fondului Arhivistic Național," *Archiva Moldaviae* XIII (2021), 239-254.

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] Dragoș 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] from eliminating inconvenient documents to obsessively collecting their own records (paralleling the surveillance logic documented by Weld and others in various authoritarian contexts).[104] Post-1989, communism maintained its privileged status (setting up the CNSAS), but only partially from a perspective of democratic opening and transparency, and not full accountability. Yet if we understand the content of the Securitate archives less from a surveillance logic, and more as "the manner in which the Communist Party generated knowledge about reality while also trying to actively shape that reality in accordance with its ideological commitments," in other words as "inextricably linked to global modern practices of legibility and knowledge,"[105] then post-communist memory construction is inevitably and treacherously bound by the Securitate gaze.

Other continuities are at the heart of the May 2022 controversy and questions of access to archival materials. During the 1990s, access was difficult, often dependent on personal relations or idiosyncratic, and driven by nationalist or national security fears. The former included

[102] ANR, "Strategia Arhivelor Naționale," p. 4.
[103] Claudiu Porumbăcean, "Armonizarea legislației arhivistice românești cu cea europeană și pregătirea personalului responsabil cu activitatea de arhivă," *Revista de Administraţie Publică şi Politici Sociale* I(2) (2010).
[104] See Kirsten Weld, *Paper Cadavers. The Archives of Dictatorship in Guatemala* (Durham, NC: Duke University Press, 2014).
[105] Florin Poenaru, "Contesting Illusions. History and Intellectual Class Struggle in Post-Communist Romania," PhD diss., Central European University (2013), p. 182.

concerns that opening the archives will allow dispossessed owners (e.g., Jewish) to retrace and therefore reclaim expropriated or nationalized properties. The latter revolved around materials documenting resistance to the regime, particularly in the 1970s and 1980s, for example the missing archives of the 1987 Brașov uprising, and the role of the secret services personnel regarding access to archival materials.

The securitization logic is visible also in the post-2002 encroaching of the security services (DGPI, specifically) on access and the archival domain.[106] Intelligence officers imposed their own interpretation and understanding of legal provisions and the meaning of the law on archives on archivists, denying them access, deciding on archival selection and access, and even allowing the destruction of classified documents. Conflicts between legal provisions and the oversize role of the intelligence personnel created situations that echoed the 1950s, not 2020s. Documents classified as "strictly secret" by their creators, whether the 1950 Ministry of the Interior, Antonescu's fascist regime, or the Austro-Hungarian Empire, and which had not been declassified, were therefore still considered "strictly secret" and not accessible to researchers (the December 2022 decision presumably resolved this). This was not consistent, however, at the local level, nor temporally, as documents that were available at some point may subsequently have been closed off.[107] Adrian Cioflâncă, a prominent Holocaust researcher, estimates that as a result of these policies and their strict implementation, anywhere between a half and two-thirds of the files pertaining to Antonescu's regime in Romania and the Holocaust were thus classified as secret or strictly secret, and directly impacted in terms of lack of access.[108] The control by the intelligence branch of the Ministry of the Interior is less about the actual content of the archival

[106] For a broader discussion, see, e.g., Cătălin Botoșineanu, "O himeră și un abuz legislativ."
[107] Cătălin Botoșineanu, "O himeră și un abuz legislativ."
[108] Discussions during the June 30th, 2022 hybrid roundtable organized by the Society for Historical Studies and the Historical Institute of the Romanian Academy on historical memory, freedom of research, and archival politics in Romania.

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 *fond* itself, which actively produces a certain level of amnesia. How archivists interpret legal provisions that govern access to archival records also matters, as do organization complexities, various ideological discourses in play, relationships between archivists and researchers, and actions and decisions regarding the classification and preparation of documents. Archival practices illuminate how the line between the juridical and the non-juridical is drawn, as they classify, categorize, and "discipline" the

[109] Arcadie Bodale and Suzana Iuliana Bodale, "O nouă viziune despre rolul Arhivelor Naţionale."
[110] Mihai Dan Cirjan, "Plaintiffs, Historians and Pensioners inside the Archives," p. 27.

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 classified, organized, and prepared for research. As a senior archivist explained, the lack of personnel and proper storage meant both potential document loss and processing delays,

[111] Mihaela Șerban, *Subverting Communism in Romania. Law and Private Property 1945-1965* (Lanham, MD: Lexington Books, 2019).
[112] European Court of Human Rights (ECHR), *Violations by Article and by State*, last accessed May 2022, https://echr.coe.int/Documents/Stats_violation_1959_2021_ENG.pdf.
[113] See Mihai Dan Cirjan, "Plaintiffs, Historians and Pensioners inside the Archives."
[114] Mihaela Șerban, *Subverting Communism in Romania*.

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 exercise of state power, retrospectively collaborating with the regime.[117] This archival oblivion has echoes in terms of other truth regimes, as efforts to establish the "legal truth" regarding

[115] Mihaela Şerban, *Subverting Communism in Romania*, pp. 124-125.
[116] Herbjørn Andresen, "On the Internationalisation and Harmonisation of Archival Law," *European Journal of Comparative Law and Governance* 7 (2019), 64-88, 84-86.
[117] See Laura Helton, "Archive," and Cynthia Kros, "Rhodes Must Fall," for discussions of the intersections between state power, transitional justice, and archives.

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 Lăcătuşu, "Acceptăm să se declasifice! Dar să nu se schimbe nimic!"
[119] Dorin Dobrincu, "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, *Jewish Resistance to 'Romanianization*,' *1940–44* (London: Palgrave Macmillan, 2015); Tuvia Friling, Radu Ioanid, and Mihail Ionescu. *Final Report of the International Commission of the Holocaust in Romania* (Iaşi: 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 "police") trigger higher alert levels. For the prosecutor's office records, I could examine policy documents, memos, etc., but not individual indictments. Court decisions were not accessible, but I was allowed to see and make copies, selectively, from police files, as well as from administrative documents, such as internal regulations, etc., from court and prosecutorial bodies. The archivist read, interpreted, and manually tagged pages from these files, deciding which ones I could see, a procedure reinforced by the May 2022 order from the National Archives.

If "the making of archives is frequently where knowledge production begins," and the archive is not merely where knowledge is stored and retrieved,[121] then archival interpretation, whether in specific legal provisions or archival classification and organization, and not unlike legal interpretation, is central in the process of knowledge production. With both nationalization and Jewish expropriations, the archive is engaged in the process not of knowledge production, but institutional amnesia. It is more about forgetting, and less about collecting or remembering,

[121] Kate Eichhorn, *The Archival Turn in Feminism*, p. 3; Laura Helton, "Archive," p. 47.

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 more broadly.

In Romania, the May 2022 conflict around archival access illuminated these effects for both the collective memory of communism and of the Holocaust. For the collective memory of communism, this public conflict was an inflection point in the construction of a memory regime that reconciles two heretofore opposed communist memory discourses, totalitarian versus

[122] Laura Helton, "Archive," p. 50.
[123] Eric Ketelaar, "Tacit Narratives: The Meanings of Archives," *Archival Science* 1(2001), 131–141, 138.
[124] See, e.g., Liliana Corobca, "Instituţia cenzurii şi accesul la documentele privind secretul de stat," *Revista Arhivelor* 1 (2011), 28-33, for a similar exercise regarding communist censorship.

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 Șerban, "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 normalizing "the other communism," understood as everything from anti-Soviet resistance to the relatively flourishing 1970s, stability, social protections, etc., both within long-term historical memory and as it relates to the immediate past (captured well in the disjunctive collective memory of 1989). Simultaneously, the focus on the collective memory of communism continues to sideline the collective memory of the Holocaust and fascism in Romania.

[129] Ricardo L. Punzalan and Michelle Caswell, "Critical Directions for Archival Approaches to Social Justice," pp. 5-6.
[130] David Wallace, "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).
[131] Monica Ciobanu, *Repression, Resistance and Collaboration in Stalinist Romania*, p. 7.

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 Wiesel 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 Ceauşescu'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," *The Hedgehog Review* 9(2) (2007).

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