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Special issue

Law, History and Justice in Romania

Edited by Monica Ciobanu and Mihaela Șerban

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Law, History, and Justice in Romania: New Directions in Law and Society Research

Mihaela Şerban and Monica Ciobanu

This special issue of the *Journal of Romanian Studies* examines law as a social institution and the ways in which it intersects with the larger social, historical, political and economic world. While the articles included here mostly explore the intersections between law, history, and justice, they consciously reject positivist and doctrinal analyses of law and an understanding of law as primarily a (repressive) instrument of the state. Instead, we focus on "living law" and the complex interactions between law and social issues, including how law is created, interpreted and implemented, and how individuals and organizations live, shape and evade it in everyday interactions within and outside of the state. We also want to situate this flourishing area of research not only within broader fields, such as transitional justice and legal history, but also in the expansive law and society tradition that has been open to interdisciplinary legal research worldwide, but is perhaps less well known in Romania.

The study of law and/in society is a relatively new, interdisciplinary field, stronger in common law countries compared to civil law ones, but growing worldwide for the past three decades.[1] Foreshadowed by the sociology of law and authors like Durkheim and Ehrlich, law and society research developed both as an intellectual and an institutional project.[2] Conceptually, the push back against legal formalism in the United States resulted in legal realists' hope that law could be an instrument of social engineering and positive social change, tackling issues from poverty to crime. Institutionally, the second part of the twentieth century saw both the infusion of resources and the creation of new institutional structures,

1 I will be using "law and society" and "sociolegal" interchangeably to reflect the comparable scholarly traditions focused on the interdisciplinary study of law around the world. We will also discuss it as a "field," while acknowledging the long history of debates around the nature of law and society as a field, a movement, etc., and its relations to other interdisciplinary traditions centered on law.

2 Lynn Mather, "Law and Society," in *The Oxford Handbook of Political Science*, ed. Robert R. Goodin (Oxford: Oxford University Press, 2011), 289–304; Felice Levine, "Goose Bumps and 'The Search for Signs of Intelligent Life' in Sociolegal Studies: After Twenty-Five Years," *Law & Society Review*, 24 (1990): 7–33; Bryant Garth and Joyce Sterling, "From Legal Realism to Law and Society: Reshaping Law for the Last Stages of the Social Activist State," *Law & Society Review*, 32(1998):409–71.

such as the Law and Society Association and *The Law & Society Review*, created in the mid-1960s, which channeled the emerging scholarship.

Both of these developments are less pronounced elsewhere. The British Socio-Legal Studies Association was formed only in 1990, but studies of law in action, its effects and connection to the wider social system had been ongoing for decades.[3] The French *Droit et Société* began publication in 1985, while the Oñati International Institute for Sociology of Law was established in 1988 and has since become a major hub for law and social sciences research around the world. The Asian Law & Society Association was created in 2015, the *Asian Journal of Law and Society* in 2014, and *Islamic Law & Society* began publication in 1994. Studies of law and society in Latin America have had less of an institutional base, but have thrived nonetheless within specific national contexts and also comparatively.[4] Within the American Law and Society Association, collaborative research networks and international research collaboratives have provided some institutional structure and space for collaborations.[5]

The core of the law and society approach is that law—norms, institutions, processes, etc.—must be understood in context. Law is deeply embedded in society and constituted in and through political, historical, social, and cultural interactions. Simply put, law is a political, historical, social and cultural construct, both reflecting and impacting other social systems.[6] The law and society tradition aims to understand law in action, how it functions and how it is connected to other institutions, systems, groups, etc. Law and society, in other words, are mutually constitutive.

Law and society scholarship is distinguished from other fields in the following ways: it is multidisciplinary, interdisciplinary (e.g. legal history, law and psychology) and trans-disciplinary (at its best, question-driven), drawing from cross-disciplinary methodology and theory to focus on empirical studies of "law in action" and critiques of legal positivism (the "outside point of view" on law).[7] Law and society scholarship has a normative, substantive focus on questions of justice, equality, and power (for

3 D. R. Harris, "The Development of Socio-Legal Studies in the United Kingdom," *Legal Studies*, 3, no.3 (1983): 315–333.

4 Rachel Sieder, Karina Ansolabehere, and Tatiana Alfonso, "Law and Society in Latin America. An Introduction," in *Routledge Handbook of Law and Society in Latin America*, eds. Rachel Sieder, Karina Ansolabehere, and Tatiana Alfonso (New York and London: Routledge, 2019), 1–21.

5 See the website of the Association, https://lawandsociety.org/crn.html, accessed January 21, 2020.

6 Mather, "Law and Society."

7 Macaulay, Stewart, Lawrence Friedman, and Elizabeth Mertz, *Law in Action: A Socio-Legal Reader* (New York: Foundation Press, 2007), 1.

example, in the critical legal studies tradition in the United States, or "law from below" in Latin America or Southeast Asia), further reflected in a commitment to advocating for progressive policy changes.[8]

Major areas of research and contributions of law and society scholarship include law and social change, such as the relationship between courts, litigation and social and political change;[9] the study of courts, disputes and disputing, including alternatives to courts and judicial behavior;[10] the study of the legal profession and other legal actors (e.g. court clerks);[11] legal ideology (meanings, ideas, beliefs, values encoded in and by law and the construction of legal meaning) and legal consciousness (how people engage with the law writ large);[12] legal pluralism (co-existence of multiple legal and regulatory regimes);[13] social control;[14] regulatory law and governance; and the intersections between law and various other systems (such as law and economics, law and development, etc.).[15]

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8 For an influential discussion and critique, see Austin Sarat and Susan Silbey, "The Pull of the Policy Audience," *Law and Policy*, 10(1988): 97–166.

9 See Stuart Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change* (Ann Arbor: University of Michigan Press, 2004, 2nd ed.).

10 Classic studies include William Felstiner, Richard Abel, and Austin Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming …," *Law & Society Review*, 15, Nos. 3–4(1980–1): 631–54; Marc Galanter, "Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change," *Law & Society Review,* 9, No. 1(1974): 95–160; Frances Kahn Zeman, "Legal Mobilization: The Neglected Role of the Law in the Political System," *American Political Science Review*, 77(1983):690–703.

11 For example, Barbara Yngvesson, "Making Law at the Doorway: The Clerk, the Court, and the Construction of Community in a New England Town," *Law & Society Review*, 22, No. 3 (1988):409–448; Carol Greenhouse, Barbara Yngvesson, and David Engel, *Law and Community in Three American Towns* (Ithaca: Cornell University Press, 1994).

12 Sally Engle Merry, *Getting Justice and Getting Even* (Chicago: University of Chicago Press, 1990); Patricia Ewick and Susan Silbey, *The Common Place of Law* (Chicago: University of Chicago Press, 1998).

13 For example, Sally Engle Merry, "Legal Pluralism," *Law & Society Review*, 22, No. 5 (1988): 869–896; Franz von Benda-Beckmann, "Who's Afraid of Legal Pluralism?," *Journal of Legal Pluralism*, 47(2002): 37–83; Brian Z. Tamanaha, "The Folly of the 'Social Scientific' Concept of Legal Pluralism," *Journal of Law and Society*, 20, No. 2 (1993): 192–217.

14 Landmark studies include Donald Black, "Crime as Social Control," *American Sociological Review*, 48, No. 1 (1983): 34–45; David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford: Oxford University Press, 2001).

15 E.g., Guido Calabresi, "Some Thoughts on Risk Distribution and the Law of Torts," *Yale Law Journal*, 70(1961): 499–553; Ronald Coase, "The Problem of Social Cost," *Journal of Law and Economics*, 3(1960): 1–44; Richard A. Posner, *Economic Analysis of Law* (Boston: Little Brown, 1st edition, 1973); Ugo Mattei, *Comparative Law and Economics* (Ann Arbor, MI: The University of Michigan Press, 1988); Kevin E. Davis and Michael J. Trebilcock, "The Relationship between Law

There are currently 56 collaborative research networks within the Law and Society Association, covering substantive and geographical areas, theory and methodology, and newly emerging topics, such as law and emotion.[16]

While the core of the law and society approach binds sociolegal scholarship across the world, different regions inevitably have somewhat different research agendas. For fruitful comparison purposes, we will briefly discuss here Latin America. Most law and society research in Latin America has been shaped by both law and development approaches and critical reactions to a law and development agenda originating in the Global North, such as Marxist and critical legal studies ones, as well as alternative law and studies of law "from below."[17]

Latin American scholars have worked on topics most relevant to their particular contexts, such as exploring gaps between norms and practice (the gap between law in books and law in action, including non-compliance with the law), legal pluralism, clientelistic legal cultures, authoritarianism, transitional justice, socio-economic rights and social constitutionalism, inequality, violence, mobilizing international law and national constitutions to fight against discrimination, etc. They helped reconceptualize bedrock legal concepts, for example neo-constitutionalism (social constitutionalism) and specifically the extension of socio-economic rights and their justiciability, problems of implementation and structural capacity of the state, questions of excessive executive power and centralization, and brought attention to issues mostly neglected in the Global North, such as indigenous peoples' rights (claims to justice based on recognition) or the globalization of national legal fields (from practice to academia, e.g. Inter-American Court of Human Rights as a key site for regional human rights standards).[18] Latin American sociolegal scholarship has been more topic focused, less quantitative and more qualitative,[19] significantly more

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and Development: Optimists versus Skeptics," *The American Journal of Comparative Law*, 56, No. 4 (2008): 895–946; David M. Trubek, "Toward a Social Theory of Law: An Essay on the Study of Law and Development," *The Yale Law Journal*, 82, No. 1 (1972): 1–50.

16 https://www.lawandsociety.org/crn.html; last accessed January 20, 2020.

17 Sieder, Ansolabehere, and Alfonso, "Law and Society in Latin America. An Introduction," 4.

18 Cesar Rodriguez-Garavito, "Remapping Law and Society in Latin America: Visions and Topics for a New Legal Cartography," in *Law and Society in Latin America. A New Map*, ed. Cesar Rodriguez-Garavito (New York: Routledge, 2015), 1–20.

19 Sieder, Ansolabehere, and Alfonso, "Law and Society in Latin America. An Introduction."

comparative than elsewhere in the world (facilitated by language commonalities), and theoretically creative (legal counter-mapping).[20]

Law and development and its modernization assumptions have driven Latin American sociolegal research and have left a legacy of continued focus on law and social change, one that is only partially present in Central and Eastern European (CEE) countries. The two regions do have other similarities: both belong to the civil law tradition, both are driven by a modernization paradigm that sees law primarily from an instrumentalist perspective, both have relatively weak institutional infrastructures for sociolegal research, both have strong comparative research traditions, and certain topics are important for both, such as transitional justice and corruption. However, the law and society spirit—understanding law in its context, on the ground, in action—is not as prominent in Central and Eastern European studies, and neither is the concern with the role of law in fostering progressive social change. While our own Eugen Ehrlich may have been the father of legal pluralism and living law, this is also a large missing area from contemporary CEE national or regional studies of law in society.[21]

Law and society in Central and Eastern Europe generally and Romania specifically is an even more recent field than elsewhere. While Poland and Hungary, for example, have had a longer tradition of interdisciplinary legal studies and particularly sociology of law,[22] Romania had a different historical context up to 1989. Area studies continue to be dominated by more traditional research approaches, and from a sociolegal perspective, two have been important: studies of constitutional and democratic changes in post-communism, and transitional justice studies. This is partly due to a hyper-positivist legal tradition that discourages interdisciplinary research, but also to distinctive academic traditions, contexts, and networks. Political scientists and historians have filled in some of the gaps, and some topics have received more attention than others (for example, corruption, the rule of law, governance, EU accession, property, etc.), but specifically sociolegal works of inquiry that center law in action

20 Rodriguez-Garavito, "Remapping Law and Society in Latin America," 5–6.

21 Of note is the continuing influence of Leon Petrażycki, the Polish sociologist of law, who was also interested in ideas of legal pluralism and living law. See Jacek Kurczewski, "Sociology of Law in Poland," *The American Sociologist*, 32, No. 2 (2001): 85–98; Roger Cotterrell, "Leon Petrazycki and Contemporary Socio-Legal Studies," *International Journal of Law in Context*, 11(2015):1–16.

22 Kurczewski, "Sociology of Law in Poland;" Grażyna Skapska, "The Sociology of Law in Poland. Problems, Polemics, Social Commitment," *Journal of Law and Society*, 14, No. 3 (1987): 353–365.

within its historical, political, social, economic, and cultural context are not as common.

Mapping law and society research in Central and Eastern Europe would have to start from the distinctive context of the region, shaped by the region's neoliberal transition from communism and the top-down process of European integration. This new law and development wave still draws from modernization assumptions, this time within a transitional paradigm (transitions to democracy, the rule of law, and market economy), with massive external funding (the World Bank, etc., later the EU). Post-communist Central and Eastern Europe focused on institutional reforms, market-oriented legal reforms, and policy-making through law.

Research followed: top areas of research and publication have come overwhelmingly from political science and economics, and broadly focused on economy, law and society, with privatization a top concern;[23] and separately transitional constitutionalism, institutional design, judicial reform, and law and politics,[24] itself with two sub-strands: transitional, and more recently law and courts/policy, with corruption and the rule of law popular subtopics.[25] European integration processes (whether

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23 See, e.g., Roman Frydman and Andrzej Rapaczynski, *Privatization in Eastern Europe: Is the State Withering Away?* (Budapest: Central European University Press, 1994).

24 See, e.g., Andrew Arato, "Constitution and Continuity in the East European Transitions," *Tilburg Law Review*, 3, no 4(1994): 345–370; Jon Elster, "Constitutionalism in Eastern Europe: An Introduction," *The University of Chicago Law Review*, 58, no. 2 (1991): 447–482; James McAdams (ed.), *Transitional Justice and the Rule of Law in New Democracies* (Notre Dame, London: Univ. of Notre Dame Press, 1997); Gábor Halmai, "Democracy versus Constitutionalism? The Re-establishment of the Rule of Law in Hungary," *Journal of Constitutional Law in Eastern and Central Europe* 5 (1994); Claus Offe, "Designing Institutions for East European Transitions," Public Lecture no.9, delivered at Collegium Budapest 17 December 1993; Dick A.E. Howard (ed.), *Constitution Making in Eastern Europe* (Washington, DC: The Woodrow Wilson Center Press, 1993); Ruti Teitel, "Post-Communist Constitutionalism: A Transitional Perspective," *Columbia Human Rights Law Review* 26 (1994): 167.

25 See, e.g., András Sajó, "From Corruption to Extortion: Conceptualization of Post-Communist Corruption," *Crime, Law & Social Change* 40(2003): 171–194; András, Sajó, "Preferred Generations: A Paradox of Restoration Constitutions," in *Constitutionalism, Identity, Difference and Legitimacy*, Michel Rosenfeld ed. (Durham, London: Duke University Press, 1994); Herman Schwartz, *The Struggle for Constitutional Justice in Post-Communist Europe* (Chicago: The University of Chicago Press, 2000); Kim Lane Scheppele, "The Inevitable Corruption of Transition," *Connecticut Journal of International Law* 14(1999): 509; Kim Lane Scheppele, "Constitutional Negotiations: Political Contexts of Judicial Activism in Post-Soviet Europe," *International Sociology,* 18, no. 1 (2003): 219–238; Alexei Trochev, *Judging Russia: The Role of the Constitutional Court in Russian Politics 1990–2006* (Cambridge: Cambridge University Press, 2008); Marina Zaloznaya, The Politics of Bureaucratic Corruption in Post-Transitional Eastern Europe (Cambridge: Cambridge Univer-

EU or Council of Europe accessions) have spawned their own, mostly disciplinary (law and/or political science) literatures, with much of the focus on supranational courts.[26] Certain areas of research receive more attention than others, for example, crime, legal reform, and law and politics.[27] The most fruitful areas of law and society research have come from transitional justice, specifically lustration and property restitutions, particularly in the early 1990s and 2000s.[28] More recently, legal history (both in general and during socialism) and legal anthropology have made inroads.[29]

Influential voices include, among many others, Martin Krygier and Wojciech Sadurski on constitutionalism, the rule of law, and rights in the region;[30] Jiří Přibáň on the sociology of law, legal philosophy, constitutional and European comparative law, and the theory of human rights;[31]

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sity Press, 2017; Cristina Parau, *Transnational Networking and Elite Self-Empowerment. The Making of the Judiciary in Contemporary Europe and Beyond* (Oxford: Oxford University Press, 2018).

26 See, e.g. Alexei Trochev, "All Appeals Lead to Strasbourg? Unpacking the Impact of the European Court of Human Rights on Russia," *Demokratizatsiya,* 17, no. 2 (2009): 145–178; Wojciech Sadurski, "Partnering with Strasbourg: Constitutionalisation of the European Court of Human Rights, the Accession of Central and East European States to the Council of Europe, and the Idea of Pilot Judgments," *Human Rights Law Review*, 9, no. 3(2009): 397–453.

27 See, e.g., Kathryn Hendley, "Revisiting the Emergence of the Rule of Law in Russia," *Global Crime*, 16, no. 1 (2015): 19–33; Leslie Holmes, *Rotten States?: Corruption, Post-Communism and Neoliberalism,* (Durham and London: Duke University Press, 2006); Maria Popova, *Politicized Justice in Emerging Democracies: A Study of Courts in Russia and Ukraine* (Cambridge: Cambridge University Press, 2012); Alexei Trochev, *Judging Russia: The Role of the Constitutuonal Court in Russian Politics 1990–2006* (Cambridge: Cambridge University Press, 2008).

28 See, e.g., Ruti Teitel, "Transitional Jurisprudence: The Role of Law in Political Transformation," 106 *Yale Law Journal* 106 (1997): 2009; Lavinia Stan, *Transitional Justice in Eastern Europe and the former Soviet Union* (London: Routledge, 2009); Monika Nalepa, *Skeletons in the Closet: Transitional Justice in Post-Communist Europe* (Cambridge: Cambridge University Press, 2010).

29 See, e.g., Katherine Verdery, *The Vanishing Hectare: Property and Value in Postsocialist Transylvania* (Ithaca, NY: Cornell University Press, 2003); Inga Markovits, *Justice in Lűritz: Experiencing Socialist Law in East Germany* (Princeton: Princeton University Press, 2010); Peter Solomon, *Soviet Criminal Justice under Stalin* (Cambridge: Cambridge University Press, 1996); Mihaela Şerban, *Subverting Communism in Romania: Law and Private Property 1945–1965* (Lanham, MD: Lexington Books/Rowman and Littlefield, 2019).

30 See, e.g., Adam Czarnota, Martin Krygier, and Wojciech Sadurski, *Rethinking the Rule of Law after Communism* (Budapest: Central European University Press, 2005).

31 See, e.g. Jiří Přibáň, *Dissidents of Law: On the 1989 Velvet Revolutions, Legitimations, Fictions of Legality and Contemporary Version of the Social Contract* (London: Routledge, 2019).

Wiktor Osiatyński on human rights;[32] Kim Lane Scheppele on constitutionalism;[33] and Roman David on lustration and transitional justice.[34] Anchor research centers for legal and sociolegal research have included Central European University (legal studies and human rights programs in particular), and the Max Planck Institute for Social Anthropology (legal anthropology).

Landmark sociolegal publications for the region include, among others, Inga Markovits's 2010 book *Justice in Lűritz*, Katherine Verdery's body of work on Romanian property, Lavinia Stan's body of work on transitional justice overall and in Romania separately, Kathryn Hendley's 2017 monograph *Everyday Law in Russia*,[35] and from a critical perspective, Rafal Mańko's, Cosmin Cercel's, and Liviu Damşa's works on Central Europe and Romania, respectively.[36] CEE scholars, whether based inside or outside of the region, have been reshaping more recently developed fields like memory studies,[37] and separately there is a relatively large body of research on criminal justice, both historical and contemporary.[38] Law and society research in Central and Eastern Europe and the post-Soviet space is entering a new phase, from edited volumes to special issues in various journals, some emerging out of collaborative networks based in the American Law and Society Association.[39] This special issue of law

32 See, e.g., Wiktor Osiatyński, *Human Rights and Their Limits* (Cambridge: Cambridge University Press, 2009).

33 See, e.g., Miklós Bánkuti, Gábor Halmai, and Kim Lane Scheppele, "Hungary's Illiberal Turn: Disabling the Constitution," *Journal of Democracy*, 23, No. 3(2012): 138–146.

34 See, e.g. Roman David, "Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989–2001)," *Law & Social Inquiry*, 28, No. 2 (2003): 387–439.

35 Published by Cornell University Press. While there are significant differences between the former Soviet Union and Central and Eastern European countries, this book exemplifies the best in sociolegal research in the region more broadly.

36 See, e.g., Rafał Mańko, Cosmin Sebastian Cercel and Adam Sulikowski eds., *Law and Critique in Central Europe: Questioning the Past, Resisting the Present* (Oxford: Counterpress, 2016).

37 See, e.g., Monica Ciobanu, "Criminalising the Past and Reconstructing Collective Memory: The Romanian Truth Commission," *Europe-Asia Studies*, 61, No. 2 (2009): 313–336; Monica Ciobanu, *Repression, Resistance and Collaboration in Stalinist Romania 1944–1964. Post-Communist Remembering* (London: Routledge, 2020); Uladzislau Belavusau and Aleksandra Gliszczynska-Grabias, *Law and Memory: Towards Legal Governance of History* (Cambridge: Cambridge University Press, 2017).

38 See, e.g., Lauren McCarthy, *Trafficking Justice: How Russian Police Enforce New Laws, from Crime to Courtroom* (Ithaca, NY: Cornell University Press).

39 See, e.g., William Simmons ed., *East European Faces of Law and Society: Values and Practices* (Leiden: Brill, 2014); Special Issue: A Law & Society Take on Legality in the Former Soviet Union, *Demokratizatsiya: The Journal of Post-Soviet Demo-*

and society in Romania both contributes to this broader literature and introduces it to scholars of Romanian studies.

We attempt here to undertake an innovative law and society analysis by bringing together seven seasoned scholars from several disciplines in humanities and social sciences, including anthropology (Emanuela Grama), comparative literature (Simona Livescu), history (Ştefan Cristian Ionescu), law and society (Mihaela Şerban), political science (Dragoş Petrescu), sociolegal studies (Cosmin Cercel), and sociology (Monica Ciobanu). Regardless of their academic field, the contributors engage in interdisciplinary studies of "law in action" located in various historical settings and different types of political regimes. Cercel, Ionescu, and Şerban address issues of legality during the interwar era of the authoritarian regimes of King Carol the Second (1938–1940) and Marshall Ion Antonescu's fascist wartime dictatorship (1940–1944). These authors point out that the reverse of liberal legality, which resulted in exclusionary and repressive legislation against ethnic minorities (especially the Jewish population), has to be understood within broader cultural and historical processes involving modernization, nation and state building occurring in the aftermath of the 1918 unification of the Romanian state. They emphasize that the regression of rights and liberties embodied in the 1923 Constitution that defined the interwar constitutional monarchist government was partly the result of the inherent predisposition to authoritarian practices embedded in the Versailles Treaty after the First World War.

But whether it is at the local level of the administrative courts in Timişoara where, according to Şerban, Jewish and then German claimants tried to renegotiate their ethnic identity, or within the inner circle of legal professionals under Antonescu (see Ionescu), legal institutions and legal reasoning in non-democratic regimes were not entirely shaped by decisions and practices from above. There were ongoing pressures and challenges from below that influenced the legal realm as a site for both contestation and affirmation of rights and identities. In fact, conflicts over legal rights tend to resurface after more than half a century later. Both Ciobanu and Grama examine the links, continuities, and discontinuities between the post-war transition to communist legality (1945–1947) and the post-1989 transition to democracy. Grama's article covers an even longer historical period of major legal and political transformation that

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cratization, 28, No. 1 (2020); Peter Solomon and Kaja Gadowska eds., Special Issue: Legal Change in Post-Communist States: *Courts, Police and Public Administration, Communist and Post-Communist Studies*, 51, No. 3 (2018), reissued as *Legal Change in Post-Communist States. Progress, Reversions, Explanations* (Stuttgart: ibidem-Verlag, 2019).

spans over almost a century and a half, since the late 1800s (several decades before the formation of the Romanian state in 1918) until the post-communist transition of the early 21st century. She examines the case of property restitution involving the Miko high school built in the late 19th century as a religious institution by the Reformed Church in the exclusively (at the time) ethnically Hungarian city of Sfântu-Gheorghe in Transylvania. Whether involving legal claims over the confiscated Miko high school (Grama) or a criminal trial against the communist era prison commandant Alexandru Vișinescu (Ciobanu), local and national courts have become sites in which the meaning of family, local and ethnic communities, and even the larger national and transnational diaspora communities are negotiated and redefined.

But such struggles over issues of justice also involve the public at large through informal quasi-legal institutions. This was the case of the National Council for the Study of the Securitate Archives (CNSAS) examined by Petrescu, and the Sighet Memorial discussed by Livescu. As the two authors persuasively argue, both institutions contribute to the education and socialization of citizens in the values of human rights and justice. While CNSAS provides access to the public, in digitized form, to the files of those who collaborated with the communist secret police and impinged on the rights of their fellow citizens, the Sighet Memorial exposes its many visitors from the country and abroad to physical, visual and audio artefacts and representations of communist repression.

By combining theoretical frameworks and the methodologies of their respective disciplines with those of related areas of research, the authors bring empirical contributions to specific topics that simultaneously raise broader substantive issues and fundamental questions regarding law and society. Among the latter, the most striking relate to issues of justice, power and legitimacy, social and political change (social engineering and regime change), and the construction of meaning (as ideology or as value-systems that constitute the basis of national community or other collectivities). With respect to justice, the articles highlight that whether liberal, illiberal, authoritarian, totalitarian or democratic, every political regime rules and claims legitimacy based on a particular type of justice and corresponding sets of institutions.

Authoritarian regimes often justify their repressive measures in the name of law and order exerted on behalf of a charismatic or supreme leader. In his article, Cercel shows that Carol's return to the throne in the context of political crisis in 1930 (after his abdication five years earlier), occurred in a fashion that conflicted with the legal principles of constitutional monarchy and defined him as "an ideological and quasi-mythical

figure," and not as a constitutional monarch. Similarly, Antonescu continued to subordinate and instrumentalize the judicial system in a situation of rising authoritarianism and ethno-nationalism. Both Cercel and Ionescu describe the multifaceted aspects of authoritarian legality during Carol's and Antonescu's regimes, including extrajudicial arrests, deportations and killings targeting political opponents, but mostly ethnic and religious minorities. Şerban makes a pertinent point that the 1938 constitution represented the definitive break with liberal constitutionalism that guaranteed inclusive rights and liberties to all citizens regardless of their ethnicity or religion and the establishment of ethno-constitutionalism. Both she and Ionescu provide detailed and insightful information based on archival documentation as well as firsthand autobiographical accounts of the racialist and exclusionary legal practices against members of the Jewish communities during Antonescu's regime.

The first part of Ciobanu's article examines legal developments following the August 1944 overthrow of the fascist regime during the early years of communization, the legal foundation of which was rooted in the Soviet jurisprudence of terror. By focusing on Stalinist-type show trials levelled against the leaders of the pre-war historical National Peasant Party (PNŢ), she points out that revolutionary class struggle and the claim of the Communist Party to be the sole representative of the working class constituted at the time the regime's justification for repressive action. However, following the mobilization of anti-communist civic activists and the descendants of some of the PNŢ's prominent figures after 1989, this narrative was challenged and at least partially dismantled by the legal system.

Grama also discusses how in post-communism courts become sites where ethnic and religious minorities attempt to reclaim their political, cultural and property rights. In a similar vein to the families of former political prisoners who demanded legal and moral recognition for their parents and grandparents, the Hungarian minority in Transylvania mobilized around their collective rights by invoking their own marginalization and discrimination by the communist authorities. The restitution of the confiscated community properties in 1948 in Transylvania belonging to the German and Hungarian minorities became a much politicized and legally entangled topic in post-communism. These deep-seated historical tensions and legal ambiguities are clearly illustrated by the developments following the 2012 revocation of the 2001 decision taken by the Sfântu-Gheorghe city council that gave the Reformed Church property rights over the Miko high school. The ensuing legal proceedings initiated on behalf of the rights of the Reformed Church and the Hungarians of Transylvania in

local, national and international courts were paralleled by the direct involvement of the Hungarian authorities. As such, the Miko high school case reflects the ongoing contradictions between the legal system's abilities and weaknesses in defining the relationship between community and property rights. This point was also made by Şerban when analyzing the Jewish claimants' efforts to utilize legal loopholes to prove their Christian identity during the war.

Legal practices and institutions play a significant role in bringing social and political change to both non-democratic and democratic regimes. However, the degree to which political authorities utilize or subordinate the legal system varies between them. On the one hand, the creation of a purely ethnic and religiously based nation during Antonescu's dictatorship (see Cercel and Şerban), or of a classless society free of bourgeois elements ruled by a communist party (see Ciobanu) represent extreme cases of social engineering. On the other, quasi-legal mechanisms in democratic societies engage in more subtle forms of symbolic justice, which teach citizens the values of freedom, rights, and liberties. Petrescu provides a compelling argument of how after 2008, the CNSAS transformed itself from a "vetting" agency into a fact-finding institution. By providing public access, through its database, to information about individuals who collaborated with Securitate, the post-communist generations have been able to internalize important lessons in civic education. This pedagogical function is also exercised by post-communist memorial museums. Livescu's analysis of two such institutions focusing especially on repression and victimization rather than issues of collaboration and acquiescence—the Sighet Memorial in Sighet, Romania and the House of Terror in Budapest, Hungary—offers a fascinating story of how human rights museums produce a highly emotional but incomplete version of the history of communism. But as Ciobanu shows, criminal courts can also easily fall into the trap of manufacturing incomplete accounts of the past. This was the case of the Vişinescu trial that primarily represented the voices of only one segment of those victimized by the defendant and the regime, that is, the leaders of the National Peasant Party.

In fact, this uneasy relationship between legal redress and historical memory represents a common theme addressed in various ways by most of the contributors (Ciobanu, Grama, Livescu, Şerban and Petrescu). When courts, legal professionals and administrative agencies attempt to rationalize their decisions on behalf of a collective entity (our audience), legal reasoning and the ensuing application of justice become a performative act. This was the experience of Jewish defendants and their attorneys from Banat who attempted to persuade the authorities in detail of their

gentile background (Şerban). The history of communism as a narrative of national victimization was dramatically re-enacted during Vişinescu's trial. Such "staged" reenactments take similarly expressive forms through practices of mis-remembering and over-remembering typical of the red and dark tourism drawn by the Sighet Memorial or advertised by the House of Terror (Livescu).

This overview of the seven contributions reveals both the strengths and the opportunities that law and society research can bring to Romanian studies. By engaging in interdisciplinary research on law, history, and justice, scholars of the social sciences and humanities can enhance current and future academic scholarship in many areas, including legal and political theory, transitional justice and memory studies, and arts and politics in post-communist societies. At the same time, some of the lessons provided by the Romanian case could constitute a source of inspiration for future studies of post-socialism in other regions of the world yet to pursue their own legal and political transitions.