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POST-COMMUNIST TRANSITIONAL JUSTICE AT 25: UNRESOLVED DILEMMAS

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***Abstract*:** The main purpose of this article is to assess the relationship between transitional justice and democratization in post-communist Eastern Europe since the fall of communism in 1989. The analysis is focused on the role of lustration and the opening of communist secret police files in encouraging accountability and promoting the rule of law. An overview of these developments in the countries of the region – including Bulgaria, the Czech Republic, Hungary, Poland and Slovakia – emphasizes the different approaches undertaken in dealing with the abuses and crimes committed by previous non-democratic governments. These differences are examined in relationship to three interrelated variables: (1) the exit mode from communism; (2) the nature of the communist regime; and (3) the politics of the present. The second part of the article provides an extensive analysis of the Romanian case, whose specificity lies in its violent and abrupt exit from communism. The unfinished reckoning with the past in Romania leads us to two main conclusions. First, the nature of communist elites and the opposition to them are of equal importance in understanding how the politics of the present shapes the way in which the past is addressed. Second, in the absence of any real possible reconciliation through public exposure – at least symbolically – of those involved in repression, delayed transitional justice is ineffective.

***Keywords*:** transitional justice; post-communism; lustration; Romania; opening of the files.

In the last three decades, the question of a reckoning with the past has become intertwined with the main priorities and challenges faced by transitional governments. Addressing past abuses and human rights violations and ensuring that such acts will not occur in the future has direct implications for designing and consolidating democratic practices and institutions, establishing the rule of law, promoting a robust civil society and an engaged citizenry. Economies and infrastructures weakened by internal conflicts or corruption and mismanagement of previous oppressive regimes also need to be rebuilt. Transitional justice has become the catch-all term used by both academics and policy-makers to encompass both legal and non-legal mechanisms for addressing the past. The International Center for Transitional Justice includes the following related actions: criminal prosecutions against perpetrators responsible for past crimes and abuses; institutional reforms of state institutions directly or indirectly involved in abuses (police, military, courts); reparatory measures towards compensating the victims of repression; establishment of

truth commissions or other bodies invested with the responsibility of investigating and explaining the underlying causes and the systematic patterns of human rights violations; victim-oriented memorialization efforts through public displays and education.[1]

Although the origins of transitional justice is traced to the post-WWII period and linked to the creation of the Nuremberg and Tokyo tribunals to prosecute and punish major perpetrators of war crimes, crimes against humanity, and genocide during the war, it has been only since the 1980s that the issue of the past was placed at the forefront of political agendas and academic debates. The focus of transitional justice has accordingly shifted from a jurisprudential and retribution-centered framework to a much broader approach that puts equal emphasis on reconciliation, healing and restoration. The worldwide third and fourth waves of democratization of the 1980s and 1990s have led to the appearance of many truth commissions and other forms of conciliatory attempts to balance the goals of retribution and restoration.[2] A combination of criminal trials, restitution policies, vetting programs, truth commissions and memorializations is now sought in order to find some meaningful ways to avoid selective amnesia over the non-democratic past.

The fall of the communist regimes in East-Central Europe in 1989 posed new challenges in the area of transitional justice arising from their unique historical experiences. Characterized as Soviet-type totalitarian regimes, these countries experienced extended periods of non-democratic rule that spanned more than four decades. After a period of generalized terror exerted through violent gulag-style measures in the aftermath of WWII, when the region quickly fell under the political and military domination of the Soviet Union, cooptation and acquiescence became the common means of control in these countries since the 1960s. The mass character of the communist parties also blurred the distinction between rulers and ruled. Moreover, wide-scale control not only affected the public sphere, but also deprived citizens of any essential private experience. This was accomplished not only by the state apparatus (secret police), but also by widespread use of informers and collaborators. However, in Bulgaria, Czechoslovakia, Hungary, and Poland (with the notable exception of Romania) the passing of communism was peaceful and accomplished through negotiations between communist parties and opposition movements.[3] In this

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[1] Available at: http://www.ictj.org/about/trans-justice (accessed on 17 July 2014). For an extensive analysis regarding the concept of transitional justice including its history, methods and objectives, see Kritz (1995), Teitel (2003), Elster (2004).

[2] The examples of the truth commissions in Argentina (1983), Chile (1990), South Africa (1995) was followed in the 2000s and beyond in many countries in Latin America, Africa, Asia and the Middle East in the aftermath of civil wars, guerilla warfare and military dictatorships. For cross-regional comparisons see Kritz (1995), Barahona de Brito et al. (2001), Hainer (2002), Teitel (2000), Roht-Ariaza & Mariezcurrena (2006), Sikkink (2011).

[3] For the roundtables in Bulgaria, Czechoslovakia, East Germany, Hungary and Poland see Elster (1996). Some of the most comprehensive analyses of the violent end of

context, the task of dismantling the communist parties' hold over society – known as decommunization – became central to the project of structural transformation involving elite replacement, the establishment of the rule of law and a multiparty system, the reformation of the police, and the transition to market economy. Lustration – a form of vetting based on a wide set of legal measures aimed at restricting access of members and collaborators of former regimes to public office - was developed as necessary to achieve these goals.

As the year 2014 marks the 25th anniversary of the collapse of European communist regimes, we have now an ample opportunity to reflect on some of the lessons to be learned from the region. In this article the following issues are addressed: the relationship between democratization and transitional justice; the role of lustration and the opening of communist secret police files in encouraging accountability; the difficulty in locating centers of repression and separating its institutional mechanisms from the everyday collaboration of civilians. A brief overview of the politics of memory in post-communism lays the groundwork for our analysis. This is followed by a presentation of the Romanian case. Both sections will focus on transitional justice mechanisms from above (lustration, opening of the files and truth commissions). Although our main focus of analysis is Romania, some comparative references will allow more general conclusions to be drawn. The very specificity of the Romanian case – the abrupt, sudden and violent exit from communism in December 1989 – presents us with the advantage of examining the interplay between the nature of the previous regime, the exit mode and their relation to contemporary politics. In relationship to the latter it is particularly important to emphasize that although a new generation has emerged that had no direct experience of communism, current debates involving issues of guilt, responsibility and accountability continue to divide and stir passionate debates in Romania among politicians, intellectuals, civic associations and the general public. The argument pursued here is that these ongoing controversies involving conflicting accounts over the past illustrate not just a reaction against forgetting the past but also very real but unresolved disputes over legitimacy among competing political actors.

Empirical and Theoretical Issues in Post-Communist Transitional Justice

The initial conception of retribution against representatives of the former regime in post-communist Europe was based on a transition paradigm developed by Samuel Huntington in 1991. He argued that since the transition to democracy was generally peaceful "in Eastern Europe, apart from Romania and East Germany, the initial overall tendency was to forgive and forget"

communism in Romania include Codrescu (1991), Ratesh (1991), Siani-Davies (2005), Petrescu (2010).

(Huntington 1991, 228). However, both immediate and long-term developments in the region defied this prediction.[4] Romania and East Germany took opposite approaches. In 1990, East Germany adopted a lustration model that allowed employers to verify their employees' previous involvement with the communist police (Stasi). In contrast, Romania took no legal measures at all to reveal the previous links of public officials with the Securitate until 1997. However, as the next section shows, this measure was so restrictive that it resulted in no screening and vetting of those responsible for past abuses. Further, countries that experienced smooth transitions in 1989, either through roundtable negotiations between communists and opposition movements and dissidents – as occurred in Poland and Hungary – or through a peaceful ending dubbed as the "velvet revolution" as in Czechoslovakia, took divergent transitional justice paths. In 1991 Czechoslovakia enacted a radical lustration program seeking to ban former party and state security officials who acted as agents or collaborators of the secret police Statnĭ bezpečnost (StB) from elected or appointed positions in the government. However, the dissolution of Czechoslovakia in 1993 resulted in two opposite approaches to lustration: while the Czech Republic continued the radical model, in Slovakia there were no consistent efforts towards decommunization (Nedelsky 2004). In 1992, Bulgaria also banned former high-level officials from managerial positions in the banking sector and from institutions of higher education. The first speech of the newly elected Polish Prime Minister, Tadeusz Mazoviescki, which stated that a "thick line" with the past should be drawn seemed to indicate that Poland would take a forgive-and-forget approach. However, two years later the topic of lustration re-entered the public debate. In 1997, it resulted in a law that sanctioned lying about collaboration and thereby emphasized guilt and remorse rather than outright punitive action. The 1994 Hungarian model of lustration on the other hand, brought a novel legalistic approach to bear with a strict application of the due process principle as promoted by the constitutional court.

This brief overview reflects a fair spectrum of responses in dealing with former perpetrators ranging from willful amnesia (Romania), to an intermediary or "mild lustration" model based on confession and reconciliation (Poland and Hungary) and a more "radical lustration" model emphasizing accusation and punishment (East Germany, Czechoslovakia, Bulgaria). Thus, policy-makers and scholars in the field sought after alternative and multiple determinants of post-communist transitional justice. Two additional variables were added to Huntington's hypothesis: the nature of the communist regime (more liberal or

[4] For comparative regional analyses of lustration and the rule of law, see McAdams (1997); the German and the Polish cases are examined by Calhoun (2004, 51-132). David analyzes lustration as personnel change in the Czech Republic, Hungary and Poland (2011). Stan provides a broad comparison of transitional justice in Eastern Europe and the former Soviet Union (2009).

more repressive) and some conception of the politics of the present. The latter was seen in terms either of the electoral strength of former communists (Welsh 1996), or of the existence of majority coalitions which pursued lustration as part of the reformation of state institutions perceived as contaminated by morally compromised and corrupt actors previously involved with the defunctive regime (Williams, Fowler & Szczerbiak 2005). However, when faced with the prospects of losing elections, ex-communists themselves fortuitously used lustration as a means to future political gain. This was true of Hungary in 1994 and Poland in 1997, when mild screening policies were implemented in order to preempt more vigorous future measures by radical anti-communist opposition forces. At the same time, as the opening of secret police files showed, former dissidents or anti-communist opposition parties also had had their share of spies, informers and collaborators. According to Monika Nalepa, this explains the inconsistent and postponed application of lustrations in many post-communist countries. She argues that "former dissidents delayed lustration because they feared 'the skeletons in their own closet'" (Nalepa 2010, 12).

Yet, the initial popular euphoria following 1989 proved to be short-lived. Serious economic problems caused by the introduction of market economies led to unemployment, inflation and loss of social welfare. Publics became disillusioned with the post-communist elites (both former communists and anti-communist forces) as compromised by corrupt practices and scandals involving their prior affiliation with security services. In these circumstances, rhetoric about the past became highly politicized and inflamed. Interestingly though, demands for retroactive justice and truth-telling continued over fifteen years later when the alleged break with the past was symbolically legitimated by acceptance into the European Union. This apparent paradox was attributed to the fact that the euphoric post-communist liberal consensus had become irrelevant and the public disenchanted with both sides (Mungiu-Pippidi 2007). One of the most controversial attempts of using lustration as a political weapon involved the right-wing conservative Kaczynski government in Poland in 2006, when a controversial bill was initiated. The bill was overturned by the constitutional court, but if implemented 700,000 people could have been affected (Jasiewicz 2007, 31-32). In Bulgaria mild lustration (public exposure) gained momentum in 2010 when the Commission for the Declassification of State Security Archives revealed that from 1991 to 2010 half of Bulgarian ambassadors had been affiliated with the communist police. An unsuccessful attempt to introduce a lustration law in Romania in 2006 was followed by two other failed initiatives of the legislature in 2010 and 2012. Both times the Constitutional Court declared the lustration law as unconstitutional.

These examples point towards the existence of certain problematic aspects of lustration. First, the potential for abuses and the inevitable politicization of lustration raises the question of how effective this transitional

justice mechanism is from the point of view of democratization. Second, the problem is to what extent can late lustration programs lead to positive personnel changes and an enhancement of democratic trust in post-communist countries. Natalia Letki provides a persuasive response to question of the relationship between democratization and lustration. Based on a comparative analysis, Letki weighs both the pros and the cons of lustration. Among the first, she lists the public interest (former nomenklatura represents bad social capital) and the importance of "ritual purification" to establish trust in the new regime. The negative effects lie in the incompatible relation between the exclusion of some on the basis of the incomplete and unreliable secret police files and democracy (Letki 2002, 540-545). Yet, taking into account the positive effect on reforming state institutions by promoting accountability as state assets are privatized, it seems that ultimately the advantages of lustration programs outweigh their shortcomings. Williams, Fowler and Szczerbiak take a less optimistic stand in this matter. They emphasize that an equally powerful motivation for pursuing programs seeking the vetting or disqualification of tainted officials is the direct result of present political maneuvering. They point to the particular electoral circumstances of post-communism that involve a fluid party system and the need for legislative alliances (Williams et al. 2005, 39). However, as Cynthia Horne shows, when implemented in relation to other legal measures such as anti-corruption policies, lustration can further the democratization process (Horne 2009). Her analysis of late lustration programs in 2006 in Poland and Romania suggests that since these policies moved beyond the political elites and attempted to target professionals placed in positions of public trust such as business leaders, journalists and academics, there is a potential for a positive outcome in the area of public trust and confidence. Horne's framework is useful in bringing a broader understanding of reckoning with the past in relationship to both short-term and long-term processes of democratic consolidation.

The interplay between past and present in shaping specific country responses in relation to the politics of memory seems to allow the development of an adequate framework for both case studies and cross-regional comparisons. The challenge, however, is to identify the factors that explain the complex and fluid relationship between the ex-communists and the opposition under communism during the events of 1989 and beyond. Lavinia Stan proposes a multivariate model that encompasses the experiences of countries from the former Soviet Union, the Balkans and Central Europe. She argues that the post-1989 electoral competition between the successors to the communist parties and the opposition reflects not only the recent past understood as the type of domination exerted by communist regimes (repression or cooptation), which explains the type of opposition developed both during and after communism, but also the pre-communist experiences of these countries with democracy (Stan 2009, 267-268).

At the same time, to understand post-communist lustration we also need to consider how each country set up independent bodies invested with managing the archives of the regime's secret police and then granted (or withheld) individual access to the files kept on them. Granting access to these files was to reveal the truth about the past and to signal implementing vetting measures. East Germany was the first to provide extensive access to the Stasi archives in 1990. It was followed by Hungary in 1996, Bulgaria and Poland in 1997, and Romania in 1999. However, as some of the files were either destroyed during the chaos of 1989 or were subsequently altered by the state bodies entrusted with their upkeep, we can only question their authenticity, completeness and reliability (Stan & Nedelski 2012, 1-5). In addition, the risk of blackmail and political manipulation has necessitated some further restrictions or privacy measures.

This summary presentation of the transitional justice processes in the region and their interpretation by scholars in the field provides the necessary background for analyzing the Romanian case within the post-communist context. Specifically, the question to be addressed is the extent to which the violent exit from the communist dictatorship in 1989 has significantly shaped the politics of memory in Romania in more specific ways. As the next section shows, while the nature of the communist regime and the politics of the present have led to similar outcomes, it is the type of transition that took place that ultimately explains current debates on the recent past in Romania. Although the country initiated a wide range of both legal and non-legal responses to the abuses and crimes committed by the communist regime, it has yet remained a laggard in terms of implementing retributive and restorative policies (Stan 2013).

Between Remembrance and Amnesia: Romania after 1989

During the last two and a half decades, the politics of memory and justice in Romania has been shaped by an ongoing tension between two conflicting responses to the past. One approach promoted by former representatives of the communist regime who remained in positions of power and influence after 1989 advocated selective forgetting. These actors attempted to manufacture a narrative of the December 1989 revolution as a complete break with the past. This myth of the revolution as the foundation of a democratic beginning consciously or unconsciously provided the basis for collective amnesia. Thus, while communism itself has been considered not worth remembering, its actual overthrow should have been celebrated as a symbol of heroic national action. During the 1990s and early 2000s, this rhetoric became the bedrock of the post-communist official narrative. In contrast, former dissidents, civil society groups, survivors of the Romanian gulag and pre-WWII political elites promoted the

idea of the "unfinished revolution." These actors acknowledged the persisting influence of former members of the communist nomenklatura and the secret police in stalling the democratic transition and thus asked for transitional justice policies to complete the revolutionary process, while the surviving forces of the old regime indeed blocked any such measures.

This dichotomy represents the outcome of three factors that have determined post-communist transitional justice policies: 1. the nature of the communist regime itself; 2. the form of transition to democracy; and 3. and the balance of power between former communist and anti-communist political actors during the early stages of democratization. The interaction between these three also shows the similarities and differences between Romania and other former communist countries in East and Central Europe.

Communism in Romania underwent two distinctive phases. The first began in the aftermath of WWII, when communists became the dominant political force as a result of the massively fraudulent elections of 1946, followed a year later by the forced abdication of King Michael, which ushered in a Stalinist-style regime. Especially in the late 1940s and 1950s, nationalization of private ownership, forced collectivization of agriculture, and Sovietization were imposed by the new regime under the direct authority of Moscow and with mass gulag-style repression. A large network of prisons, work colonies and labor camps, as well as forced deportations, indiscriminately targeted a heterogeneous population (both in terms of social class and political affiliation) as the class enemy.[5] A special department within the Ministry of Internal Affairs (MAI) led by Gheorghe Pintilie (an agent of the Soviet secret services) was set up in August 1948 under the name the General Directorate of People's Security (Direcția Generală a Securității Poporului, DGSP, referred to as the Securitate). It used terror, violence, and torture against prisoners and deportees. The most extreme measures were employed in the Piteşti prison.[6] It was not until 1964 that the last political prisoners were released after the forced signing of individual agreements of collaboration with the Securitate.

The release of political prisoners coincided with a Declaration issued the same year by Gheorghe Gheorghiu-Dej, the leader of the communist party. This proclaimed independence from the Soviet Union cleared the path for an indigenous Romanian communism and represented the beginning of a nationalist-communist stage that was to reach extreme forms by the 1980s. After Gheorghiu Dej's death in 1965, the new communist leader Nicolae Ceauşescu embarked on a brief period of apparent quasi-liberalization, which

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[5] See Muraru et al. (2008) and Bălan (2000). According to Rusan (2007), the victims of direct repression included 600,000 political detainees and 200,000 administrative internees.

[6] Here an elaborate program of reeducation through torture was aimed at transforming the prisoners into submissive tools of the regime. For the most comprehensive account of the Piteşti experiment, see Stănescu (2010).

ended in the early 1970s. Gradually, Ceauşescu imposed a highly dogmatic, oppressive and personalized rule. The regime, characterized as dynastic-socialist or sultanistic-totalitarian, rested on three principal supports: (1) a communist-nationalist ideology; (2) the secret police (the Securitate); and (3) Ceauşescu's family members and assorted loyalists.[7] The role of the Securitate was crucial, and after 1978 it became directly subordinate to Ceauşescu. Its indiscriminate use of mostly psychological rather than physical terror allowed the regime to exert widespread control over the population (Deletant 1996). However, it is important to note that, unlike the previous decade, the Securitate used much more subtle ways to recruit informers and collaborators including blackmail, personal favors and material or non-material benefits (Albu 2008). In fact, after December 1989, it was revealed that while the number of the secret police full-time employees was not especially impressive, the number of informers was one for every 57 members of the population (Oprea 2003, 48). This is significant as it indicates that late communism was strongly dependent on cooptation (involving both the increasingly mass character of the communist parties and civilian involvement with the Securitate). As throughout post-communist Europe, this state of affairs posed serious dilemmas both in terms of establishing guilt and designing adequate transitional justice measures affecting lustration and granting individuals access to personal Securitate files. Moreover, the deeply anti-communist rhetoric of the early 1990s regarding the "unfinished revolution," certainly alienated and may have intimidated some of the 4 million members of the Romanian Communist Party that had constituted almost 20% of the country's population.

Both repression and cooptation determined the nature of the opposition movement. In Romania, unlike Poland, Hungary and even Czechoslovakia and Bulgaria, there was a significant absence of any viable opposition to the regime. No influential dissidents with moral credibility like Václav Havel in Czechoslovakia or Adam Michnik in Poland, no organized working-class opposition movement similar to the Polish Solidarity movement, no well-established intellectual circle critical of the Marxist dogma as in Hungary, and no reformist elements within the party itself were in a position to negotiate the exit from communism. As a result, Romania's overthrow of the communist regime was sudden, violent, and disorganized, if not indeed chaotic. According to Peter Siani-Davies, during the popular uprising 1,142 people lost their lives

[7] For the concept of dynastic socialism see Vlad Georgescu (1987) and Vladimir Tismăneanu (2003). The term "sultanistic cum totalitarian" was coined by Juan J. Linz and Alfred Stepan (1996). Both terms highlight the hybrid combination of communist-Soviet ideology and traditional type of legitimacy employed by the Romanian communist regime. The nationalist-communist ideology promoted by Ceauşescu took extreme xenophobic tones by incorporating elements of the pre-WWII fascist rhetoric employed by the Iron Guard and Marshal Ion Antonescu, Hitler's ally (Verdery 1991).

and more than 3,000 were wounded (Siani-Davies 2006). Thus, Romania was the only former communist country whose initial response to the crimes of the old regime was instant retribution in the form of a makeshift revolutionary justice. A military trial that convicted and sentenced Ceauşescu and his wife Elena to death was conducted in a climate of violence and uncertainty regarding the defeat of the old regime.[8] This act invested the National Salvation Front (NSF) – the provisional body that took power – with a semblance of revolutionary legitimacy. Two other subsequent trials involving higher-echelon officials were also conducted in a similarly helter-skelter fashion. This swift retributive justice worked as a cathartic scapegoat mechanism that in fact resulted in delaying/preventing further inquiries into the crimes committed both before 1989 and during the revolution. This unquestionably established a distinctive tone of forgetfulness by avoiding or postponing a real debate over guilt and responsibility for former abuses. Instead, the new leader of the NSF, Ion Iliescu, appealed to national consensus and emphasized in the early communiqués of the NSF Council that it was the Ceauşescu clan that had bankrupted the country. However, thanks to their own sacrifice, Romanians could have enjoyed a better future under the expert guidance of the new authority.[9]

On the contrary, former dissidents, representatives of pre-WWII historical parties, intellectuals, survivors of the armed resistance conceived of lustration as a necessary and fundamental continuation of the revolution (for many years, its symbol was Point 8 of the so-called Timişoara Declaration which requested the banning of communist officials and secret police employees from public office).[10] Thus, an anti-communist post-communist rhetoric became a counter-force and catalyst for the construction of a new narrative which attacked the trend towards a complacent amnesia. In fact, anti-communism became the unifying force of a rather heterogeneous protest coalition consisting of the newly reestablished historical parties, most notably, the National Liberal Party (PNL) and the National Peasant Christian Democratic Party (PNŢCD); civic groups consisting of intellectuals and former dissidents, such as the Civic Alliance (AC) and the Group for Social Dialogue (GDS); the Association of the Former Political Prisoners in Romania (AFDPR) and various student groups. This position influenced the actions of the opposition movement both in the aftermath of December 1989 and in the first democratic election of May 1990. The Timisoara Proclamation became the manifesto of the anti-communist opposition during the spring 1990 demonstration in Bucharest's

[8] The transcript of the trial can be downloaded at: http://ceausescu.org/ceausescu_texts/revolution/trial-eng.htm (accessed on 8 July 2014).

[9] For the texts of the NSF communiqués from 22 December and 24 December 1989, see Ion Iliescu (2010), 259-261 and 264-266.

[10] For the chronology, the content and the adherents of the Timişoara Declaration, see Tudor & Seracin (2010, 24-44).

University Square. After the NSF's overwhelming victory in elections, some chose to continue their protest, but this ended in mid-June, when it was violently smashed by the authorities. The repressive response of the government and Iliescu's populist attack on the opposition (which was portrayed as comprising fascists and pre-communist bourgeoisie) stalled any opportunity for reconciliation or critical-rational debate.

During the next fifteen years, the balance of power between former communists and the opposition had a crucial impact on the politics of memory. From December 1989 until 1996, and then again between 2000 and 2004, former communists were the dominant political force in the country. The NSF renamed itself several times and became a social-democratic party that included former middle-ranking communist officials and their heirs. They found ardent supporters among the Securitate officers who went into private business and benefited from the privatization of state assets or retained positions of influence within the new structures of the secret services. Some representatives of the communist era who held positions of power under Gheorghiu-Dej and were marginalized by Ceauşescu or even engaged in dissident actions against Ceauşescu (including Iliescu himself) attempted to promote their own particularized versions of the past. These ex-communists made every effort to present both the positive nature of the regime (in particular its attempts at modernization) and to attribute its misdeeds and failures solely to Ceauşescu's personal rule.

Given this state of affairs, the very few transitional justice policies initiated before 2005 were rather minimal, symbolic and geared towards protecting former officials from any type of legal or non-legal accountability and ensuring their continuing dominance. It was only in 1997 that the legislature passed the Law of Access to Files and Exposure of the Securitate as a Political Police. It became known as the "Ticu Law" after Constantin Ticu Dumitrescu, the president of AFDPR, who tirelessly pursued an ongoing and personally dangerous battle with the heirs of the communist regime. The law was, however, very restrictive in scope and content and was significantly altered from its original version. The files remained in the custody of the same institutions that produced them (including the heir of the Securitate, the Romanian Intelligence Service–SRI), so only those files the content of which was defined by the holder as posing no threat to national security were made public. This clearly gave the ex-communists the advantage. Before the 2000 elections, the SRI released to the National Council for the Study of the Securitate Archives (CNSAS) only the files of opposition candidates who were shown to be informers after their release from jail. This was the case of the three PNL leaders, Mircea Ionescu-Quintus, Alexandru Paleologu and Dan Amedeo Lăzărescu. In 2004, CNSAS released the results of the verifications only after the elections rendering it superfluous (Ursachi 2012, 310). Moreover, the media

had already provided by that time enough evidence to show that some were incomplete or simply destroyed.[11]

In effect, the subordination of the justice system to the interests of the old/new elites inhibited, postponed and undermined the criminal trials launched against former officials and those individuals involved with the mechanism of repression before 1989. As crimes against humanity fell under a statute of limitations established by the communist penal code in 1969, two of the legal proceedings initiated by AFDPR against Alexandru Drăghici, minister of interior in the 1950s, and his deputy Alexandru Nicolschi failed. After 2006, when the Institute for the Investigation of the Crimes of Communism (IICCR) – a transitional justice body set up in June 2006 – filed several judicial proceedings against former officials, the statute of limitations prevailed again.[12] Restitution and compensatory measures for former political prisoners were similarly meager and geared towards providing more of a social safety net than legal redress.[13] In contrast, the post-communist authorities granted extremely generous privileges and compensations to the "heroes" of the December 1989 revolution. These restorative measures, however, served the interests of the post-communist oligarchy only (Palade 2011).

In the absence of serious political will, the work of investigating the past was taken up by civil society groups (AFDPR, GDS and AC) and some segments of the media.[14] The memories of those who had direct experience of the brutality of the early Stalinist repression or Ceauşescu's ubiquitous secret police became a major avenue for truth-telling. An impressive number of memoirs, autobiographical accounts and oral histories were published. Perhaps these undertakings can be summarized in the motto used by the Sighet Memorial established in 1997: "When justice is unable to act as a form of

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[11] In May 1991, former dissident and journalist Petre Mihai Băcanu provided evidence about the existence of buried Securitate documents near Bucharest. Historian Marius Oprea documented further the destruction of files and the involvement of SRI in the matter (Oprea 2004, 124-147).

[12] For legal trials against former officials, see Grosescu & Ursachi (2009).

[13] The law was published as Emergency Decree 118/1990 in *Monitorul Oficial* (9 April 1990). However, given the inability of successive governments to honor the provisions of the decree (mainly to provide subsidized medical treatment and transportation) former political prisoners felt humiliated again.

[14] Since 1990 the journal *Memoria: Revista Gândirii Arestate* has been publishing primary sources connected to the communist history. Also, TV journalist Lucia Hossu-Longin undertook a systematic and consistent effort of collecting testimonies from former political prisoners and dissidents. These were released in 2007 in the DVD collection *Memorialul Durerii: O istorie care nu se invaţă la şcoală*. Similar work was done by academics involved with the Institute of Oral History from Cluj, the Institute for the Study of Totalitarianism of the Romanian Academy, and more recently by the CNSAS Center of Oral History.

memory, memory alone can be a form of justice".[15] Without in any way minimizing the contribution of many individuals and associations in revealing the previously silenced or hidden history of the communist repression, we have to acknowledge that less interest was shown in discussing issues of collaborationism or acquiescence. In fact, as Cristina Petrescu and Dragoş Petrescu aptly put it, the past has become unilaterally and unfortunately represented through the exclusive lens of repression created by an alien Soviet occupation and symbolized in the so-called "Piteşti syndrome" (Petrescu & Petrescu 2010).

A turning point that seemed to reverse the balance between forgetting and remembering in favor of memory was the establishment by President Traian Băsescu in 2006 of a Presidential Commission for the Analysis of the Communist Dictatorship in Romania–CPADCR (a kind of truth commission), which six months later released a lengthy report of almost 700 pages (CPADCR 2007). The presentation of the report to the legislature coincided with the country's accession into the European Union. The report, which declared the communist regime illegal, illegitimate and criminal, condemned and repudiated the communist dictatorship as guilty of crimes against humanity. It was endorsed by the president and his Democratic Party, but not by the other political parties in the legislature. Moreover, the report provoked virulent political reactions and generally poisoned the political climate. The Greater Romania Party (PRM) – a nationalist-xenophobic party filled with former Securitate elements and led by poet Corneliu Vadim Tudor (a promoter of Ceauşescu's personality cult) – attacked the report on the very day of its presentation. This led to a serious problem after its release as many of its recommendations could not be put into practice. For example, Government Ordinance No. 16/2006 which asked for mild lustration (the removal from office of public servants and state dignitaries who had lied about their collaboration with the Securitate) could not be implemented.[16] A year after its adoption, it was declared unconstitutional. On the positive side, however, it had at least two extremely important outcomes in respect to truth-telling. First, it provoked an open debate between various groups that had always claimed a place for themselves in the history of anti-communist opposition (intellectuals, representatives of the workers' movements and of the anti-communist armed resistance). Second, as a direct consequence of giving full and unrestricted access to the Securitate archives for members of the commission it resulted in the opening of the archives and access to secret files. Following Emergency

[15] For the impressive work of the Sighet Memorial, see their website http://www.memoriasighet.ro (accessed on 9 July 2014). The memorial is in the custody of the Civic Academy Foundation led by well-known public intellectual and former dissident Ana Blandiana.

[16] For Government Ordinance 16/2006, see *Monitorul Oficial* (27 February 2006).

Ordinance No. 10/2006 and Decision No. 60/2006 of the Supreme Council of National Defense (CSAT), the CNSAS archives were enlarged by 130,612 files. Similarly, the National Archives (ANR) substantially enriched its collection of party documents.

However, this apparently positive shift was quickly stalled by political forces opposed to decommunization and desecretization. Under pressure from Dan Voiculescu, a former Securitate informer and media mogul, CNSAS was declared by the Constitutional Court as unconstitutional in January 2008. However, thanks to civil society pressure, the activities of CNSAS continued within a new legal framework defined by Emergency Government Ordinance No. 24/2008. Accordingly, the role of the council was merely to determine and recommend the status of collaborator and informer to the judicial authorities and not pass judgment on any allegation of involvement with the communist police (Petrescu 2014). Equally strong pressure by MAI officials was directed at the newly appointed director of ANR who promoted the transparency of the archives (Ciobanu 2011, 208). Moreover, various attempts to change the restrictive Law No. 16/1996 governing the activity of the archives faced similar resistance.

In 2012, following a period of intense popular unrest resulting from economic recession and the imposition of highly unpopular socio-economic measures, CNSAS came again under threat. The resignation of the incumbent Prime Minister Emil Boc of the Liberal Democratic Party (PDL) led President Băsescu to replace him with Mihai Răzvan Ungureanu, former foreign minister and head of the Foreign Intelligence Service–SIE. However, Ungureanu's government was short-lived. After a successful motion of censorship in April, Băsescu was left with no choice but to appoint Victor Ponta of the PSD as head of the executive. Immediately, the Ponta government moved to increase its power over state institutions provoking a political crisis. This escalated further when Ponta attempted to impeach President Băsescu to the point where prodding from the EU was needed to defend the rule of law and, with it, CNSAS. At the same time, the Constitutional Court overruled retroactive judicial legislation in two other areas: restitution and lustration. A year after the Law on Politically Motivated Court Sentences and Their Related Administrative Measures from 6 March 1945 to 22 December 1989 (Law No. 221/2009) was passed, the Court declared as unconstitutional that part of the law that left open to interpretation the level of material compensation awarded to those politically persecuted by the communist regime. Victims again found themselves potentially humiliated and subjected to further victimization by the government (Ciobanu 2013). In 2010, after a lustration law was voted through by the legislature, the Court had then declared it as unconstitutional. The principal objection to it, the Court claimed, was that it seeks to punish individuals for their ideological convictions, but not for human rights violations.[17] Two years later, after the law was amended in accordance with the Court's ruling, it was

[17] For Decision of the Constitutional Court 820/2010, see *Monitorul Oficial* (23 June 2010).

again challenged by the very same court. This time the argument was that the previous ruling referred to the unconstitutionality of the law in its entirety meaning that it would then have to be reintroduced *in toto* and not merely amended.[18] In the absence of any effective vetting legislation, CNSAS had become since 2006 quite active in disclosing involvement with the Securitate among office holders, business leaders, and other public figures. It is uncertain whether such disclosures or, as Horne calls them, "informal lustration", would eventually lead to bureaucratic change.[19] However, it clearly suggests ongoing public dissatisfaction with the political establishment and continuing mistrust of the performance and corrupt practices of public institutions.

These examples illustrate that more than two decades after the fall of communism the battle over the past continues to divide the political and public space between those demanding justice and those who persists in the politics of forgetting. As Alexandru Gussi points out, the conflict over the meaning of the past is essentially the basis for the conflict respecting the legitimacy of the post-communist state and the transitional regime (Gussi 2013). As of this writing, the politics of memory continues to generate strong controversies over issues of guilt and accountability. Since 2013, the IICCR – renamed in 2009 as the Institute for the Investigation of Crimes of Communism and the Memory of the Romanian Exile (IICCMER) – has launched another investigation of thirty-five people suspected of crimes committed during communism.[20]

Some Conclusions

This analysis provides some necessary clarification concerning the relations between the nature of the communist regime, the exit mode from it, and the politics of the present in shaping transitional justice in post-communism. In particular, the Romanian experience shows the difficulties posed by the inability of divergent political actors to compromise over essential questions relating to the institutionalization of democracy. The sudden and violent exit from the communist dictatorship in December 1989, and the absence of a coherent and well-organized opposition movement, resulted in a political climate dominated by intolerance and generalized suspicion. The monopolization of power by unreformed ex-communists and elements of the Securitate in conjunction with the rhetoric of the "unfinished revolution" that was promoted by some segments of the opposition has shaped a confrontational

[18] For the Decision of the Constitutional Court 308/2012, see *Monitorul Oficial* (9 May 2012).

[19] Horne sees these processes of "silent lustration" in both Romania and Bulgaria as marking a shift in a transitional justice approach that does not simply focus on condemning the past, but also seeks political change for the future (Horne 2014, in press, available at: http://cynthiamhorne.weebly.com/scholarship.html, accessed 7 November 2014).

[20] "IICCMER is investigating 35 people under suspicion of having committed war crimes during the communist regime," available at: http://iiccmer.ro (accessed 19 February 2013).

and often unhealthy political competition during the first fifteen years of the democratic transition. In this context, various attempts at coming to terms with the past became deeply politicized. The report of the Presidential Commission for the Analysis of the Communist Dictatorship and its endorsement by the president in December 2006 did not soften these political and societal divisions either. On the contrary, by stressing the negative role played by the NSF and its leaders after 1989 and by equating them with the communist regime, the report further aggravated the already existing conflict between opposing political actors. As shown earlier, this contest of legitimacy contestation persists and continues to be reproduced (at least symbolically) a generation later. At the same time, the abusive and discretionary way in which the revolutionaries of December 1989 were compensated by post-communist authorities might well be compared to the meager and delayed compensation for those politically persecuted by the communist regime. Does this not simply compromise the idea of retroactive justice as embedded in the rule of law?

We can only assume the positive potential outcomes that lustration could have brought for the democratic transition. Given the slow pace of democratic consolidation and generalized public distrust in state institutions, we ought to be persuaded in subscribing to the important argument that lustration promotes good social capital as it also makes the necessary symbolic break with the undemocratic past (Letki 2002). However, such a break has to be pursued in rational-legal terms in order to conform to any democratic politics. Given the specific context of the Romanian transition, it is perhaps doubtful that something like this could have been achieved. Yet, previous and current practices of administrative purges among mid-rank and appointed professional staff in public institutions can suggest otherwise (Stan 2013, 252-254). However, the inconsistent and rather discretionary access to the files (at least until 2000) has led to mixed results in revealing the truth. Thus, we can conclude that when used for political gain or altered by irreconcilable disputes, these transitional justice measures can all too easily fail to enhance democratization.

In much broader terms, two main lessons can be drawn from this analysis. First, of equal importance in understanding how the politics of the present shapes addressing the past is both the nature of former elites and the opposition. Second, when initial transitional justice mechanisms appear to favor forgetting over remembering, subsequent attempts at addressing the past may have only very limited results.

REFERENCES

ALBU, Mihai. 2008. *Informatorul: Studiu asupra colaborării cu Securitatea.* Iaşi: Polirom.

BARAHONA DE BRITO, Alexandra, Carmen GONZALES ENRIQUEZ & Paloma AGUILAR. 2001. *The Politics of Memory: Transitional Justice in Democratizing Societies.* Oxford: Oxford University Press.

BĂLAN, Ion. 2000. *Regimul concentraţionar din România: 1945-1964*. Bucharest: Civic Academy Foundation.

CALHOUN, Noel. 2004. *Dilemmas of Justice in Eastern Europe's Democratic Transition*. New York: Palgrave MacMillan.

CIOBANU, Monica. 2013. Recent Restorative Justice Measures in Romania (2006-2010). *Problems of Post-Communism* 60 (5): 45-57.

CIOBANU, Monica. 2011. Rewriting and Remembering Romanian Communism: Some Controversial Issues. *Nationalities Papers* 39(2): 205-221.

CODRESCU, Andrei. 1991. *The Hole in the Flag: A Romanian Exile's Story of Return and Revolution*. New York: William Morrow and Company, Inc.

COMISIA PREZIDENŢIALĂ PENTRU ANALIZA DICTATURII COMUNISTE DIN ROMÂNIA (CPADCR). 2007. *Raport Final*, eds. Vladimir Tismăneanu, Dorin Dobrincu & Cristian Vasile. Bucharest: Humanitas.

DAVID, Roman. 2011. *Lustration and Transitional Justice in the Czech Republic, Hungary, and Poland*. Philadelphia, University of Pennsylvania Press.

DELETANT, Dennis. 1996. *Ceauşescu and the Securitate: Coercion and Dissent in Romania, 1965-1989*. Armonk, NY: M. E. Sharpe.

ELSTER, Jon, ed. 1996. *The Roundtable Talks and the Breakdown of Communism*. Chicago: University of Chicago Press.

ELSTER, Jon. 2004. *Closing the Books: Transitional Justice in Historical Perspective*. Cambridge: Cambridge University Press.

GEORGESCU, Vlad. 1987. Romania in the 1980s: The Legacy of Dynastic Socialism. *East European Politics and Societies* 2 (1): 69-93.

GROSESCU, Raluca & Raluca URSACHI. 2009. *Justiţia penală de tranziţie: De la Nürnberg la postcomunismul românesc.* Iaşi: Polirom.

GUSSI, Alexandru. 2013. State Institutions and the 'Balance' of Memories. Paper presented at the 45th *Annual Convention of the Association for Slavic, East European & Eurasian Studies*, Boston, MA.

HAYNER, Priscilla. 2002. *Unspeakable Truths: Facing the Challenge of Truths Commissions*. New York: Routledge.

HUNTINGTON, Samuel. 1991. *The Third Wave: Democratization in the Late Twentieth Century*. London: University of Oklahoma Press.

HORNE, Cynthia. 2014. 'Silent Lustration:' Public Disclosures as Informal Lustration Mechanisms in Bulgaria and Romania. *Problems of Post-Communism* (in press).

HORNE, Cynthia. 2009. Late Lustration Programs in Romania and Poland: Supporting and Undermining Democratic Transitions? *Democratization* 16 (2): 344-377.

ILIESCU, Ion. 2000. *După 20 de ani: 1989 – An de cotitură în istoria naţională şi în viaţa internaţională*. Bucharest: Semne.

JASIEWICZ, Krzysztof. 2007. The Political Party Landscape. *Journal of Democracy* 18(4): 26-33.

KRITZ, Neill J., ed. 1995. *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Washington, DC: United States Institute of Peace.

LETKI, Natalia. 2002. Lustration and Democratization in East-Central Europe. *Europe-Asia Studies*. 54(4): 529-552.

LINZ, Juan J. & Alfred STEPAN. 1996. *Problems of Democratic Transition and Consolidation*. Baltimore: John Hopkins University Press.

MCADAMS, James. 2001. *Judging the Past in Unified Germany*. Cambridge: Cambridge University Press.

MUNGIU-PIPPIDI, Alina. 2007. EU Accession is No 'End of History." *Journal of Democracy*, 18 (8): 8-16.

MURARU, Andrei et al. 2008. *Dicţionarul penitenciarelor din România comunistă (1945-1967)*. Iaşi: Polirom.

NALEPA, Monika. 2010. *Skeletons in the Closet: Transitional Justice in Post-Communist Europe*. Cambridge: Cambridge University Press.

OPREA, Marius. 2004. *Moştenitorii Securităţii*. Bucharest: Humanitas.

PALADE, Rodica. 2011. Profitorii revoluției. *Revista 22*. 27 July 2011.

PETRESCU, Cristina & Dragoş PETRESCU. 2010. The Piteşi Syndrome: A Romanian Vergangenheitsbewältigung? In *Postdiktatorische Geschichtskulturen in Süden und Osten Europas: Bestandsaufnahme und Forschungsperspektiven*, eds. Stefan Troebst with Susan Baumgartl, 502-618. Göttingen: Wallstein Verlag.

PETRESCU, Dragoş. 2010. *Explaining the Romanian Revolution of 1989: Culture, Structure and Contingency.* Bucharest: Editura Enciclopedică.

PETRESCU, Dragoş. 2014. Repararea nedreptăților comise de fostul regim comunist din România: Un caz special de difuziune intra-regională a modelului german. In *Jurisdicția constituțională după 20 de ani de la căderea cortinei comuniste*, eds. Augustin Zegrean & Mihaela-Senia Costinescu, 230-253. Bucharest: Universul Juridic.

NEDELSKY, Nadya. 2004. Divergent Responses to a Common Past: Transitional Justice in the Czech Republic and Slovakia. *Theory and Society* 33 (1): 65-115.

RATESH, Nestor. 1993. *Romania: The Entangled Revolution*. New York: Praeger.

ROHT-ARIAZA, Naomi & Javier MARIEZCURENNA, eds. 2006. *Transitional Justice in the Twenty-First Century*. Cambridge: Cambridge University Press.

RUSAN, Romulus. 2007. *Cronologia şi geografia represiunii comuniste în România*. Bucharest: Civic Academy Foundation.

SIANI-DAVIES, Peter. 2005. *The Romanian Revolution of December 1989*. New York: Cornell University Press.

SIKKINK, Kathryn. 2011. *The Justice Cascade: How Human Rights Prosecutions Are Changing the World Politics.* New York: W. W. Norton & Company.

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

STAN, Lavinia & Nadya NEDELSKI. 2012. Access to Secret Files. In *Encyclopedia of Transitional Justice*, vol. 1, eds. Lavinia Stan & Nadya Nedelski, 1-5. Cambridge: Cambridge University Press.

STAN, Lavinia, ed. 2009. *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past.* London: Routledge.

STĂNESCU, Mircea. 2010. *Reeducarea în România comunistă (1954-1952): Aiud, Suceava, Piteşti, Braşov*. Iaşi: Polirom.

TEITEL, Ruti G. 2000. *Transitional Justice.* Oxford: Oxford University Press.

TISMĂNEANU, Vladimir. 2003. *Stalinism for all Seasons: A Political History of Romanian Communism.* Berkeley: University of California Press.

TUDOR, Cristina & Cornel SERACIN. 2010. Proclamația de la Timişoara: Document al Revoluției Române din 1989. *Memorial 1989* 1 (6): 24-44.

URSACHI, Raluca. 2010. National Council for the Study of Securitate Archives. In *Encyclopedia of Transitional Justice*, vol. 3, eds. Lavinia Stan & Nadya Nedelski, 308-316. Cambridge: Cambridge University Press.

VERDERY, Katherine. 1991. *National Ideology under Communism: Identity and Cultural Politics in Ceausescu's Romania.* Berkeley: University of California Press.

WELSH, Helga. 1996. Dealing with the Communist Past: Central and East European Experiences after 1990. *Europe-Asia Studies* 48 (3): 419-428.

WILLIAMS, Kieran, Brigit FOWLER & Aleks SZCZERBIAK. 2005. Explaining Lustration in Central Europe: A 'Post-Communist' Politics Approach. *Democratization* 12 (1): 22-43.