


## ARTICLE

# Fascist Claims to Sovereign Power: Law, Politics and the Romanian Legionary Movement

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This article aims to provide the basis for a theoretical framework conceptualising Romanian fascist ideology at work in relation to law and politics, by focusing on the way it operated within the movement's understanding of foundational concepts of state power, sovereignty and justice. In doing so, I investigate the relationship between fascism, understood here as both an ideology and a political movement, and constitutional law in the context of interwar Romania. I ask how the ideology – that is, the doctrinal body of Romanian ultranationalism, as well as political practice – related to core constitutional concepts such as sovereign power and popular sovereignty. Accordingly, I map the nexus between law and politics within the ideology of the Romanian main ultranationalist movement – the Legion of Archangel Michael and its paramilitary branch, the Iron Guard.

## Introduction

During the last decades the study of Romanian fascism has evolved into an expanding field, deepening our historical understanding of ultranationalism as a multi-layered phenomenon embedded in a context marked by crisis and institutional fragility, while unearthing the deeper historical lines of continuity going beyond the interwar period. Starting with Eugen Weber's salient work back in the 1960s<sup>1</sup> highlighting the specificities of the Iron Guard (*Garda de fier*) and thus setting the stage for further historical inquiry on the nature of Romanian fascism, historians have uncovered the link between fascist politics and the rise of authoritarianism during the interwar in Romania.<sup>2</sup> Ever since, the field has expanded our knowledge of fascism by engaging with the social history of the legionary movement in the 1990s in connection to the Holocaust<sup>3</sup> as well as with the cultural context informing fascist ideology.<sup>4</sup> Furthermore, by tackling the institutional, social and intellectual layers informing the politics of culture during the interwar era,<sup>5</sup> historical inquiry has benefitted from a solid foothold within the contextual situation of Romanian far-right politics. This research has enabled further analysis towards grasping the mechanics of the rise to power of Romanian fascism<sup>6</sup> and tackles the relations between the radical right and the sphere of established politics.<sup>7</sup>

<sup>1</sup> Eugen Weber, 'Romania', in Hans Rogger and Eugen Weber, eds., *The European Right: A Historical Profile* (Berkeley: University of California Press, 1965), 501–74.

<sup>2</sup> Paul Shapiro, 'Prelude to Dictatorship in Romania: The National Christian Party in Power, Dec. 1937–Feb. 1938', *Canadian-American Slavic Studies*, 8, 1 (1974), 45–88.

<sup>3</sup> Radu Ioanid, *The Sword of the Archangel* (Boulder: East European Monographs, 1990).

<sup>4</sup> Zigu Ornea, *The Romanian Extreme Right: The Nineteen Thirties* (Boulder: East European Monographs, 1999).

<sup>5</sup> Irina Livezeanu, *Cultural Politics in Greater Romania: Regionalism, Nation Building, and Ethnic Struggle, 1918–1930* (Ithaca: Cornell University Press, 1995).

<sup>6</sup> Rebecca Haynes, 'Corneliu Zelea Codreanu: The Romanian "New Man"', in Rebecca Haynes and Martyn Rady, eds., *In the Shadow of Hitler: Personalities of the Right in Central and Eastern Europe* (London: Tauris, 2011), 169–87.

<sup>7</sup> Rebecca Ann Haynes, 'Reluctant Allies? Iuliu Maniu and Corneliu Zelea Codreanu against King Carol II of Romania', *The Slavonic and East European Review*, 85, 1 (2007), 105–34.

Another important line of inquiry was able to clarify the Legion's ideological status within the panoply of the interwar far-right movements.<sup>8</sup> Current analyses of Romanian fascism attempt to reconstruct its inner ideological creeds and worldview within the context of the interwar political and intellectual landscape.<sup>9</sup> Focusing on political subjectivation,<sup>10</sup> that is on the practices and disciplines through which one became a fascist, out of which theological doctrines and religious practices are central,<sup>11</sup> recent analyses were able to explore even deeper the conundrum of fascist politics, by enquiring and problematising issues as broad as gender politics<sup>12</sup> and practices of political violence within fascist ideology.<sup>13</sup>

One particular point continues to remain a blind spot of studies of Romanian fascism, namely the relationship that the fascist movement entertained with the politico-legal landscape of its emergence. As 'the only "fascist" movement outside Italy and Germany to come to power without foreign aid',<sup>14</sup> the Legion of Archangel Michael (*Legiunea Arhanghelului Mihail*)<sup>15</sup> did not only develop a strategy for organising itself and for activating within a constitutional system, but also was a vehicle for conveying, developing and at times using concepts of statehood, authority and political belonging. Moreover, during the short-lived National Legionary State (September 1940–January 1941), it directly influenced the content of legality. It is thus crucial to understand in a more refined way the theory and praxis that has pushed forward the fascist movement and enabled its political takeover by considering its understanding of law. This type of analysis should not be limited to an institutional history of the fascist rise to power and should move beyond the interactions between the state and the fascist movement. It is important to seize the internal perspective of the Legion in matters such as law, authority and justice. We thus need to be able to account for the various forms through which the Legion engaged with questions of law, rights and justice. In other words, what was the Romanian fascists' constitutional theory? What was their understanding of law and politics?

Until the beginning of the last decade an analysis of Romanian fascist ideology in relation to law was almost entirely lacking – with the only analysis tackling the relationship between fascism, law and politics being the work of Romanian communist militant and later Ministry of Justice, Lucrețiu Pătrășcanu, a useful but largely dated book published in 1946 entitled *Under Three Dictatorships (Sub trei dictaturi)*.<sup>16</sup> Sporadic analysis of Romanian fascist legality written by lawyers emerged on

<sup>8</sup> Constantin Iordachi, 'God's Chosen Warriors: Romantic Palingenesis', in Constantin Iordachi, ed., *Comparative Fascist Studies: New Perspectives* (London: Routledge, 2010), 316–57; Constantin Iordachi, 'A Continuum of Dictatorships: Hybrid Totalitarian Experiments', in António Costa Pinto and Aristotle Kallis, eds., *Rethinking Fascism and Dictatorship in Europe* (Basingstoke: Palgrave Macmillan, 2014), 233–71.

<sup>9</sup> Raul Cârstocea, 'Breaking the Teeth of Time: Mythical Time and the "Terror of History" in the Rhetoric of the Legionary Movement in Interwar Romania', *Journal of Modern European History*, 13, 1 (2015), 79–97.

<sup>10</sup> Roland Clark, *Holy Legionary Youth: Fascist Activism in Interwar Romania* (Ithaca: Cornell University Press, 2015).

<sup>11</sup> Ionuț Biliuță, 'Constructing Fascist Hagiographies: The Genealogy of the Prison Saints Movement in Contemporary Romania', *Contemporary European History*, 31, 3 (2021), 435–55.

<sup>12</sup> Mihai Stelian Rusu, 'Domesticating Viragos: The Politics of Womanhood in the Romanian Legionary Movement', *Fascism*, 5, 2 (2016), 149–76; Maria Bucur, 'Romania', in Kevin Passmore, ed., *Women, Gender and Fascism in Europe, 1919–1945* (New Brunswick: Rutgers University Press, 2003), 57–78; Anca Diana Axinia, *Women and Politics in the Romanian Legionary Movement* (Florence: European University Institute, 2022, EUI PhD Thesis, Department of History and Civilization).

<sup>13</sup> Mihai Stelian Rusu, 'The Sacralization of Martyric Death in Romanian Legionary Movement: Self-sacrificial Patriotism, Vicarious Atonement, and Thanatic Nationalism', *Politics, Religion & Ideology*, 17, 2–3, (2016), 249–73.

<sup>14</sup> Eugen Weber, 'Men of the Archangel', *Journal of Contemporary History*, 1, 1 (1966), 103.

<sup>15</sup> The Legion of the Archangel Michael was established as a political party in June 1927. The Iron Guard was founded in Apr. 1930 as a connected and essentially paramilitary organisation which was intended to rally other antisemitic and anticommunist groups regardless of party affiliation. As no other groups joined, there was a level of confusion between the two that subsisted the Iron Guard's legal dissolution in Apr. 1933 and the Legion's ban in Dec. 1933. See Raul Cârstocea, 'Students Don the Green Shirt: The Roots of Romanian Fascism in the Antisemitic Student Movements of the 1920s', in Regina Fritz, Grzegorz Rossoliński-Liebe and Jana Starek, eds., *Alma Mater Antisemitica. Akademisches Milieu, Juden und Antisemitismus an den Universitäten Europas zwischen 1918 und 1939* (Vienna: New Academic Press, 2016), 39; Clark, *Holy Legionary Youth*, 99–103.

<sup>16</sup> Lucrețiu Pătrășcanu, *Sub trei dictaturi* (Bucharest: Forum, 1946).

the occasion of the regime change in 1945 in relation to the post-war trials but offered little insight into the nexus connecting fascist ideology and constitutional theory, emphasising technical aspects of constitutional continuity.<sup>17</sup> In a rather fragmentary way, the analyses undertaken during the last decade explored some of the salient topics related to the far-right engagements with law and politics. By examining how the constitutional framework in place in the 1920s enabled the rise of fascism,<sup>18</sup> they were able to offer a clearer image of the discursive, material and intellectual links between law, fascism and authoritarian politics. They also unearthed how the struggle between various forms of ultranationalism prompted the rewriting of criminal law and justice in the 1930s,<sup>19</sup> as well as how fascist ideology took over constitutional discourse.<sup>20</sup> Despite these sustained efforts we still lack a comprehensive framework able to grasp the politics of Romanian fascism towards the law, its inner theorisation of state authority in relation to legal discourse, as well as how it shaped both its political practice and ideology.

This article endeavours to provide a first theoretical framework conceptualising Romanian fascist ideology at work in relation to law and politics, by focusing on the way it operated within the movement's understanding of foundational concepts of state power, sovereignty and justice. In doing so, I investigate the relationship between fascism, understood here as both an ideology and a political movement, and constitutional law in the context of interwar Romania. I ask how the ideology – that is, the doctrinal body of Romanian ultranationalism, *as well as* political practice – related to core constitutional concepts such as sovereign power and popular sovereignty. Accordingly, I intend to map the nexus between law and politics within the ideology the Romanian main ultranationalist movement – the Legion of Archangel Michael.

I purport to substantiate how the Legion framed its political and legal claims to becoming the main constitutional subject. Exploring the diversity of entanglements between the Legion and the law would certainly exceed the limits of an article. This is why I proceed by following how these claims were framed at the very top of the movement, focusing my analysis on the legal tactics and ideology professed by its leader, Corneliu Zelea Codreanu. There are at least two reasons for doing this: first, it is the uncontested authority that Codreanu held over the movement during his lifetime; second, it is the dual background and activity of Codreanu, who followed military training as well as legal studies, and was not only a political activist but also a qualified practising lawyer. Drawing on constitutional texts, legislation, as well as on legal proceedings involving the movement, alongside fascist literature and journal articles of the time, I aim to clarify how Codreanu construed the relationship that his movement entertained with the body of the law that it aimed to either depose, re-write or institute. Acting within a legal historical context marked by a limited liberal constitution such as the Romanian constitution of 1923 – instituting and securing fundamental freedoms, the separation of powers and protecting the formal universalism of rights – Romanian fascists had to adapt their political and legal tactics to the existing framework. While they opposed the main features of this constitutional system, they took advantage of its limits and inner tensions, speculating on the opposition between democratic protections and authoritarian features of a regime marked by the use of emergency powers. While the focus of my intervention is primarily historical, as an attempt to produce a critical legal history of fascism it also serves as a caveat for contemporary developments, insofar as the movement's staunch opposition to procedural legality, democracy and universalism of rights highlights contiguities and continuities with forms of authoritarianism beyond its historical span.

<sup>17</sup> Alexandre Tilman-Timon, *Les actes constitutionnels en Roumanie de 1938 à 1944* (Bucharest: Imprimeria Cugetarea, 1947).

<sup>18</sup> Cosmin Cercel, 'The "Right" Side of the Law: State of Siege and the Rise of Fascism in Interwar Romania', *Fascism*, 2, 2 (2013), 205–32.

<sup>19</sup> Cosmin Cercel, 'The Enemy Within: Criminal Law and Ideology in Interwar Romania', in Stephen Skinner, ed., *Fascism and Criminal Law: History, Theory, Continuity* (Oxford: Hart, 2015), 101–26.

<sup>20</sup> Cosmin Cercel, 'The Law of Blood: Totalitarianism, Criminal Law and the Body Politic of World War Two Romania', in Stephen Skinner, ed., *Ideology and Criminal Law: Fascist, National Socialist and Authoritarian Regimes* (Oxford: Hart, 2019), 345–68.

### Approaching Fascist Legality

This analysis takes its cue from a strand of legal historical and jurisprudential literature that has studied the ‘darker legacies of law’<sup>21</sup> in a European context, with a view of dealing with the law’s past, marked by connivance and collusion with forms of authoritarianism. Writing within this strand, David Fraser has exposed the traces of Nazi legality and the Holocaust within legal thought and the legal institution,<sup>22</sup> while Michael Stolleis offered crucial insights on Nazi law within the German legal tradition.<sup>23</sup> For his part, Stephen Skinner’s work unearthed the nexus between Italian fascism and criminal law,<sup>24</sup> as well as the circulation of fascist concepts between the Italian context and the criminal and constitutional law of the United Kingdom,<sup>25</sup> challenging commonly held assumptions about the symbolic dividing line between democratic and authoritarian legality. More recently, Simon Lavis has uncovered the intricacies, paradoxes and tensions that a concept such as Nazi legality raises for the jurisprudential enterprise,<sup>26</sup> while Johann Chapoutot’s *Law of Blood* attentively traces the Nazi imagery of legality and justice as anchored in a patchwork of knowledge at the interstices of legal history, the biological, and eugenics.<sup>27</sup>

Perhaps the most important intellectual breakthrough of this legal historical literature was to bring to the fore the fact that authoritarian and totalitarian regimes such as Italian fascism or Nazism were in no way *a-legal*, or lawless. Rather, they were grounded in, and they fought for and developed, a theory of law which, as inconsistent or as morally abhorrent as it might appear, was nonetheless a theory of legal normativity. In other words, it acted as an intellectual device for defining a specific understanding of what counts as legally valid.<sup>28</sup> In doing so, such regimes also entertained a line of continuity and a specific contiguity with other forms of legal thought, a fact which, as unsettling as it might be to lawyers, the legal institution or legal scholars, is nonetheless historically real. In Stolleis’ words, ‘it is a myth that some areas [of law] remained entirely untouched by the political claims of the system’.<sup>29</sup>

In what follows I will draw on the conceptual and methodological framework set out by this type of analysis, emphasising that in the case of Romanian fascism, these lines are also rather thin, insofar as ultranationalism was a pervasive ideology, thwarting from within the production of regimes of legality. I intend to read law first as part of a wider trajectory that affected the structure of sovereign power both at a normative level as well as the level of its material historical existence. In doing so, I understand law, as an apparatus, at the interface between repression and ideology,<sup>30</sup> being both the law in action – that is, the law applied by the courts and law officials – and the law in books, the theories and the representation of the law by legal scholars. As Susan Silbey and Patricia Ewick rightly observed, there is yet, beyond this traditional dichotomy, also a domain of legal experience that defies traditional boundaries. Law is also a cultural artefact that lives and presents itself through social interactions, that is, it is a discourse that is socially pervasive and has a social existence:

<sup>21</sup> Christian Joerges and Navraj Singh Ghaleigh, eds., *Darker Legacies of Law in Europe: The Shadow of National Socialism and Fascism over Europe and its Legal Traditions* (Oxford: Hart, 2003).

<sup>22</sup> David Fraser, *Law after Auschwitz: Towards a Jurisprudence of the Holocaust* (Durham: Carolina Academic Press, 2005); David Fraser, ‘Evil Law, Evil Lawyers: From the Justice Case to the Torture Memos’, *Jurisprudence*, 3, 2 (2012), 391–428.

<sup>23</sup> Michael Stolleis, *The Law under the Swastika: Studies in Legal History of Nazi Germany* (Chicago: University of Chicago Press, 1998).

<sup>24</sup> Stephen Skinner, ‘Fascist by Name, Fascist by Nature? The 1930 Italian Penal Code in Academic Commentary, 1928–1946’, in Skinner, ed., *Fascism and Criminal Law*, 59–84.

<sup>25</sup> Stephen Skinner, ‘Criminal Law and the Use of Force: Ideology and State Power in Fascist Italy and England in the Interwar Period’, in Stephen Skinner, ed., *Ideology and Criminal Law: Fascist, National Socialist and Authoritarian Regimes* (Oxford: Hart, 2019), 299–320.

<sup>26</sup> Simon Lavis, ‘“No One Wants the Taint of an Association with the Crimes of Nazism”: (Sometimes) in Search of the Meaning of Nazi Law’, *Holocaust Studies: A Journal of Culture and History*, 26, 1 (2020), 108–22.

<sup>27</sup> Johann Chapoutot, *La loi du sang: Penser et agir en Nazi* (Paris: Gallimard, 2020).

<sup>28</sup> Hans Kelsen, *Introduction to the Problems of Legal Theory* (Oxford: Oxford University Press, 1992 [1934]), 7–9.

<sup>29</sup> Michael Stolleis, ‘Law and Lawyers Preparing the Holocaust’, *Annual Review of Law and Social Science*, 3, 1 (2007), 216.

<sup>30</sup> Louis Althusser, ‘Ideology and Ideological State Apparatuses (Notes towards an Investigation)’, in Louis Althusser, *Lenin and Philosophy and Other Essays* (New York: Monthly Review Press, 1971), 127.

[L]egality is not sustained solely by the formal law of the Constitution, legislative statutes, court decisions, or explicit demonstrations of state power . . . Rather, legality is enduring because it relies on and invokes commonplace schemas of everyday life . . . the multiple and contradictory character of law's meanings, rather than a weakness, is a crucial component of its power.<sup>31</sup>

When approaching the ideological tenets of Romanian fascism in relation to the law, I aim to follow this path, eschewing a rigid distinction between the 'high' and 'low' forms of legal experience, while aiming to grasp fascist notions of legality at the interface between theory, practice and political action. In doing so I aim to reconstruct the features of the 'normative universe', that is, 'the world of right and wrong, of lawful and unlawful',<sup>32</sup> that Romanian fascism inhabited.

Two theoretical frames can capture paradigmatically the traits of this legal experience, each in its own way problematising the status of legality within the context of the interwar. First, as Giorgio Agamben noted in 2003, 'World War One (and the years following it) appear as a laboratory for testing and honing the functional mechanisms and apparatuses of the state of exception as a paradigm of government'.<sup>33</sup> Legality is thus affected by its constant suspension. Rather than offering a stable ground, able to limit sovereign state power, it is its vehicle. Second, following Enzo Traverso's observation on the role of the civil war in European history, we can note that the interwar era was not simply and only a period of crisis, a bridge between the world wars, but an era under the shadow of numerous civil wars,<sup>34</sup> and under its constant threat. As Traverso writes,

civil war is not a conflict between states, but a breakdown of order within a state no longer able to impose its monopoly on violence. The enemy parties are not two regular armies but two factions within one and the same state, only one of which possesses legal status, so that the distinction between civilian and combatant becomes highly problematic.<sup>35</sup>

Seen through these lenses, legality occupies an essentially contested position, and a thoroughly political one. The normative universe of the interwar is that of a legality that is a battleground, in which sovereign power attempts to affirm itself: 'The sovereign requires law not necessarily as a means of subordinating and governing the reigned field, but as a symbolic formation which embodies the preservation of the status quo. The existence of law, with its structurally embedded potential eternity of applications, provides a foothold for internally unstable sovereignty'.<sup>36</sup> It is against this background that the concept of a *claim* to sovereign power should emerge in a different light. Not only did the fascist movement in Romania claim to represent the people as a constitutional subject; rather, it claimed to already exercise a sovereign power, parasitical upon, yet distinct from, the official authority of the state that it aimed to subvert or usurp. Moreover, throughout its existence, the Iron Guard had constantly been accused of stirring up civil war – and, significantly, one of the counts for which Codreanu was tried in May 1938 was sedition with a view of preparing for civil war.

To understand fully the context of this normative universe, we need to turn to Romania as a peripheral state within the post-Versailles arrangements. Following the signing of the Peace Treaty on 9 December 1919,<sup>37</sup> the Romanian state sided with the victors, at least in terms of territorial gains. The state also attempted to inscribe itself on the path of liberal constitutionalism, understood here as a

<sup>31</sup> Susan Silbey and Patricia Ewick, *The Common Place of Law* (Chicago: University of Chicago Press, 1998), 17.

<sup>32</sup> Robert Cover, 'The Supreme Court, 1982 Term – Foreword: Nomos and Narrative', *Harvard Law Review*, 97, 1 (1983), 4.

<sup>33</sup> Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Chicago: University of Chicago Press, 1998), 7.

<sup>34</sup> Dan Diner, *Cataclysms: A History of the Twentieth Century from Europe's Edge* (Madison: Wisconsin University Press, 2008), 33–8.

<sup>35</sup> Enzo Traverso, *Fire and Blood The European Civil War, 1914–1945* (London: Verso, 2017), 71.

<sup>36</sup> Przemysław Tacik, *A New Philosophy of Modernity and Sovereignty: Towards Radical Historicization* (London: Bloomsbury, 2021), 39.

<sup>37</sup> 'Treaty between the Principal Allied and Associated Powers and Roumania', 9 Dec. 1919, *League of Nations Treaty Series*, 5 (1921), 335.

technical notion of ‘interrelated concepts, principles, and practices of organizing and thereby limiting government power in order to prevent despotism’.<sup>38</sup> As limited as this attempt was, and as many practices were undermining it from the inside, there were at least some constitutional and international guarantees securing its existence. First, there were the provisions concerning citizenship and fundamental rights for all the inhabitants that were part of the Peace Treaty, reluctantly ratified by the parliament in 1920.<sup>39</sup> Second, the provisions of the constitution of 1923, beyond stating the principle of universal citizenship, also included a charter of rights, granted male universal suffrage, and restated the provisions of the 1866 constitution concerning the separation of powers.<sup>40</sup> Also, a monopoly over constitutional adjudication, existent as a diffuse control of constitutionality since 1912, was granted to the United Sections of the Supreme Court in 1925.<sup>41</sup> Yet, perhaps we should understand these developments and the constitutional trajectory together with and not against state repression in the newly acquired territories,<sup>42</sup> the uses of emergency powers that suspended constitutional protections<sup>43</sup> as well as the presence of political violence from the early days of the interwar period.<sup>44</sup>

In this light, the position of the Legion of the Archangel Michael towards the constitutional order becomes somewhat clearer: it was not only a matter of simply acting as an illegal movement, nor was it a matter of opposing the existing politico-legal order in a radical unalloyed attempt to overthrow the order through revolutionary means. Rather, it was a process of negotiation with and against the legal order, in an attempt to change its content. The ambivalent relation to the law and the constitutional order, under the unstable politico-legal conditions of the 1920s and 1930s Romania, enable us to grasp the ways in which the movement represented its relation to the legal and constitutional order as a distinct kind of claim to the exercise of sovereign power. I argue that this claim is one that a different type of political organisation would make within the context of a democratic and pluralist context, insofar as it is not built on the idea of gaining power only through elections. Such a claim was grounded in the understanding of the movement as already exercising attributions of sovereign power by itself. In order to substantiate this argument, I recall briefly the emerging context of the Legion, and then I move on towards analysing closely three statements capturing the constitutional theory of the Legion, while presenting the context of their utterance.

### Before the Law: Fascist Claims to Sovereign Power

The growth of the fascist movement in Romania is intertwined with the growth of emergency measures sapping and distorting the ‘normal functioning of the state’.<sup>45</sup> Between 1915 and 1939, no less than thirty-six pieces of legislation declaring, suspending, extending or limiting the effects of the state of siege were issued by the Romanian legislature and the Romanian government. The origins of the Legion of Archangel Michael are to be sought in the initial response to the strikes of the year 1920. The Guard of National Awareness (*Garda Conștiinței Naționale*), the short-lived faction that

<sup>38</sup> András Sajó and Renata Uitz, *The Constitution of Freedom* (Oxford: Oxford University Press, 2017), 13.

<sup>39</sup> Erwin Lowenfeld, ‘The Protection of Private Property under the Minorities Protection Treaties’, *Transactions of Hugo Grotius Society*, 16 (1930), 41, 47–50.

<sup>40</sup> ‘Constitution of Romania of 28 Mar. 1923’, *Monitorul Oficial (M.Of. hereafter)*, 282, 29 Mar. 1923.

<sup>41</sup> Alexandre-Radu Rădulesco, *Le contrôle de la constitutionnalité des lois en Roumanie* (Paris: Les Presses Modernes, 1935), 65–75.

<sup>42</sup> Charles Upson Clark, *United Romania* (New York: Dodd, Mead and Co, 1932), 173.

<sup>43</sup> Between 1916 and 1928 the state of siege had constantly been declared and revoked over the whole territory of the country. However, the border regions continued to stay under this regime until its generalisation in 1933. For instance, the Royal Decree No. 131 of 16 Jan. 1923 (*M. Of. No. 231*, 26 Jan. 1923) extended the state of siege in Transilvania, whereas the Royal Decree No. 3310 of 5 Oct. 1924 (*M. Of. No. 219*, 7 Oct. 1924) extended the state of siege in southern Bessarabia. The events of 1926 described below fell under the scope of the government’s Order No. 2614 of 6 Aug. 1925 (*M. Of. No. 174*, 11 Aug. 1925) declaring the state of siege in the county of Putna.

<sup>44</sup> Corneliu Pintilescu, ‘The Reverberations of the Oct. 1917 Revolution and the State of Siege in Interwar Romania’, in Gerhard Besier and Katarzyna Stokłosa, eds., *1917 and the Consequences* (London: Routledge, 2019), 111–30.

<sup>45</sup> Carl Schmitt, *Political Theology* (Cambridge, MA: MIT Press, 1985), 13.

engaged in strike-breaking actions across that year and later was co-opted by the antisemitic League of National Christian Defense (*Liga Apărării Național Creștine*, LANC hereafter),<sup>46</sup> not only stood as a first form of political organisation devised by Codreanu but was interwoven with the politics sustaining the Royal Decree of 21 October 1920 declaring the state of siege.

As Prime Minister Alexandru Averescu wrote in the report to the king, justifying the need for the state of siege, ‘the general strike . . . created in the country a more dangerous situation as the state of peace is not yet established between Romanians and our neighbours’.<sup>47</sup> For his part, Codreanu reminisced about the formative years of the Guard in these terms: ‘there was a state of chaos in the country at that time . . . that we understood very well’.<sup>48</sup> It is not an overstretch to understand how the later pledge of the legionary movement, to build a New Romania which ‘through Christ’s Church and integral nationalism, according to the laws of the country’,<sup>49</sup> relates to the emergence of this claim to sovereign power. As a paramilitary strike-breaking formation acting under the conditions of a state of siege – that is, under a suspension of constitutional protections and an affirmation of military authority – the Guard had at least political grounds to perceive itself as a force defending the existing order. This trope will be reiterated through the existence of the movement: even when opposing the constitution, or engaging in acts of terror, they are all acts purported to defend the country. For instance, in the span of time separating the actions of the Guard and of national awareness of the events I analyse here, Codreanu, joining LANC, will be implicated in two major trials, in the context of boycotting and opposing the liberal constitution of 1923 granting equal civil rights to minorities and upholding equality before the law.<sup>50</sup> A first trial concerns a plot that Codreanu and fellow student activists devised in killing members of the government and of the Romanian establishment.<sup>51</sup> Ultimately acquitted due to lack of evidence for proving an attempted act,<sup>52</sup> the trial did not fail to act as a catalyst for the ultra-nationalist student movement under the leadership of Codreanu, who incidentally was finishing his studies of law at the Law Faculty in Iași. The justification for this plot was presented by Codreanu as an act of ethnic and national self-defence against traitors.<sup>53</sup> A second trial involved Codreanu for shooting the chief of police in Iași, Constantin Manciu. Once again acquitted in a trial by jury as having allegedly acted in self-defence, Codreanu was able to rally further support for his movement,<sup>54</sup> benefiting from an aura of impunity and using the legal proceedings as a means for political propaganda.

These early encounters with the legal system paved the way for devising and honing a legal defence strategy and articulating a political position in relation to the law. Codreanu studied law at an undergraduate level and held a doctorate in economics. He was also a practising lawyer and a member of the Bar. In his propaganda writings the law does not occupy a central role, though his writings abound in references to legality, state and authority. Certainly it would be an overstretch to imagine that he developed a thorough theoretical framework for his approach to law. Yet, in his legal pleas and official statements in his numerous encounters with law enforcement authorities and the courts, he shows a clear understanding of both the political and legal significance of his actions that informed more general ideas of the Legion about their stand with regards to the legal system. They create the substance of the legal ideology of Romanian fascism that I aim to uncover.

<sup>46</sup> Clark, *Holy Legionary Youth*, 24.

<sup>47</sup> Royal Decree No. 4209 of 21 Oct. 1920, in *M. Of.* No. 159, 21 Oct. 1920.

<sup>48</sup> Corneliu Zelea Codreanu, *Pentru legionari* (Sibiu: Totul Pentru Țară, 1936), 4.

<sup>49</sup> Corneliu Zelea Codreanu, *Cărticica șefului de cuib* (Bucharest: Tipografia C.S.M.C., 1940), 47 [emphasis added].

<sup>50</sup> Clark, *Holy Legionary Youth*, 34–6.

<sup>51</sup> *Ibid.*, 42–6.

<sup>52</sup> Ornea, *The Romanian Extreme Right*, 266.

<sup>53</sup> Codreanu, *Pentru legionari*, 28.

<sup>54</sup> Clark, *Holy Legionary Youth*, 50–3.

On 11 May 1926, the Romanian military prosecutor in the region of Putna indicted Corneliu Zelea Codreanu on two counts: resisting authority (rebellion) and assault,<sup>55</sup> both punishable under the Criminal Code of 1864, in force at that time. The facts, as they can be reconstructed from the witness declarations and official reports of law-enforcement authorities, concern three distinct events that took place on 9 May that year.<sup>56</sup> According to the indictment pieces, Codreanu, then a candidate for the chamber of deputies of the Romanian parliament, competing on the lists of the antisemitic LANC, arrived in the constituency of Focșani from Bucharest for the purpose of conducting his campaign. Together with a group of followers, they attempted to reach the house of General Macridescu, a fellow LANC member who was running for election. Followed by a group of supporters, he discussed the conditions of the rally with the captain of the gendarmerie in charge and promised to comply with the rules for electoral campaigning applicable in an area under the state of siege. The rally proceeded in small groups that began in an orderly fashion, but for some reason the rally did not carry on in this way and instead led to a scuffle with the gendarmes accompanying them. Reaching the house of General Macridescu, the LANC supporters dispersed.<sup>57</sup>

A couple of hours later, a motorcade and a group of around thirty members – amongst whom we could find General Macridescu and Major Carifopol – headed by Codreanu aimed to enter the nearby village of Mândrești, where they were stopped by a first cordon of gendarmes asking them to identify themselves. Codreanu refused to do so but produced an approval for carrying out the electoral campaign issued by Colonel Sravitescu.<sup>58</sup> The captain of gendarmes stated that the approval was no longer valid, being revoked by a telephone order. As a consequence, the ultranationalist group advanced, breaking the line of the soldiers. When the gendarmes tried to push them back, the LANC members led by Codreanu scuffled again with the military police, Codreanu reportedly attempting to disarm a soldier. The soldiers fired a couple of shots in the air and, disputedly, over a car. Forced to return to Focșani, General Macridescu and Codreanu complained to the government's representative in the territory (the prefect). A rather tense exchange ensued between the two, with the prefect claiming to have been assaulted by Codreanu. The latter allegedly threatened him with death.<sup>59</sup> Among the facts, there are only a few that have been disputed by the parties involved. The events concerning the rally towards Macridescu's mansion were disputed by the LANC, stating that no violence was involved, while the chief of the gendarmes held that a scuffle took place; however, the extent of the violence does not seem to have been a serious threat to the law enforcement.<sup>60</sup> There is no indictment on this count. However, on the following events there seems to be no dispute about the nature of the facts: shots were fired, the scuffle took place, as well as menacing words were uttered to the prefect Aurelian Chițulescu. No one has debated the existence of the approval issued to Codreanu and his followers to proceed with the election campaign. In addition, there seems to be no official allegation that the telephone order was illegal or invalid.

As important as the legal details of these events are, the crux of my argument revolves around Codreanu's statement concerning the legality of his actions and which he repeated along with the formal statements, being confirmed in detail by the other witnesses on the side of LANC. I argue that this statement contains in nuce the basics of the legal strategy of the fascist movement in the years to follow. Such a defence captures vividly the frames through which Codreanu understood the fascist movement's relation to the legal order. As he stated, in an attempt to explain and seemingly mitigate the consequences of his actions against the gendarmes' refusal to allow the rally: 'faced with this situation, we considered it to be our duty to defend ourselves, our wronged right, and to impose to the guardians

<sup>55</sup> ACNSAS (Archive of the National Council for the Study of the Securitate Archive, ACNSAS hereafter) fond Penal, file no. 110237, Vol. 1, 228–9.

<sup>56</sup> ACNSAS, fond Penal, file no. 110237, Vol. 1, 227–80.

<sup>57</sup> *Ibid.*, 251.

<sup>58</sup> ACNSAS, fond Penal, file no. 110237, Vol. 1, 246.

<sup>59</sup> *Ibid.*, 229. For the declarations of the official authorities involved, see 232.

<sup>60</sup> *Ibid.*, 252.



of the law to enter into legality'.<sup>61</sup> To prefect Chitulescu, whom Codreanu held responsible for revoking the initial approval, he retorted:

we are in perfect legality while we try to do our propaganda. If you abuse the force that you have to take us out of the sphere of legality, we have the duty to defend our rights. If you, in disregard of all laws will shoot at us, then I will shoot at you as well.<sup>62</sup>

In a second recorded statement, concerning the earlier scuffle at the railway station, Codreanu wrote:

we were prevented in an absolutely illegal manner to exercise our rights as citizens of Romania. In other words, we were put outside the sphere of the laws guaranteed by the Constitution of the country. Whomever goes outside the sphere of the law does not have the right to invoke its protection.<sup>63</sup>

The crimes were never fully prosecuted as a royal decree amnestied all criminal offences perpetrated during the electoral campaign of 1926.<sup>64</sup> Even before the legal charges were dropped, Codreanu returned to his doctoral studies in Grenoble<sup>65</sup> and was informed about this outcome whilst abroad.

Significantly, the line of argument presented during the 1926 events is not only an incidental occurrence across the numerous trials that Corneliu Zelea Codreanu and the ultranationalist movement were engaged in. Four years later, following the split with the League of National Christian Defence and the foundation of the Legion of the Archangel Michael, Codreanu stood trial for offences to the statute on public peace.<sup>66</sup> After successful electoral campaigns and political agitation in Bessarabia, Maramureş and Bucovina – all marked by scuffles with the law enforcement<sup>67</sup> – a new incident marked the actions of the Legion. Gheorghe Beza, one of the new members of the Legion coming from the ranks of the Aromanian adherents, shot a minister, holding him responsible for worsening the situation of Aromanians in Greece and Bulgaria.<sup>68</sup> The press reacted to the violence unleashed by the legionaries and state authorities prohibited further campaigning in Bessarabia. In response to this situation Codreanu published two manifestos titled 'warnings'.

The first manifesto was directed against the press, and ended with an ominous message: 'if you consider that the laws are not enough to stop you, I declare that I hold enough power to put you down at your place'.<sup>69</sup> In the official statement given during the prosecution, Codreanu wrote:

I considered it necessary to draw attention in a most serious manner to their attitude of mystification and constant insult of my movement, which since 1927 never troubled the public peace, understanding that otherwise and if the laws are going to prove insufficient in order to defend myself, I shall defend myself as I can.<sup>70</sup>

In 1935 a legal guide for legionnaires was published which offers further insights into the matter. A booklet containing references to the relevant legislation from the Criminal Code, the Statute for the Protection of Public Peace, and the electoral law, the legal guideline was meant to provide a

<sup>61</sup> Ibid., 237.

<sup>62</sup> Ibid., 237–8.

<sup>63</sup> Ibid., 255.

<sup>64</sup> Ibid., 274.

<sup>65</sup> Ibid., 271.

<sup>66</sup> For the indictment act see *ibid.*, 188–92.

<sup>67</sup> Clark, *Holy Legionary Youth*, 73–4.

<sup>68</sup> Weber, 'Romania', 544.

<sup>69</sup> ACNSAS, fond Penal, file no. 110237, Vol. 1, 209.

<sup>70</sup> Ibid., 204.

minimum legal counsel to legionnaires in their encounters with the state authorities.<sup>71</sup> The booklet starts with a peculiar text authored by Codreanu as the leader of the movement and titled *The Ten Commandments (Cele Zece Porunci)*.<sup>72</sup> This introduction provides the basic tenets of legionary discipline, by means of injunctions meant to serve as the inner laws of the movement in order to strengthen ideological cohesion. We find there statements concerning the relationship between the members and their leaders as well as guidelines establishing a general ethos of fight and struggle against political enemies. It covers haphazardly questions of discipline – ‘the Legionary does not believe in anything but the order and the word of his chief’ – as well as of legionary morality such as: ‘never speak bad of your comrades’, or ‘pray to God’.<sup>73</sup>

While these commandments act as the inner rules of the movement, the textual core of the booklet concerns state-made law. Following the already established line of argument, it is always the state authorities that seem prone to transgress the law against the interests of the legionary movement. As such, the guidelines note what ‘each legionary ought to know, in order to know how to act, how to move and defend himself against those who violate the law’.<sup>74</sup> Interestingly, the principle of equality before the law that would be otherwise denied to fellow citizens based on their ethnicity proves to be a useful tool within the hands of the movement:

the laws are made for all and all should respect them, equally the minister and the prosecutor, the policeman and the gendarme, and whomever. It should be known that those who have the duty to protect and defend the law, if they break it themselves, they shall be punished harsher.<sup>75</sup>

The central part of the legal analysis provided by the booklet revolves around the protections offered by the 1923 constitution. Emphasis is placed on individual freedom, the due process clause in criminal and civil proceedings, freedom of assembly as well as the inviolability of the home and communication.<sup>76</sup> The text is concluded with other normative injunctions addressed to the members of the movement under the title of *The Six Fundamental Laws of the Legionary (Cele șase legi fundamentale ale legionarului)*.<sup>77</sup> They constitute the basis of a code of conduct for any legionary. They emphasise discipline, the ceaseless work for the future of the Legion and the country, the code of silence and mutual help, as well as honour as a distinctive feature of fascist actions. The booklet was published under the signature of the Legionary Litigation Service, a body that reunited the numerous legionary members of the Bar across the country and who played an instrumental role in the countless trials that the members of the movement and the movement itself participated in during the 1930s.<sup>78</sup>

Beyond the content of this booklet, a first point that strikes the reader is the juxtaposition of internal regulations proclaimed by the movement itself and the hasty yet not inaccurate legal analysis of Romanian positive law. Through this assemblage of texts we are able to grasp the ambiguous politico-legal position informing the ultranationalist understanding of the law. On one hand, we can find the laws of the movement, either as commandments of a quasi-religious nature or as its inner code of ethics. On the other hand, there is the strategy of navigating through the actual legal order. This juxtaposition is revealing: the true law to which the legionary is bound is the law of the Legion, inscribed within the movement’s discipline and ideology. The law of the state is just mere legality, that may be useful to achieve the higher political goals of the movement. In a sense, this

<sup>71</sup> *Îndreptar Juridic pentru Legionari* (Chișinău: Ziarul România Creștină, 1935).

<sup>72</sup> *Ibid.*, i.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*, 1.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*, 2–5.

<sup>77</sup> *Ibid.*, 9.

<sup>78</sup> In relation to this, one should note the impressive list of no less than thirty defenders that Codreanu was able to muster for his trials in 1938 alongside their political affiliations, mostly being members or sympathisers of the Legion. For instance see ACNSAS, fond Penal, file no. 110237, Vol. 3, 120–2.

stand replicates the tenets of natural law theory of a theological hue: the higher law is of divine origin and trumps mere human legality.<sup>79</sup>

### A Legal Palingenesis: Fascist Visions of Law, Justice and Politics

Before analysing further this inner perspective held by legionary ideology it is useful to reconstruct the basic tenets that are brought together by the ideologues presented so far. First, there is a position of the movement that disdains state authority and is suspicious of its actions. The whole legal system and its application seem to be set against the Legion, and at the same time it provides it with a veneer of protection. Such a form of legal instrumentalism becomes clearer if we take into consideration the deeper layers of antisemitic ideology professed by Romanian ultranationalists and pervading the various layers of their political thought and praxis. Not only was the application of the law perceived to have become the monopoly of a class of corrupt politicians, but fascists considered that ever since the beginning of modernity, the foundations of the state had been somehow thwarted from their imagined natural growth.<sup>80</sup> Equality before the law and the universalism of rights were precisely what the LANC, and later on the Legion, stood against when they opposed the constitution of 1923.

However, this position is not only grounded within a purely phantasmatic presupposition about the failure of Romanian modern state-building. As I have emphasised, the actions and the material ideology of the Legion were built from within and against a particular constitutional regime. In the early years of the interwar and through the 1920s the dynamics of state-building was marked by a profound dualism. On one hand, the state built its own normative constraints, in an attempt to democratise and rationalise government. Regardless of its authoritarian features, the constitution of 1923 was still a bulwark against arbitrary rule, and certainly the international obligations under the Minority Treaties and the League of Nations were a step further in the protection of minorities compared to the pre-war period. But at the same time the constitution not only held authoritarian features, being built around the figure of the monarch,<sup>81</sup> but also enshrined the practice of the state of siege as an institution addressing emergencies.

Whereas before the constitution the use of emergency, despite its recurrence, was justified according to a doctrine of necessity,<sup>82</sup> it was now accommodated as a constitutional mechanism proper. The state of siege had recurred constantly since the entry into force of the constitution of 1923,<sup>83</sup> and at the time of these events it was still used, even though arguably as a political instrument rather than as a military constitutional device. As a tool within the hands of Brătianu's or Marshall Averescu's governments to interfere with electoral politics,<sup>84</sup> it was nonetheless an encroachment of the military on civilian life which opened the way to numerous abuses.

To real, potential or imagined abuses operated and condoned by the state authorities, the Legion aimed to oppose its own version of legality. It did so not by simply invoking the ideological tenets of a movement that aimed to replace liberal legality with the frames of ethnonationalism. It was not only the case of a direct and non-mediated explosion of violence. Rather, the argument was threefold: first, exposing the failures and abuses of current legality; second, claiming that these failures and antinomies entitled a violent reaction as a form of protecting and conveying a higher notion of legality; last but not least, affirming that the violence employed was *just*.

<sup>79</sup> While this stand is not made explicit in Codreanu's writings, it strikes one as similar to a Thomist conception of natural law. See J. Budziszewski, *Commentary on Thomas Aquinas's Treatise on Law* (Cambridge: Cambridge University Press, 2014), 347–418.

<sup>80</sup> Ornea, *The Romanian Extreme Right*, 28–30. See also, Codreanu, *Pentru legionar*, 22.

<sup>81</sup> Keith Hitchens, *Rumania 1866–1947* (Oxford: Oxford University Press, 1994), 390.

<sup>82</sup> Cosmin Cercel, 'Mapping the Siege: Law, Crisis and the Antinomies of Liberal Legality', *Romanian Journal of Comparative Law*, 2, 1 (2021), 193–225.

<sup>83</sup> Article 128 of the Constitution of Romania of 28 Mar. 1923.

<sup>84</sup> Joseph S. Roucek, 'Social Background of Roumanian Politics', *Social Forces*, 10, 1 (1932), 423.

These three arguments cover the whole range of the actions of the Legion in relation to the existing constitutional order: a form of political and legal criticism, direct action against the perceived abuses of authority and political strategies of opposing the legal status quo, either by acting from within the established political spectrum or by engaging in violent acts. At the end of this spectrum there lies the ominous threat of civil war. It should be emphasised that they are not simply notions employed in legal defences but partake within the construction of legionary ideology as both theory and praxis. I argue that the three limbs of the argument advanced by this discursive strategy articulate a specific claim that the legionary movement made in relation to sovereign power.

When Codreanu states that he will fight state authorities, the press, or for that matter anyone who opposes him, once they have failed applying or obeying the law, and by whichever means – legal or illegal – he claims that he and his movement somehow represent another form of authority that is not yet officially recognised. However, this form of authority is already potentially recognisable as that of a distinct *political faction*. Fascists following Codreanu do not perceive their actions as being illegal or, I claim, not even a-legal. They perceive them to be *just*, and within this framework they are purveying a vision of legality that is already in a specific relationship with the existing legal order. When tried in May 1938 on the count of sedition with an aim to provoke a civil war,<sup>85</sup> Codreanu emphatically argued before the court martial: ‘from a legal standpoint the chief of a party is not a [public] authority; but it is beyond dispute that he has a role on which basis he retains something of the principle of national sovereignty’.<sup>86</sup>

To unpack further this stand, it is useful to historicise the existing authority exercised by the Romanian state. Under the specific conditions of the early interwar period, Romania still functioned as an authoritarian machinery, as a ‘soft’ dual state grounded in either a normative framework or a purely prerogative administrative element.<sup>87</sup> On one hand, a body of the territory was by and large under the protection of a constitution, benefiting from the normative structure and relative legal provisions that can be challenged before courts of law. On the other hand, borderlines and entire provinces of the newly acquired territories (such as Bessarabia and southern Dobruja) were ruled by the state of siege, being effectively under military administration, with limited normative protections and recourse before courts. The dividing lines were, however, never stable and a decree could change overnight the distribution of the actual exercise of power. Incidentally, between 1915 and 1928, fifteen decrees of this type were issued to that effect.

As practising lawyers, Codreanu and the Litigation Service of the Legion understood quite well the effects of the state of siege as well as the inner antinomies of liberal legality of this sort. When the movement insisted on the exercise of the constitutional rights that they were entitled to as citizens, they pointed towards the ambiguity that rights can be and are limited under conditions of declared emergency or ‘siege’. Their insistence effectively challenged the state’s sovereign right that determines the existence of such a siege. The recurrence of emergency and the effective suspension of the normative state did both legally and politically support the claim of the fascist movement to partake in the exercise of sovereign power. The original participation of Codreanu in the Guard of National Awareness in strike-breaking actions not only took place in the context of the state of siege but was perceived as being state-sanctioned, and nothing short of an act of protecting the nation against Bolshevik sedition.<sup>88</sup> Later on, in early 1930, the organisation of the Iron Guard as the paramilitary branch of the Legion benefitted from the support of the ministry of interior under the office of Vaida Voevod.<sup>89</sup> Its actions were purportedly directed primarily against communist agitation, and for a brief period of time they were tolerated by the state. It is under these conditions that the fascist

<sup>85</sup> ACNSAS, fond Penal, file no. 110237, Vol. 1, 307.

<sup>86</sup> ACNSAS, fond Penal, file no. 110237, Vol. 6, 195.

<sup>87</sup> Ernst Fraenkel, *The Dual State: A Contribution to the Theory of Dictatorship* (Oxford: Oxford University Press, 1941), 4–7.

<sup>88</sup> Codreanu, *Pentru legionari*, 5.

<sup>89</sup> *Ibid.*, 27.

movement could style itself as a para-legal organisation, operating in the shadow of emergency measures, as a corps that functionally claimed to occupy a similar place to law enforcement authorities.

However, while these constitutional conditions were necessary to the articulation of these claims, they are not sufficient to establish the position that the fascist movement aimed to occupy within the structure of the state. On this basis, both antisemitic and antidemocratic ideological stands were grafted. As already noted, the suspicion towards the liberal democratic constitutional structure of the state stemmed from an avowed ethnonationalism. At its core was an antisemitic framework of understanding politics. Following his mentor, A.C. Cuza, the ideologist of LANC, Codreanu's worldview was built around an opposition between the Romanian ethnic element and foreigners, with the Jews occupying the phantasmatic place of the enemy.<sup>90</sup> This relation of enmity was to be found primarily within the sphere of the economy, with the Jews allegedly dominating the national economy and restricting opportunities for ethnic Romanians.<sup>91</sup> It was also found within the sphere of politics, building on the alleged domination of Jews within urban life and the liberal professions. This in itself was testimony to the creation of a political class that was subservient to what the fascist discourse termed as Jewish interests inimical to those of ethnic Romanians. Within the sphere of culture, the same antagonism was at work, with Romanian culture being nothing short of tainted by Jewish and foreign admixture.

Traversing all these spheres, the theme of corruption, understood at once as political, economic, cultural and ultimately moral, was recurrent. More specifically in relation to the development of the fascist claims to sovereign power, corruption was the evil that must be cleansed. It should not be a surprise that in his inaugural address as an elected deputy in 1931, Codreanu would use the same formula described above, even as to detail. In his words, he pledged to fight against the Jewish population and the corruption within the country: 'I shall fight it through all the means provided by my mind, my Romanian law (*legea*) and my Romanian right (*dreptul*)'.<sup>92</sup>

In this speech Codreanu directly attacks the parliamentary institutions with the pejorative term *politicking* (*politicianism*), another recurring trope aimed at devaluing pluralism as well as the whole constitutional design. After all, in the fascist ideology, the whole state is corrupt. What draws attention within this formula is the clear opposition between the existing law and the Romanian natural right, which alludes to a clear, albeit crude, division between the existing 'mere' legality of the state and the 'natural', 'historical' – in short, ethnic – understanding of legality that transcends state-made law. It is precisely this vision of legality that the fascist movement aims to bring about and lay down as the law of a new regime.

We can note that the revolutionary element is present, but it takes the form of what we can rightly call a 'legal' palingenesis,<sup>93</sup> that is, a rebirth and regeneration of the law, that should have been cut off from its decadent roots. It is by returning to the laws of the country, which are not necessarily the laws of the Romanian state, that the movement can achieve a higher sense of justice built through religious charisma and ultranationalism. While this position offers us a clearer image of the legality that the Legion aims to bring about, it does not exhaust the content of this legality. One might assume that it is about traditions, customs and a natural law that is opened only to Romanians.<sup>94</sup> While right-wing authoritarian tropes are a constant presence in mainstream constitutional law treatises of the time,<sup>95</sup>

<sup>90</sup> Raul Cârstocea, 'Approaching Generic Fascism from the Margins: On the Uses of "Palingenesis" in the Romanian Context', in Constantin Iordachi and Aristotle Kallis, eds., *Beyond the Fascist Century: Essays in Honour of Roger Griffin* (Basingstoke: Palgrave Macmillan, 2020), 153–76.

<sup>91</sup> See for instance A.C. Cuza, *Despre poporație* (Bucharest: Independența, 1929), 542–55.

<sup>92</sup> Corneliu Zelea Codreanu, *Cuvântare la mesaj* (Bucharest: Gh. N. Vlădescu, 1931), 5.

<sup>93</sup> Roger Griffin, *The Nature of Fascism* (London: Pinter, 1991), 44–5.

<sup>94</sup> Petru Iroaie, 'Îndreptarea Legii', *Insemnări Sociologice*, 4, 4 (1941), 7–15.

<sup>95</sup> Paul Negulescu, *Principiile fundamentale ale Constituției din 27 februarie 1938* (Bucharest: Atelierele Zanet Corlățeanu, 1939); Paul Negulescu, *Curs de drept constituțional roman* (Bucharest: Ion I. Borșan, București, 1939); Paul Negulescu and Grigore Alexianu, *Tratat de drept public* (Bucharest: Casa Școalelor, 1942).

there are only a few jurisprudential positions directly informed by legionary ideology.<sup>96</sup> Arguably the most articulate attempt in this direction comes, significantly, from a Romanian literary scholar and was published in the antisemitic sociology journal *Sociological Notes (Însemnări Sociologice)*, edited by Traian Brăileanu, a sociologist and a member of the legionary movement after the rise to power of the Iron Guard. The text argues that legality is to be sought within the cultural practices of the ethnoses and within the linguistic traces of these practices.<sup>97</sup> In a marginal yet important note on the nature of the regime that the Legion stood for, Codreanu states: ‘the people . . . [are] to be led according to laws. They are not the human laws. They are norms, natural laws of death. The laws of life and death. A nation goes towards life or death according to whether it respects such laws’.<sup>98</sup>

## Conclusions

In her exemplary analysis of the role of work camps, commerce and education operated by the legionary movement, Rebecca Haynes aptly describes these practices by reference to the concept of ‘parallel society’.<sup>99</sup> A concept coined by Václav Benda, in an attempt to designate the preservation and regeneration of the national community under the conditions of really-existing socialism, ‘parallel society’ was usefully employed as a framework for approaching legionaries’ political mobilisation as a means ‘that challenged the hegemony of the state and the dominant class of Romanian politicians’.<sup>100</sup> Such a parallel society is not to be understood as a simple means of ‘mimicking’<sup>101</sup> state institutions that will later be replaced with the arrival to power. Haynes highlights the transformative potential of these forms of political organisation.

Indeed, such a concept explains quite clearly the legionary discipline, the code of ethics and the inner legality of the movement. As a parallel society, the Legion had its own moral code, and its own vision of legality. However, the parallelism with the state is not perfect, hence the ambivalence of the legionaries’ position towards legality – on one hand a new legality can be instituted in place of the positive law of the state. On the other hand, the very laws of the state, and for that matter their indeterminacy, are to be used to open the space for the contestation of the state’s authority. By claiming to exercise sovereignty in its own right, or by usurping the sovereign power of the state, the legionary movement acts as a seceding faction. Its historical inscription within the context of the European civil war, the fragilities of the Romanian state as well as the inner tensions of the constitutional model offer a new light in understanding its legal and political status.

In his post-war work, *The Nomos of the Earth*, German constitutional theorist Carl Schmitt, who had his share of participation in national-socialist politics, links the birth of the modern state to the ‘bracketing of war’,<sup>102</sup> and an overcoming of civil war between factions, a process finalised in the seventeenth century. For its part, the legionary movement and its affirmation of a competing claim to sovereignty offers an example of an opposite legal historical process. Within the conditions of an escalation of political violence and a contested authority of the state, a political movement regresses towards a factionalism which is inscribed in the logic of a civil war.

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<sup>96</sup> Marius Cișmigiu, *Stat autoritar și stat țărănesc: Elemente de drept autoritar în practica constituțională românească* (Bucharest: Tipografia Finanțe și Industrie, 1942).

<sup>97</sup> Iroaie, ‘Îndreptarea’, 13.

<sup>98</sup> Codreanu, *Pentru legionari*, 270.

<sup>99</sup> Rebecca Ann Haynes, ‘Work Camps, Commerce, and the Education of the “New Man” in the Romanian Legionary Movement’, *The Historical Journal*, 51, 4 (2008), 943.

<sup>100</sup> *Ibid.*, 944.

<sup>101</sup> *Ibid.*, 967.

<sup>102</sup> Carl Schmitt, *The Nomos of the Earth* (New York: Telos Press, 2003), 142.

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