

The ‘Right’ Side of the Law. State of Siege and the Rise of Fascism in Interwar Romania

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Abstract

The aim of this article is to problematize one of the most audacious tenets of the new consensus, namely the revolutionary character of fascism, by linking together the experience of the state of siege and the emergence of the fascist movement in interwar Romania. It tries to do so by drawing on the philosophical underpinnings of the paradigm of the state of exception developed by Giorgio Agamben and Walter Benjamin's critique of law and violence. In a first part my aim is to present the main arguments espoused in defending the view according to which fascist movements were professing an authentic revolutionary radical politics. Secondly, I will turn towards legal critique and to the work of Giorgio Agamben in order to build a topography of the relation between law and the force of state. In a third part I will focus on the uses and the historical meaning of the state of siege in post-First World War Romania. This article argues that the emergence of the fascist movement in Romania is an event strongly embedded in the political, legal and symbolic dynamics entailed by the state of exception rather than the expression of a revolutionary thrust.

Keywords

Giorgio Agamben; Walter Benjamin; fascism; law; Romania; state of exception; state of siege; violence

Introduction

The analysis of fascism, understood primarily as a historical event disrupting modernity, has become under the strain of our own historical situation both an urgent and an uneasy task. It is a matter of urgency inasmuch as the traumatic, un-assumed and often unexplored debris of the fascist experience continue to inform and limit the politico-legal potentialities of our

(post)modern imaginary. Exploring fascism ‘now’¹ is also uneasy as the material and ideal traces of its historical trajectory find themselves scattered under various layers of strategies of signification, under the interplay of the politics of knowledge and often unstated prejudices guiding reading and interpretation.² Added to this, the overwhelming production of often conflicting historical narratives of fascism – specific to the digital age of knowledge production – render the subject matter uncanny, devoid of limits and ambiguous, if not paradoxical. Ideological appropriations, conceptual confusions owing much to the martial logic of the past Cold War, polemic and rhetorical utterances as well as nowadays historiographical debates and philosophical investigations both in the field of fascism and in the field of historiography tend to bring the concept to the limits of its signification.

Under this novel and rather confusing historiographical landscape, order is slowly re-emerging. The new consensus, leaving behind time-fashioned interpretations of fascism developed by the Marxist tradition on the one hand and traditional liberal centric theory on the other, seems to bring to the fore forgotten, overlooked and often misread traits of this movement. Old paradigms of analysis, such as fascism as an extension of capitalism,³ or fascism *qua* reaction to modernity⁴ are to be submitted to a process of re-evaluation by historians and political scientists alike. What we gain in return, is the mapping of a polymorphic phenomenon, which is to be understood as a part of the multiple experience of modernity. According to the forerunners of this trend,

fascism is a genus of modern, revolutionary, ‘mass’ politics which, while extremely heterogeneous in its social support and in the specific ideology promoted by its many permutations, draws its internal cohesion and driving force from a core myth that a period of perceived national decline and decadence is giving way to one of rebirth and renewal in a post-liberal new order.⁵

¹ Any historical analysis is doubled by a negotiation between the ‘Now’ and the ‘Then’ which is essentially dialectical: ‘while the relation of the present to the past is a purely temporal, continuous one, the relation of the Then to the Now is dialectical: it is not progression, but image’: Walter Benjamin, *Arcades Project* (Cambridge: Harvard University Press, 1999), 462.

² On the positive aspect of prejudice in the theory of interpretation, see Hans Georg Gadamer, *Truth and Method*, 2nd ed. (New York: Continuum, 1989), 372–73.

³ See, e.g.: ‘[f]ascism in the eyes of capitalists is a means of saving capitalism of collapse’. Comintern, ‘The Terrorist Dictatorship of Finance Capital,’ in *International Fascism: Theories, Causes and the New Consensus*, ed. Roger Griffin (London: Arnold, 1998 [1933]), 59. Or, in Trotsky’s words: ‘fascism is a continuation of capitalism, an attempt to perpetuate its existence’. Leon Trotsky, ‘The counter-revolution of imperialist capitalism,’ in *International Fascism: Theories, Causes and the New Consensus*, ed. Roger Griffin (London: Arnold, 1998 [1940]), 72.

⁴ ‘In terms of a theory of economic growth . . . , fascism can be defined as a revolt of those who lost – directly or indirectly, temporarily or permanently – by industrialization. Fascism is a revolt of the *déclassés*’. Wolfgang Sauer, ‘National Socialism: Totalitarianism or Fascism?’, *American Historical Review* 73 (1967): 417.

⁵ Roger Griffin, ‘Introduction,’ in *International Fascism: Theories, Causes and the New Consensus*, ed. Roger Griffin (London: Arnold, 1998), 14. Or, in a highly synthetic vein, ‘Fascism

Far from being purely a reaction to the features of modern times, fascist movements are to be treated by historians as pertaining to the project of modernity and to be understood as proposing their own alternative modern worldview,⁶ albeit one built on the use of violence and the exclusion of otherness. By approaching the history of generic fascism through the lenses of a Weberian ideal type, ‘contributors to fascist studies are finally in a position to treat fascism like any other political ideology rather than as a “special case”’.⁷ Through a new consensus, fascism would be analysed not only under a new light, unhindered by the open ideological biases of the past, but also as a form of modernity in its own right, as a virtual response to the crisis of liberal capitalism in the world of the interwar.⁸ Fascism is thus opened to be read as ‘the *faulty* diagnosis of a *genuine* malfunction’ pertaining to the ways in which liberal societies address the question of identity and belonging in times of crisis.⁹ In this sense, the new consensus between historians of fascism tries to link this moment to various aspects of modernity such as the cult of progress and the politics of time¹⁰ or the appropriation of the past to modern uses of mass politics.¹¹

The semantic and conceptual negotiation between existing frameworks of understanding fascism and the ‘new’ emerging consensus has been in itself ambiguous and rather vivid.¹² As such, the idea of a common core of fascism has been overtly challenged as regards its perceived essentialism,¹³ its insistence on ideology and apparent disregard of social structure and power organization.¹⁴ Inasmuch as an emerging discursive order organizes

is a political ideology whose mythic core in its various permutations is a palingenetic form of populist ultra-nationalism.’ Roger Griffin, *The Nature of Fascism* (London: Routledge, 1993), 26. See also, Roger Griffin, ‘Fascism’s new faces [and new facelessness] in the post-fascist epoch,’ in *Fascism Past and Present, West and East*, ed. Roger Griffin, Werner Loh and Andreas Umland, (Stuttgart: Ibidem, 2006), 41.

⁶ ‘Fascism was everywhere an “attitude toward life”, based on a national mystique’. George L. Mosse, ‘Toward a General Theory of Fascism,’ in *Comparative Fascist Studies: New Perspectives*, ed. Constantin Iordachi (London: Routledge, 2010), 89.

⁷ Roger Griffin, ‘Introduction,’ 14.

⁸ Roger Griffin, ‘Modernity Under the New Order: The Fascist Project for Managing the Future,’ in *A Fascist Century*, ed. Matthew Feldman (Basingstoke: Palgrave Macmillan, 2008), 24–45.

⁹ Ibid., 44 (original emphasis).

¹⁰ Roger Griffin, *Modernism and Fascism: The Sense of a Beginning Under Mussolini and Hitler* (Basingstoke: Palgrave Macmillan, 2007).

¹¹ Emilio Gentile, *The Sacralization of Politics in Fascist Italy* (Cambridge: Harvard University Press, 1996); Constantin Iordachi, *Charisma, Politics and Violence: The Legion of the ‘Archangel Michael’ in Inter-War Romania* (Trondheim: PEECS, 2004).

¹² For a synoptical account of the main topoi of the debate, see Roger Griffin, ‘“Consensus? Quel consensus?”: Perspectives pour une meilleure Entente entre les spécialistes francophones et anglophones du fascisme’, *Vingtième siècle* 108 (2010): 53–69.

¹³ Robert Paxton, *The Anatomy of Fascism* (London: Allen Lane, 2004), 219.

¹⁴ Michael Mann, *Fascists* (Cambridge: Cambridge University Press, 2004), 12.

knowledge and truth production, as it determines what counts as valid and what not, it pertains to a dimension of power. According to Foucault, 'the production of discourse is at the same time controlled, selected, organized and distributed through a certain number of procedures which have as a role to conjure powers and dangers, to master random events and to avoid its heavy, exceptional materiality'.¹⁵ As such, it is structurally determined to exclude what it perceives as being its other: old paradigms, approaches deemed unscientific, disciplinary myths.¹⁶ However, in this process, the unorganized and resistant knowledge, does not fade away: '[k]nowledge is not an epistemological site that disappears in the science that supersedes it'.¹⁷ Moreover, this process of exclusion not only responds to a certain episteme,¹⁸ but also to the extension of the field of knowledge by the 'entry into legibility'¹⁹ of new aspects of the time. What it is singled out from the ambit of the new discursive order risks continually haunting its project. Thus an attentive analysis of the philosophical and theoretical creeds of the new historiographical approaches to fascism, as well as a focus to its blind spots, can prove a useful exercise of constructive criticism.

The rationale underlying my project is to approach the relation between law and fascism at the time of the latter's emergence on the historical stage. In this way, I try not only to shed a new light on the ambivalent relation between Romanian fascism and state-driven politics during the first decade of the interwar, but also to render the complex conceptual network linking Romanian fascism and law during modernity. My attempt relies on a critical reading of the law in the specific context of its enforcement as well as on a reading paradigm which I borrow from a certain tradition of continental political philosophy which has been coined as 'radical' inasmuch as it partakes in a style of reading both law and history against the grain of the various forms of our post-political ideological consensus. Thus, my inquiry will rely conceptually on the work of Giorgio Agamben and Walter Benjamin while also professing a 'hermeneutics of suspicion'²⁰ in the exploration of legal and historical traces. What detains me here is the construction of a narrative – from a legal historian's perspective – of the ways in which fascism has been entangled in the uses of the state of exception devised by the Romanian state during the interwar.

¹⁵ Michel Foucault, *L'ordre du discours* (Paris : Gallimard, 1971), 10.

¹⁶ Michel Foucault, *L'archéologie du savoir* (Paris : Gallimard, 1969), 241.

¹⁷ Ibid.

¹⁸ Ibid., 211.

¹⁹ Benjamin, *Arcades Project*, 463.

²⁰ Paul Ricoeur, *De l'interprétation* (Paris: Le Seuil, 1965), 40–44.

Law, violence and the state of exception

The starting point for my investigation resides in the thesis espoused by Roger Griffin in his seminal article ‘Exploding the Continuum of History’.²¹ Departing from the assumption specific to the new consensus scholarship that fascism strived to achieve a ‘radical social renewal, one rooted in the regeneration of the nation conceived as an organic entity and whose aim was therefore not mass deception and social control’,²² the article aims to open Marxist approaches of fascism to a more refined understanding of the fascist phenomena, by debunking some of the foundational myths of the Marxist tradition. Synthesising his argument under the form of four ‘theses’, Griffin explores from an avowed non-Marxist position,²³ the possibility of a dialogue between Marxist and non-Marxist scholars of fascism built on the basis of a new interpretative model. Such a call for a renewed analysis is, of course, salutary insofar as approaches to fascism have been hindered by the dogma of fascism *qua* agent of capitalism and its likes as well as by econocentric functional explicative models.²⁴

In Griffin’s approach, thesis one defends the idea that ideology, acting as a superstructural force can operate as an ‘autonomous factor of historical causation’ that can undo or circumvent economical determinism.²⁵ The second thesis asserts that ‘[i]nterwar fascism exerted a trans-class and genuinely “mass” appeal . . . , and contained an autonomous radical element independent of attempts by the forces of capitalist reaction and bourgeois self-interest to use it as an “agent” in its struggle against socialism’.²⁶ Thesis three emphasizes that the cult of the past in fascism is ‘consistent with the crucial role of remembrance and mythicizing retrospection played in all revolutionary activism’.²⁷ For its part, the fourth and the last thesis stresses that fascism’s ‘main thrust is not reactionary or conservative, but *counter-revolutionary*, pursuing the *anti-conservative* goal of realising a new order and a new era’.²⁸

Thesis one could find easy acceptance in some post-Gramscian and post-Althusserian circles and as long as it can broaden the scope of the

²¹ Roger Griffin, ‘Exploding the Continuum of History’, in *A Fascist Century: Essays by Roger Griffin*, ed. Matthew Feldman (Basingstoke: Palgrave Macmillan, 2008), 46–68.

²² *Ibid.*, 52.

²³ Matthew Feldman, ‘The Fascination of Fascism: A Concluding Interview with Roger Griffin’, in *A Fascist Century: Essays by Roger Griffin*, ed. Matthew Feldman (Basingstoke: Palgrave Macmillan, 2008), 210.

²⁴ See, e.g., Nicos Poulantzas, *Fascism and Dictatorship: The Third International and the Problem of Fascism* (London: Verso, 1979).

²⁵ Griffin, ‘Exploding the Continuum of History’, 53.

²⁶ *Ibid.*, 55.

²⁷ *Ibid.*, 57.

²⁸ *Ibid.*, 59 (original emphasis).

understanding of fascism by moving further from a simple economic understanding of its emergence and deployment towards a discursive one.²⁹ One could certainly concede to thesis three on the grounds that not every rhetorical use of the past amounts to a retrograde or conservative defence of its values. After all, was it not Marx who in the text of the law on the theft of woods raised his voice in ‘the defence of the customary, of what has been handed down through the ages against the mechanistic innovations of the juridical reason’?³⁰ Could Marx have been essentially a conservative solely on these grounds? History abounds indeed with various appropriations of real or imagined past moments in the life of polities which are called to play as a guiding myth for new political movements.

My attention is drawn towards the second part of thesis two stating that fascist movements contained a radical element which was independent of bourgeois and capitalist reactions attempts to capture the movements and the second part of thesis four defending the hypothesis that fascism’s main thrust was not reactionary or conservative. In sum, both of these statements propose reading fascist movements as structurally revolutionary ones. Very much aware of the cultural, intellectual, and political implications of such a thesis, the author is sympathetic to the existing ideological consensus – liberal and Marxist alike – to keep up the distinction between ‘true’ revolution and fascist ‘revolution’, insofar as ‘to place the socialist revolution on a par with the Nazi revolution is not only grotesquely counterintuitive, but smacks of post-modern relativism, a “bourgeois luxury” lethal to any political commitment or radical activism’.³¹ Notwithstanding this political inflexion, he concludes, that ‘such distinctions are difficult to sustain at a theoretical level.’³² That is so because each distinction between true and false in this case implies ‘the existence of objective criteria . . . that surely are reducible to value-judgments, or rather utopian constructs based on which alternative to the *status quo* corresponds most the personal values and hopes of the historian.’³³

My contention is that the analysis of the legal framework in force at the time of the rise of fascism as well as during fascist regimes can benefit both legal theorists and historians of fascism alike inasmuch as it can broaden the perspective of the nature and the reality of fascist movements. In this sense, I tend to overcome the existing disparity in the field of legal studies between positivist analysis of law under fascism and a genuine critical engagement with its

²⁹) But see Daniel Woodley, ‘Between Myth and Modernity: Fascism as Anti-Praxis,’ *European Journal of Political Theory* 11 (2012): 362–79, where the author finds rather problematic Griffin’s use of the concept of ideology.

³⁰) Ernst Nolte, *Marxism, Fascism, Cold War* (Assen: Van Gorcum, 1982), 25.

³¹) Griffin, ‘Exploding the Continuum of History,’ 67–68.

³²) *Ibid.*, 68.

³³) *Ibid.*

deeper significance and legacies.³⁴ I believe that an analysis of the legal framework in place at the time of the emergence of fascist movements can be serviceable as regards the trajectory of fascism. Moreover, an understanding of fascism as either revolutionary or conservative necessarily involves concepts of the state and modernity, neither of which can be thoroughly investigated without a discussion of legal frameworks and legal theories underpinning them. As fascism is a plural phenomenon, responding to local determinations and constraints, such are the legal frameworks and local legal histories which define various regimes of legality during the interwar period. It is in this sense that I propose an analysis of fascism in its context drawing on legal theory and critical philosophy.

The context of my investigation is that of the emergence of Romanian fascism. Described as ‘the most unusual mass movement of interwar Europe’,³⁵ Romanian ultra-nationalism embodied by the Legion of Archangel Michael – later known as the Iron Guard – still continues to puzzle historians and political scientists alike. Stanley Payne terms the Legion as belonging to one of the ‘four major variants of fascism’³⁶ as in Romania ‘fascist-type movements came to play an important role’.³⁷ While stressing its particularities – such as the insistence of the religious tropes in the discourse it promoted – other historians would understand the Legion’s ideology as a form of ‘clerical fascism’.³⁸ The undeniable religious thrust of the legionary ideology prompted a historian such as Eugen Weber to describe this movement as essentially a reaction to modernity specific to a backward society.³⁹ At a closer look, ‘the only “fascist” movement outside Italy and Germany to come to power without foreign aid’⁴⁰ appears as professing a form of sacralization of politics pertaining to a Romanian version of modern palingenesis⁴¹ which glorified the Nation and its

³⁴ For a seminal example of critical analysis discussing Nazism and its legacies in the field of law see, David Fraser, *Law After Auschwitz: Towards A Jurisprudence of the Holocaust* (Durham: Carolina Academic Press, 2005). Symptomatic for the growing critical literature examining law’s connivance with authoritarianism see, Christian Joerges and Navraj Singh Ghaleigh, eds., *Darker Legacies of Law in Europe* (Oxford: Hart Publishing, 2003). For an illuminating exploration of law in the context of Italian Fascism, see Stephen Skinner, ‘Tainted Law ? The Italian Penal Code, Fascism and Democracy,’ *International Journal of Law in Context* 7 (2011): 423–46.

³⁵ Stanley Payne, *A History of Fascism: 1914–45* (London: Routledge, 1995), 279–80.

³⁶ *Ibid.*, 245.

³⁷ *Ibid.*

³⁸ Roger Eatwell, ‘Reflections on Fascism and Religion,’ *Totalitarian Movements and Political Religions* 4 (2003): 146–66.

³⁹ Eugen Weber, ‘Romania,’ in *The European Right : A Historical Profile*, ed. Hans Rogger and Eugen Weber (London: Weidenfeld and Nicholson, 1965), 96. See also, Eugen Weber, ‘Men of the Archangel,’ *Journal of Contemporary History* 1 (1966): 101–126, 103.

⁴⁰ Weber, ‘Men of the Archangel,’ 103.

⁴¹ Constantin Iordachi, ‘God’s Chosen Warriors: Romantic Palingenesis,’ in *Comparative Fascist Studies: New Perspectives*, ed. Constantin Iordachi (London: Routledge, 2010), 320.

past and identified the Jewish population as the agent of the dissolution of society.⁴²

The ambiguity at the core of the fascist rhetoric of rebirth and regeneration through the evocation of the past is central to the Romanian fascist experience. For its part, the relation between conservatism and ultra-nationalism is in itself extremely fragile when approaching this topic.⁴³ Furthermore, the question of backwardness and of reaction to modernity – two common places in any discussion of Romanian interwar realities – render this spatial-temporal arch as a challenging site for exploring the nexus between fascism, law and revolution.

If generic fascism emerges in the context of modernity, at the wake of the First World War through a ‘brutalization of public life, a routinization of violence and authoritarianism’,⁴⁴ it also finds itself thrown into a specific historical moment marked by legal thought and practice. Fascism partakes in a world which is placed under the sign of displacement and excess, inasmuch as ‘to be modern is to experience personal and social life as a maelstrom, to find one’s world in perpetual disintegration and renewal, trouble and anguish, ambiguity and contradiction: to be part of a universe in which “all that is solid melts into air” and all that is sacred is profaned.’⁴⁵ As a movement driven by a palingenetic ethos, ultranationalism presents itself as being a ‘panacea to *anomie*’.⁴⁶ The same uneasiness of the age marks both legal thought and the daily administration of justice. Law’s ‘belated . . . encounter with modernity’ is marked by ‘the related legal experiences of irrationalism and powerlessness, of absurdity and cynicism’.⁴⁷ Far from being the serene ‘system of norms’⁴⁸ Kelsen imagined it to be, law is caught by a ‘growing apocalyptic sense’.⁴⁹ The interwar is not only the time of revolutions, of the ‘European Civil war’, and the rise of dictatorships, but also the age of martial law and of the state of exception.⁵⁰

⁴² Philip Morgan, *Fascism in Europe 1919-1945* (London: Routledge, 2003), 45.

⁴³ See, e.g. Carl Levy, ‘Fascism, National Socialism and Conservatives in Europe, 1914-1945: Issues for Comparativists,’ *Contemporary European History* 8 (1999): 97-126. With specific reference to Romania, see Rebecca Ann Haynes, ‘Reluctant Allies? Iuliu Maniu and Corneliu Zelea Codreanu against King Carol II of Romania,’ *The Slavonic and East European Review* 85 (2007): 105-134.

⁴⁴ Payne, *A History of Fascism*, 79.

⁴⁵ Peter Goodrich, ‘Law and Modernity,’ *Modern Law Review* 49 (1986): 551.

⁴⁶ Griffin, ‘Modernity Under the New Order,’ 44 (original emphasis).

⁴⁷ Goodrich, ‘Law and Modernity,’ 551.

⁴⁸ Hans Kelsen, *General Theory of Law and State* (Cambridge, MA: Harvard University Press), 181.

⁴⁹ Goodrich, ‘Law and Modernity,’ 548.

⁵⁰ Ernst Nolte, *Der europäische Bürgerkrieg, 1917-1945* (Frankfurt: Herbig Verlag, 1989). As I shall discuss later in this article, the historical roots of martial law and of the state of exception can be safely traced back to late 18th century and arguably back to the ancient institutions of Roman public law. However, the frequency of the recourse to such measures accrued significantly during the interwar.

From this vantage point, it seems worth noting that European legal discourse in the interwar period found itself both practically and intellectually at the crossroads between the classic formalist paradigm and new realisms. It also stood at the threshold separating constitutionalism and dictatorship. Legal texts and doctrines of the time bear the imprint of a constant fascination with unregulated, pure, state power,⁵¹ with the ‘reality’ of law⁵² and with references to higher or hidden values which imbue and sustain legal discourse.⁵³ It is as if the world of law is re-enchanted through its relation to the sovereignty of the State or the mystique of the Nation.⁵⁴

From the myriad of projects and dynamics in both legal thought and constitutional practice, one phenomenon distinguishes itself to the extent of being conceptually and historically a sign of the times, that is a specific marker for a more overarching historical tendency in relation to law. It is the practice of suspending the law, the institution of martial law and the resort to government by decree. What we are dealing with in these distinct cases is the constant recourse to exceptional measures to the extent that – at least from a legal point of view – the age of the interwar can be coined as exceptional. As Giorgio Agamben writes, ‘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’.⁵⁵

The state of exception is a limit-concept for legal theory inasmuch as it questions the basic assumptions of continental legal thought and blurs the pivotal distinction between the normative and descriptive. As Agamben argues, ‘exceptional measures . . . find themselves in the paradoxical position of being juridical measures which cannot be understood in legal terms’.⁵⁶ Although the practice of the state of exception has nothing exceptional in itself and responds to a timely fashioned logic of unhindered state intervention in times of danger, the theoretical implications of such praxis are extremely compelling for the legal thought and to some extent symptomatic for the European legal tradition. In short, the paradigm of the state of exception advanced by Agamben is a philosophical concept which builds upon the constitutional practice and the legal provisions existing in various modern constitutions consisting in either the suspension of constitutional guarantees

⁵¹ Carl Schmitt, *Die Diktatur* (Berlin: Duncker & Humblot, 1994 [1921]).

⁵² See, Evgeny Pashukanis, ‘The General Theory of Law and Marxism,’ in *Selected Writings on Marxism and Law*, ed. Piers Beirne and Robert Shalet (London: Academic Press, 1980 [1924]), 37–132.

⁵³ Carl Schmitt, *Der Wert des Staates und die Bedeutung des Einzelnen* (Berlin: Duncker & Humblot, 2004 [1914]).

⁵⁴ Carl Schmitt, *Political Theology* (Cambridge: MIT Press, 1985 [1922]).

⁵⁵ Giorgio Agamben, *State of exception* (Chicago: University of Chicago Press, 2005 [2003]), 7.

⁵⁶ *Ibid.*, 1.

or of the whole constitutional process for a series of actions taken by state authorities with the aim of protecting the constitutional order.

To be sure, this interpretative paradigm could have benefitted greatly from a broader historical and comparative basis insofar as the philosophical insights Agamben draws from the presupposed logic at the core of the state of exception hastily link modern legal frameworks to their alleged Roman roots.⁵⁷ However, the reading he proposes is poignant as a tool of social semiotics and as an exercise in legal philosophy. Drawing on Schmitt's concept of *Ausnahmezustand* [state of exception],⁵⁸ Agamben isolates the state of exception as a zone of indistinction in the structure of the law,⁵⁹ a conceptual area where it is logically impossible to make any relevant distinction between law (as a normative category) and fact (as a descriptive one). It is through this 'suspension' of the legal, that a zone of indistinction between fact and norm, between force and form, is brought upon social reality. As he writes, following Schmitt, '[s]ince "there is no rule that is applicable to chaos", chaos must first be included in the juridical order through the creation of a zone of indistinction between outside and inside, chaos and the normal situation — the state of exception'.⁶⁰ Any attempt at reasoning the state of exception as either a state inside or outside the sphere of the law fails. Do such legal measures fall under the category of legally or constitutionally justified measures? Are they purely and simply facts creating their own legitimacy, or are they legitimized *a posteriori* by the return to normalcy?

In this sense, the suspension of the law blurs the borders between the stability attributed to legal normativity and its exterior: '[T]he situation created in the exception has the peculiar characteristic that it cannot be defined either as a situation of fact or as a situation of right'.⁶¹ The paradox entailed by the state of exception is not a case of a mere lacuna in the law — pursuant to which the judge would have had to intervene in order to render the legal norm enforceable — but purely and simply the status of the legal order. This way the law presents itself precisely 'as if the juridical order [*il diritto*] contained an essential fracture between the position of the norm and its application, which . . . can be filled only . . . by creating a zone in which application is suspended but the law [*la legge*], as such, remains in force'.⁶² In other words, in order to be effective the legal order has to be suspended for in itself it is pure normativity, estranged from life. In as much as law is to regulate and discipline reality, it has

⁵⁷) Ibid., 41.

⁵⁸) Schmitt, *Political Theology*, 5.

⁵⁹) Agamben, *State of exception*, 41.

⁶⁰) Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998[1995]), 19.

⁶¹) Ibid.

⁶²) Agamben, *State of exception*, 31.

to include (by excluding) the bare, unregulated life of the subjects it dominates. Now, this inclusion of life is possible only by presupposing an outside of the law, a state of lawlessness that precedes and renders it conceivable, an outside awaiting to be colonized: '[L]aw is made of nothing but what it manages to capture inside itself through the inclusive exclusion of the *exceptio*: it nourishes itself on this exception and is a dead letter without it'.⁶³

It should not be surprising that this ambiguity of traditional constitutional theory was one of the first targets to find itself under the attack of the counter-revolutionary legal thought. Indeed, for Schmitt, the mere existence of such an area at the very core of the law, not only underlines the fragility of the constitution, but also questions its primacy. In other words, what stays fundamental in the fundamental law as long as its structure is grounded ultimately on recourse to a force which is in itself unregulated? Accordingly a legal norm cannot be conceived without presupposing the existence of a normal situation: '[E]very general norm demands a normal, everyday frame of life to which it can be applied and which is subjected to its regulations. The norm requires a homogeneous medium'.⁶⁴ Simply put, 'for a legal order to make sense, a normal situation must exist'.⁶⁵ From this point of view, the place of sovereignty can be located in the act of deciding upon the existence of the normal situation. Otherwise said, the fundamental norm is itself subsequent to an act of decision of the sovereign.⁶⁶

Through the state of exception one would get a glimpse of the *force of law*⁶⁷ which permeates and sustains legal discourse, of the 'the force essentially implied in the very concept of justice as law (*droit*), of justice as it becomes "*droit*", of the law as "*droit*".⁶⁸ Consequently, law appears as a medium which is pervasive to state power, which does not control it, rather it is controlled by it. At this juncture, Walter Benjamin's insights into the relation between law and violence seem illuminating inasmuch as they shed a new light on the inner constituents of law. In a text which was to become the standard reference in legal critique, Benjamin exposes – in a deconstructionist move – law's historical dependence on violence. Benjamin's exemplary exercise in relating law, aesthetics, theology, and philosophical criticism is also symptomatic for a historical moment where revolutionary and reactionary violence as well as state of exception were a common presence in Europe. According to his reading,

⁶³) Agamben, *Homo Sacer*, 27.

⁶⁴) Schmitt, *Political Theology*, 13.

⁶⁵) Ibid.

⁶⁶) 'He is sovereign who definitely decides whether this normal situation actually exists'. Ibid.

⁶⁷) For a thorough analysis of the concept, see Jacques Derrida, 'Force of Law: "The Mystical Foundation of Authority"', in *Deconstruction and the Possibility of Justice*, ed. Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson (London: Routledge, 1992), 3–67.

⁶⁸) Ibid., 5.

law's relation to violence is twofold as the function of violence is either 'law-making' or 'law-preserving'.⁶⁹ Owing to a tradition of Marxist legal pessimism, Benjamin argues that historically law is marked by its complicity with power.⁷⁰

As he writes, '[A]ll law was the prerogative of the kings or of the nobles – in short of the mighty; and that, mutatis mutandis, will remain as long as it exists.'⁷¹ By its complicity to the established – to the already-there and always-to-be-there – forms of domination, law is related to fate and to myth: 'violence crowned by fate is the origin of the law'.⁷² The core of the law, is thus to be sought 'where the highest violence, that over life and death, occurs in the legal system'.⁷³ Law and mythical violence, as forms of the established *status quo* converge in closing the sphere of human agency. Thus, 'the mythical manifestation of immediate violence shows itself identical with all legal violence, and turns suspicion concerning the latter into certainty of the perniciousness of its historical function'.⁷⁴ Law is thus tainted by being weaved into the fabric of myth, of the preserving power which 'demands sacrifice'.⁷⁵ To this malevolent instance of law and violence, Benjamin opposes 'divine violence', which is 'law-destroying', and disrupts the power of myth: 'if mythical violence brings at once guilt and retribution, divine power only expiates'.⁷⁶ Benjamin's critique of violence compels us to acknowledge the tension between law – understood as a formalized practice of repetition of a mythical foundational violence – and the authentic event of revolutionary 'divine violence'. Thus it opens the possibility of distinguishing between mere re-assertions of power and the advent of radically new regimes of being together.

The state of exception and the critique of violence point together to an 'other dimension of law',⁷⁷ one which has been constantly either disregarded or occulted by traditional jurisprudence, insofar as it sought to imagine the law as a system of rules of conduct which could be easily interpreted or opened to scientific analysis.⁷⁸ They also trace back to a historical moment when law's relation to violence became ubiquitous. From the standpoint of a history of forms of legal thought, what is at stake here, is not precisely 'the breakdown of

⁶⁹ Walter Benjamin 'Critique of Violence' (1921), in *Selected Writings*, Vol. 1, ed. Marcus Bullock and Michael W. Jennings (Cambridge: Harvard University Press, 1996), 285.

⁷⁰ See Karl Marx, *Critique of Hegel's 'Philosophy of Right'* (Cambridge: Cambridge University Press, 1970 [1843]).

⁷¹ Benjamin, 'Critique of Violence', 296.

⁷² Ibid., 286.

⁷³ Ibid.

⁷⁴ Ibid., 296.

⁷⁵ Ibid., 297.

⁷⁶ Ibid.

⁷⁷ Pierre Legendre, 'The Other Dimension of Law,' *Cardozo Law Review* 16 (1995): 950.

⁷⁸ Peter Goodrich, 'The Rise of Legal Formalism: Or the Defenses of Legal Faith,' *Legal Studies* 3 (1983): 254.

constitutional democracy' specific to the interwar – as political scientists and historians hastened to argue – but the very possibility for legal discourse to articulate itself.⁷⁹ Indeed, what the state of exception and Benjamin's critique of violence bring to the fore is the impossibility of the normative to take hold over political reality and violence. Thus, exploring empirically the dissolution of the law specific to the state of exception, with and against the paradigms and their subjacent legal ontologies proposed by Agamben *pace* Schmitt and by Benjamin, could shed a new light over the cartography of fascism. The question to be sought is, to which extent did a fascist movement related to the state of exception, in which ways could its position be regarded as 'law-preserving' or 'law-destroying', to borrow Benjamin's terms? Moreover, how did the suspension of the law affect the symbolic structure of the polity at the advent of fascism? If the law has been 'reef on which the revolutions . . . have been shipwrecked',⁸⁰ what is to be made of the palingenetic thrust of fascist movements in contact with the law? In what follows, I shall try to sketch a possible answer to these questions by examining the case of Romanian fascism in relation to the politico-legal context of its emergence.

Legality under siege

In 1919, in a contribution addressed to the Society for Comparative Legislation on the occasion of its fiftieth anniversary, Constantin Disescu – Dissesco, by his Francized name and equally a prominent Romanian constitutionalist of the time – intervened on the topic of the evolutions Romanian public law has faced ever since Eduard Lambert's founding of the Society. In his rather hasty and heterogeneous analysis of Romanian constitutionalism encompassing five decades of politico-legal practice, the noted professor insisted on a somewhat peculiar aspect, namely the practice of government by decree which he considered to be a consequence of the war. As he wrote, 'more important, more intense [than everything else] has been the influence that the world war which started in 1914 had on Romanian public law.'⁸¹

Accordingly, one can trace back to the war-time legal practice 'the evolution of the authority of the government entailed by the conferred right to declare the partial or general state of siege, the transfer of certain judicial attributions from the judiciary to martial courts, the extension of Military Authorities'

⁷⁹ Juan J. Linz, *Totalitarian and Authoritarian Regimes* (Boulder: Lynne Rienner, 2000), 137.

⁸⁰ Agamben, *Homo Sacer*, 14.

⁸¹ Constantin Dissesco, 'L'évolution du droit public roumain,' in *Les transformations du droit dans les principaux pays depuis cinquante ans: livre du cinquantenaire de la Société de législation comparée* (Paris : L.G.D.J, 1922), 301.

powers, of the law of the state of necessity owing to which the government could suspend, abrogate or create laws by decree.⁸² He then continues in an almost divinatory manner: '[I]t is there, one has to confess it, not the evolution of the law, but the possibility of its suspension'.⁸³ From this standpoint, 'the dire situation which arises, is the *change of meaning* of the famous word: *legality*'.⁸⁴ In order to make his argument clearer in the eyes of the French speaking reader, the author underlines: 'one has to say it openly: it [i.e. legality] is something else after the German aggression'.⁸⁵

It is not by mere coincidence that the Romanian constitutionalist was sharing his worries about the future of legality in Romania to his French-speaking peers. Not only was French the language of law in Romania since the middle of 19th century, but also the mechanisms of its suspension were also of French origin. At the time when Disescu was writing his intervention, Romania was still under the state of siege declared in 1916⁸⁶ and restated by a Royal Decree in 1918.⁸⁷ Both acts which served as a legal basis for the institution of the state of siege referred to the conditions and limits prescribed by a Statute adopted in 1864 by Prince Alexandru Ioan Cuza.⁸⁸ The latter statute was itself a restatement of an original appendix of the Military Code of Justice introduced in 1852,⁸⁹ which translated into Romanian the French Statute on the State of siege of 1849.⁹⁰

Indeed, the legal origins of the state of siege in Romania are to be sought in the tremendous work of legal translation and transplantation steered by the state and the elites in the enthusiastic and unfinished process of modernization of the nineteenth century. Interestingly enough, the legal mechanisms of suspending the law had been imported even before the country had a formal constitution, as the first modern constitution was adopted in 1866. Moreover, Romanian legal scholarship of the interwar years refers quite unambiguously to the legal concept of the state of siege as originating in the French revolution itself.⁹¹ The ur-type juridical instantiation of the state of siege is provided by the French statute of 1791 which states in its article 10 that

⁸²) Ibid.

⁸³) Ibid.

⁸⁴) Ibid. (emphasis added).

⁸⁵) Ibid.

⁸⁶) *Decret Regal pentru starea de asediu* [Royal Decree concerning the State of Siege] No. 2798, *M. Of.*, No. 107, 16 August 1916, 47.

⁸⁷) *Decret Regal* [Royal Decree] No. 1626, *M. Of.*, No. 79 bis, 1 July 1918, 23.

⁸⁸) 'Lege pentru starea de asediu din 10 decembrie 1864' [Statute for the State of Siege of the 10th of December 1864], in V. Pantelimonescu, *Starea de asediu: doctrină, jurisprudență și legislație* (Bucharest: Cartea Românească, 1939), 30–31.

⁸⁹) Dumitru Popescu, *Regimul juridic al stării de asediu* (Iași: Institutul de Arte Grafice Alexandru Terek, 1942), 28.

⁹⁰) Loi du 9 août 1849 sur l'Etat de siège, *Bulletin des lois*, no. 186, 146.

⁹¹) Pantelimonescu, *Starea de asediu*, 6; Popescu, *Regimul juridic*, 28–30.

in fortifications and military outposts, once these places and posts are under a *state of siege*, all the authority which the civil servants have been vested with by the constitution, for maintaining internal order and policing, shall be passed onto the military commander who will exercise them exclusively under his own sole responsibility.⁹²

A subsequent statute of 1797 would extend the sphere of application of the state of siege from fortified positions and military posts to communes and towns inside the state's territory.⁹³ After the fall of the Empire, the use of the state of siege during the June Rebellion of 1832 by Louis-Philippe would spark much controversy, as the *Cour de Cassation* would refuse to recognize the royal ordinance declaring it as constitutional.⁹⁴ The statute of 1849, which would serve as a basis for the Romanian first legislation in the field, moves further in regulating and defining the state of siege. Accordingly, the state of siege can be declared in the case of imminent danger, irrespective of the situation of the region and the existence of a military position in its area, as well as irrespective of the nature of the threat, which can be either internal or external.⁹⁵ Hence the literature distinguishes between a 'fictitious' state of siege which is instituted as a result of a politico-legal enactment, and 'real' military siege specific to the original legislation of 1791.⁹⁶ During the state of siege civil authorities pass attributions related to the administration of justice and law enforcement to the military ones.⁹⁷ Consequently, military tribunals are entitled to judge crimes against public order and the constitution regardless of the status of the defendants.⁹⁸ The army is authorised to carry out searches during night or day, to expel from the area former convicts and persons without a legal residence therein, and to prohibit press publications or any reunion it may judge necessary.⁹⁹ In all other matters citizens continue to keep their constitutional guarantees.¹⁰⁰

The Romanian Statute for the state of siege of 10 December 1864 translates the content of the French version even as to detail. What we are dealing with, in the Romanian case, is once again the transfer of order maintaining

⁹² 'Loi du 10 juillet 1791 sur la conservation et le classement des places de guerre et postes militaires,' in *Bulletin des lois depuis le mois du juin 1789 jusqu'au mois d'août 1830*, Vol. II (Paris : Paul Dupont, 1834), 235.

⁹³ Loi du 10 fructidor an V (27 août 1797) qui détermine la manière dont les communes de l'intérieur de la République pourront être mises en état de guerre ou de siège, *Bulletin des lois*, No. 1380, 14–15.

⁹⁴ Théodore Reinach, *De l'état de siège: étude juridique et historique* (Paris : F. Pichon, 1885), 101.

⁹⁵ Louis-Joseph Gabriel de Chénier, *De l'État de siège, de son utilité et de ses effets* (Paris : Librairie Militaire de J. Dumaine, 1849), 27–31.

⁹⁶ Reinach, *De l'état de siège*, 99.

⁹⁷ Loi du 9 août 1849 sur l'Etat de siège, art. 7, 146.

⁹⁸ *Ibid.*, art. 8, 146.

⁹⁹ *Ibid.*, art. 9, 146.

¹⁰⁰ *Ibid.*, art. 11, 146.

attributions from civil authorities to the military ones. Through the state of siege, the military authority has the right to proceed with searches 'whenever and wherever it will be deemed necessary', it is entitled to expel the same categories of persons described above, as well as to withhold the publications and prohibit assemblies which it 'esteems to have the nature of inciting or supporting disorder'.¹⁰¹ Military tribunals are equally granted jurisdiction over crimes against state security, crimes against the Constitution, and against public order.¹⁰² The law also states that all other constitutional rights which are not suspended through the state of siege, shall continue to be exercised by citizens.¹⁰³ The apparent similarities fall short with respect to the legal authority entitled to declare the state of siege. Whereas the French legislation in its original form of 1849 set as a principle that only the National Assembly had the right to declare the state of siege, the Romanian law granted this right to the Prince.¹⁰⁴ Moreover, when the French law was adopted pursuant to the provisions of the Constitution – albeit in a time of revolutionary turmoil – the Romanian legislation was passed after the *coup d'Etat* orchestrated by Prince Cuza.¹⁰⁵

After the adoption of the Constitution of 1866, the validity of the statute was questioned as it conflicted with the prohibition of exceptional tribunals as well as with the prohibition against suspending the constitution.¹⁰⁶ However, during the war of 1877, the state of siege would be declared in the counties neighbouring the Danube, without further justification.¹⁰⁷ Before the First World War, the recourse to the state of siege would stay within the limits of an exceptional measure. Indeed, one can find the state of siege only during the peasant uprising of 1907 and the conflict with Bulgaria in 1913,¹⁰⁸ whereas between 1916 and 1933 there would be issued no less than thirteen decrees instituting, restating, extending, upholding or raising the state of siege.¹⁰⁹

From this short historical excursus it should become apparent that things are rather more complex than the legal texts would present them. Not only does the state of siege originate historically in the intricate politico-legal situation of the French revolution, and not only have its uses before the First World War been considered problematic in France and Romania alike, but also the very concept links together the martial logic to the functioning of the state.

¹⁰¹ 'Lege pentru starea de asediu din 10 decembrie 1864', art. 6, 30–31

¹⁰² *Ibid.*, art. 5, 30.

¹⁰³ *Ibid.*, art. 7, 31.

¹⁰⁴ *Ibid.*, art. 2, 30.

¹⁰⁵ Popescu, *Regimul juridic*, 30–31.

¹⁰⁶ *Ibid.*, 31.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ Pantelimonescu, *Starea de asediu*, 32–45.

The legal provisions dating from 1791 relate to the state territory in purely military strategic terms as the statute ostensibly applies to *places de guerre* [fortifications] and to military posts. Moreover, the enactment of the state of siege is not primarily the result of a politico-legal decision, but a decision subsequent to a military evaluation of the situation of being under a siege.¹¹⁰ In its original form of the statute of 1791, 'the state of siege was not activated either by the King, or by the legislator, but by *the very facts of the situation*, namely from the moment that there was an *actual attack* from the enemy.'¹¹¹

Through the subsequent legislation, up until its Romanian form, one continues to find a mixture of military jargon and legal concepts, which limit the possibility of legal regulation. It is thus symptomatic, that in French legal doctrine the authorities' actions of declaring the state of siege fall in the category of the 'administrative arbitrary'.¹¹² They are 'acts of government',¹¹³ which cannot be controlled by the courts of law.¹¹⁴ Thus, the state of siege reopens the exercise of power specific to the *ancien régime*, which is more apparent in the Romanian case as the state of siege is a prerogative of the Prince – and later on of the King.¹¹⁵ Moreover, the state of siege presents itself as an ambiguous concept which traces back to the legal categories of war and peace. As one of the commentators of the law of 1849 noted, the state of siege finds itself at the threshold between the state of peace and the state of war as 'civil and military authorities must coordinate themselves in anything that can be deemed necessary for the preservation of public order'.¹¹⁶

The wording of the legal provisions and the choice of concepts are not entirely neutral and are founded on a series of ideological assumptions which are part of the wider philosophical network of modernity. Therefore, one should be attentive to the relation the state of siege produces between state, territory, population and sovereignty. The gradual move from a limited area, which found itself in what we would call today a conflict zone towards other areas which were to be considered through the power of the legal fiction analogous in terms of danger and threat to the structure of the state, puts into question both military and legal theory. Through the state of siege, not only military positions would be submerged to the authority of the army, but also

¹¹⁰) Loi du 10 juillet 1791 sur la conservation et le classement des places de guerre et postes militaires, art. 1, 235.

¹¹¹) Anna-Lena Svensson-McCarthy, *The International Law of Human Rights and States of Exception* (The Hague: Kluwer, 1998), 37 [original emphasis].

¹¹²) Jean Cruet, *Etude juridique de l'arbitraire gouvernemental et administratif* (Paris: Librairie nouvelle de droit et de jurisprudence, 1906), 158.

¹¹³) Ibid., 232

¹¹⁴) Ibid. See also, Edouard Laferrière, *Traité de la juridiction administrative et des recours contentieux*, 2nd ed., Vol. II (Paris: Berger-Levrault, 1896), 36.

¹¹⁵) Popescu, *Regimul juridic*, 30.

¹¹⁶) De Chénier, *De l'État de siège*, 16.

zones which are liable to foster imminent danger to the state. Accordingly, territorial as well as normative distinctions between war and peace are dissolved, as virtually the whole state can be considered as being a war zone. Moreover, the symbolic limits between state as a legal construct and state as a military entity are also blurred insofar as under the general state of siege the whole territory becomes a fortification, a *place de guerre*.

As a judgment of the Romanian *Curtea de Casație* [Supreme Court] of 1925 suggests, the partial state of siege raises specific issues in relating legality and territory by creating grey zones of action for the executive.¹¹⁷ As such, can a person in proximity of a zone under the state of siege be arrested for being part of a meeting deemed dangerous by the military authorities of that zone?¹¹⁸ Where is the line to be drawn between what is inside and outside the area under the state of siege? Even if the highest court decided that police and judiciary activities exercised by military authorities are strictly confined to the area under state of siege, the very fact of this decision bears witness to an existing legal uncertainty brought by the recourse to this type of measures. But not only space is to be reframed under the state of siege. As the article granting the military authorities the right to judge crimes against the state or the constitution is regarded by the interpretative community as containing ‘rules of procedure’,¹¹⁹ they can be exerted retroactively without any constitutional impediment.¹²⁰ Thus, time itself falls under the ambit of the state of siege. For as long as the state of siege is a rule of procedure, it can be applied to crimes perpetrated before its enactment.

Another distinction which is questioned by the state of siege has been pointed out ever since its beginnings in the early modern landscape of post-revolutionary France. In the case of *Sieur Geoffroy*, the French *Cour de Cassation* would consider the judgments made by a military court unconstitutional, as such courts could not have jurisdiction over civilians.¹²¹ The law of 1849 would clarify this issue, by stating that during the state of siege military Courts have full authority to judge crimes given into their jurisdiction ‘regardless of the quality of the defendants’.¹²² This view relies very much on the argument advanced by conservatives back in 1832 against the Court, holding that once a citizen takes up arms against the state they become *de facto* military and should be tried as such.¹²³ Consequently, the state of siege blurs the traditional

¹¹⁷ Curtea de Casație (Sectia II), 25 February 1925, *Buletinul Casației*, 1925, 369–75.

¹¹⁸ Ibid., 371. See also Popescu, *Regimul juridic*, 56–57.

¹¹⁹ Pantelimonescu, *Starea de asediu*, 21.

¹²⁰ Ibid. See also Ioan Tanoviceanu, *Tratat de drept penal și procedură penală*, 2nd ed., Vol. I (Bucharest: Curierul Judiciar, 1924), 286.

¹²¹ Cour de Cassation, 29 June 1832, *Journal du Palais*, Vol. 24, 1841, 1219–23.

¹²² Loi du 9 août 1849 sur l’Etat de siège, art. 8, 146.

¹²³ Auguste M. Barthélemy, *Justification de l’état de siège* (Paris : Felix Locquin, 1832), 25.

distinction between military and non-military. To the eyes of the law under the state of exception, any citizen becomes a potential military threat which can be searched, prevented to participate in reunions, censored or expelled according to the decision of the military authorities.

The state of siege is disruptive in the sense that it restates the arbitrary inherent to assertions of sovereignty which modern law strived to rationalize. In the Romanian context of the interwar, it takes the most prosaic form as long as the *Curtea de Casație* declared that the act of instituting the state of siege is outside its jurisdiction and thus cannot be made the object of a legal assessment.¹²⁴ As an act of government, the state of siege reasserts the sovereign right specific of the traditional regimes of power in the framework of modern legality. At a closer look, the state of siege appears as a crack in the system of formalization that law is called to bring onto political power. By effacing the basic distinctions which make legal discourse appear rational, the state of siege links together space, time and population under the power of a state which is reduced to its military form.

It is in this sense that the state of siege can be perceived as a historical instantiation of the generic concept of the ‘state of exception’. As the law suspends itself through its paradoxical self-referentiality – and it does so by means of a legal norm – the state of siege blurs the distinction between fact and norm by bringing to the fore the unregulated force of the state in its military guise. Furthermore, the state of siege dissolves also the basic legal categories of law enforcement by distorting spatial, temporal and personal landmarks of the application of norms. As such, it partakes into the general ‘sense-making crisis’¹²⁵ of the interwar, by mixing together remnants of legal authority and military tactics.

Revolution within the limits of the law

The Royal Decree of August 14 1916 declared the state of siege over the whole territory of the country, having as a legal basis the law of 1864. It would stay in force until June 30 1918, when its provisions would be restated by another Royal Decree. Romanian participation in the First World War is, of course, the main reason underlying the use of the state of siege. But even after the Treaty of Bucharest, in March 1918, the state of siege would be held up until 1920, when

¹²⁴ *Curtea de Casație*, 20 February 1921, *Pandectele Române*, 1922, 58. See also Pantelimonescu, *Starea de asediu*, 17.

¹²⁵ Gerald M. Platt, ‘An Alternative Theory,’ in *International Fascism: Theories, Causes and the New Consensus*, ed. Roger Griffin (London: Arnold, 1998 [1980]), 208.

it was reintroduced the same year.¹²⁶ The end of the First World War brought Romania not only a series of successful albeit uneasy negotiations at Versailles,¹²⁷ but also a whole variety of new conflicts ranging from the participation in quelling the Bolshevik revolution in Hungary in 1919¹²⁸ to a constant cold conflict at the borders with the Soviet Union.¹²⁹

To this experience of war as well as to the perceived external threat existent at the time one may trace back the origins of the constant recourse to the state of siege and a silent insinuation of a martial logic in the politico-juridical life. As it has been noted, the state of siege was a common presence in some parts of the newly acquired territories: 'Bessarabia has been under martial law ever since the annexation, with censorship and all other forms of government interference with normal life'.¹³⁰ But before becoming common currency in dealing with internal or external threat and subversion, the mechanisms of the state of siege became the Romanian answer to the October revolution. Witnessing the manifold range of problems raised by the presence on the territory of a Russian army close to one million, in early 1918 Romanian reaction was to resort to martial measures specific to the state of siege already in force:

The Romanian High Command immediately set Romanian reserves behind the portions of the front still held by Russian troops; they greatly strengthened the state police (gendarmes); they divided Moldavia up into military districts, each of which was entrusted to a military unit; every infraction of the regulations of the High Command was severely punished; no Russian troops, even unarmed, might approach Jassy; none might leave the front or return to Russia without surrendering their arms.¹³¹

But harsh measures under the strain of necessity and of the state of siege were not only directed against external threats. The Decree of 1920 declaring the state of siege 'over the territory of the stronghold of Bucharest'¹³² was directed against internal subversion. As the President of the Council of Ministries wrote in his official report to the King, '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'.¹³³ The general strike opposing Romanian

¹²⁶ Decret Regal pentru declararea stării de asediu în București și instituirea cenzurei [Royal decree declaring the state of siege in Bucharest and instituting censorship] No. 4209, *M. Of.*, No. 159, 21 October 1920, 1.

¹²⁷ Keith Hitchins, *Rumania 1866-1947* (Oxford: Oxford University Press, 1994), 288-91.

¹²⁸ *Ibid.*, 286-87. See also, Charles Upson Clark, *United Roumania* (New York: Dodd, Mead and Co., 1932), 197-215.

¹²⁹ Charles Upson Clark, *Bessarabia, Russia and Roumania on the Black Sea* (New York: Dodd, Mead & Co., 1927), 223-31.

¹³⁰ *Ibid.*, 261.

¹³¹ Clark, *United Roumania*, 173.

¹³² Decret Regal pentru declararea stării de asediu în București și instituirea cenzurei, art. 1, 1.

¹³³ Pantelimonescu, *Starea de asediu*, 37.

socialists and the government started on the twentieth of October and would be quelled by the twenty-ninth. The government refused to recognize both the legality and the legitimacy of the movement while significantly labelling it as being ‘a revolutionary strike which does not ground itself on professional demands’.¹³⁴ The same report addressed to the King stated that the ‘strike is organized by subversive machinations and the professional demands are only pretexts which seek only through destabilizing the work, to threaten the stability of the state’.¹³⁵ A French anonymous reviewer of the Romanian press of the time concluded that as a consequence of the state of siege ‘a scission took place inside the trade unions’.¹³⁶ As such, ‘the moderate elements separated themselves from extremists and group themselves in national unions. This movement, started in the Old Kingdom, especially in Iași, spread rapidly in the new provinces, particularly in Transylvania, where it gains considerable ground’.¹³⁷

In March 1921, another decree declared the state of siege on all the western, northern and eastern borders, on an area ranging from thirty up to fifty kilometres.¹³⁸ In January 1923, just two months before the adoption of the new constitution, the state of siege was extended in Transylvania, covering a wide range of its western parts.¹³⁹ It was also extended in October 1924 to the southern part of Bessarabia¹⁴⁰ as a response to the Tatar Bunary uprising,¹⁴¹ in 1925 in the district of Putna in Northern Romania and in 1926 in the Cadrilater.¹⁴² The state of siege was finally suspended in all districts inside the country in November 1928, only to be restated in 1933.¹⁴³

For its part, the Romanian Constitution of 1923 introduced a reference to the state of siege in its article 128. In a highly ambiguous formulation, it is thus stated that ‘the Constitution cannot be suspended either entirely or partially’.¹⁴⁴ However, the same article decrees that ‘in case of a danger to the

¹³⁴) ‘La situation gouvernementale. L’agitation socialiste,’ in Ministère des Affaires Etrangères, *Bulletin périodique de la presse roumaine : du 1^{er} septembre au 31 décembre 1920*, no. 30, 12 February 1921, 10.

¹³⁵) Pantelimonescu, *Starea de asediu*, 38.

¹³⁶) ‘La situation gouvernementale. L’agitation socialiste,’ 10.

¹³⁷) Ibid.

¹³⁸) Decret Regal pentru declararea stării de asediu de asediu la frontieră [Royal decree declaring the state of siege in the border regions] No. 853, in *M. Of.*, No. 286, 31 March 1921, 12.

¹³⁹) Decret Regal referitor la lărgirea stării de asediu din Ardeal [Royal decree concerning the extension of the state of siege in Transylvania] No. 131, in *M. Of.*, No. 231, 26 January 1923, 15.

¹⁴⁰) Decret Regal relativ la extinderea stării de asediu în sudul Basarabiei [Royal decree concerning the extension of the state of siege in Southern Bessarabia] No. 3310, in *M. Of.*, No. 219, 7 October 1924, 7.

¹⁴¹) Clark, *Bessarabia, Russia and Roumania*, 223–31.

¹⁴²) Pantelimonescu, *Starea de asediu*, 42–43

¹⁴³) Ibid., 44–45

¹⁴⁴) The Constitution of Romania, *M. Of.*, No. 282, 29 March, 1923, art. 128, 5.

State, a general or partial state of siege can be instituted through law'.¹⁴⁵ In this article we witness *in nuce* the mark of the state of exception, that of being a paradoxical legal structure which is founded on an 'inclusive exclusion . . . which serves to include what is excluded'.¹⁴⁶ Indeed, the state of siege is excluded from the ambit of the constitution, given that its practice is normatively discordant with the constitutional framework. For in order for the other articles guaranteeing both political and civil rights to be true, the possibility of suspension of the constitution has to be negated. However, the next phrase re-introduces the state of siege as a practice which is regulated by the law and therefore by the constitution itself. But, as I tried to show before, the state of siege necessarily produces a break in the constitutional system, be it only through the mere fact that civil authorities' attributions are passed onto the military and freedom of expression and reunion are suspended. Note how the state of siege can be equated once again to the state of exception. The normative validity of the constitution is not negated, while in the same time, the constitution can virtually be rendered devoid of content. The law is there, in the pure sphere of the normative, while in the real life its application is vested in the form of pure military intervention.

The presence of the military in the political life of the time cannot be disregarded. Following the world war, figures such as General Coandă, General Văitoianu and not least General Averescu, held during the 1920s important offices in the government, acting either as prime-ministers, ministers of Foreign affairs or ministers of the Interior.¹⁴⁷ It will thus not be hazardous to remark that the legal state of siege was moulded with a constant military rhetoric and an overall increase of authoritarian politics. In this sense, Romania was not an isolated case, inasmuch as the end of the First World War brought with it the shift towards authoritarianism and an advent of political violence. As Stanley Payne observes, in the wake of the War 'the basic habits of politics were altered, as the secular trend toward liberal democracy and greater representative government was challenged and in some areas reversed. The consequence was a brutalization of political life which made the recourse to political violence seem natural and even normal'.¹⁴⁸

The incipient forms of organization of the Romanian fascist movement were strongly connected to the strikes of 1920, the use of the state of siege as well as the overall perception of time out of joint. As the founder of the Iron Guard, Corneliu Zelea Codreanu would note in his propaganda material,

¹⁴⁵) Ibid.

¹⁴⁶) Agamben, *Homo Sacer*, 20.

¹⁴⁷) Clark, *United Romania*, 316–17 ; Zigu Ornea, *The Romanian Extreme Right: The Nineteen Thirties* (Boulder: East European Monographs, 1999), 7–75.

¹⁴⁸) Payne, *A History of Fascism*, 71.

For my legionnaires: ‘there was a state of chaos in the country at that time . . . that we understood very well’.¹⁴⁹ Rebecca Haynes observes, ‘strikes reached a peak in 1920, when there were 750 strikes, 112 in Bucharest alone’.¹⁵⁰ Moreover, the Senate plot in December of the same year – in which the minister of Justice and a member of the senate were dead and former prime-minister, general Coandă, was gravely wounded – definitely escalated the general state of uncertainty.¹⁵¹ It is in this sense that the birth of the fascist movement – even in the form of a ‘distinct sub-type’¹⁵² of fascism such as the later Iron Guard proved to be – is to be traced to this period of time placed under the aegis of the exception and violence. Not only had the ultranationalist militants actively took part in strike breaking actions, but they would also organize themselves in a form of a radical group called the Guard of National Awareness which in its short life programmatically opposed international communism. Furthermore, their incipient actions took place in the confused legal situation created by the enactment of the state of siege.

The ideology of the Legion of the Archangel Michael also played a crucial role in practicing, advocating and exerting political violence, and in the time to follow, the movement became one of its main agents. The Legion moved from the support of the state as a vigilante anti-revolutionary organization to the overt opposition of state power as an anti-establishment movement, in order to end up as one of the main forces of the National-Legionary State in its short shot-gun marriage with the conservative authoritarian Marshall Antonescu. Consequently, in relation to the state of exception, the Legion would be successively, one of its agents, one of its objects, and finally one of its subjects.

As Constantin Iordachi points out in his exemplary study of the Iron Guard, Romanian fascism has been mistakenly linked to Orthodox Christianity and mysticism. Rather, its intellectual roots are to be sought in a specific form of Romanian palingenesis which stems from the romantic cultural mythology of national regeneration as well as from the sacralization of politics.¹⁵³ The Legion appears as a modern product, one which may be wielding an anti-modern rhetoric, but which is intrinsically related to the project of modernity of the nineteenth century. To be sure, as Iordachi rightly points out, the main leader of the Legion, Corneliu Zelea Codreanu ‘did not implement major

¹⁴⁹) Corneliu Zelea Codreanu, *Pentru legionari* (Sibiu: Totul Pentru Țară, 1936), 4.

¹⁵⁰) Rebecca Haynes, ‘Corneliu Zelea Codreanu: The Romanian “New Man”’, in *In the Shadow of Hitler: Personalities of the Right in Central and Eastern Europe*, ed. Rebecca Haynes and Martyn Rady (London: Tauris, 2011), 171.

¹⁵¹) Ibid.

¹⁵²) Stanley Payne, ‘The NDH State in Comparative Perspective,’ *Totalitarian Movements and Political Religions* 7 (2006): 411.

¹⁵³) Constantin Iordachi, ‘God’s Chosen Warriors: Romantic Palingenesis,’ in *Comparative Fascist Studies: New Perspectives*, ed. Constantin Iordachi (London: Routledge, 2010), 320–321.

innovations to the Romantic doctrine of messianic nationalism'.¹⁵⁴ Rather, the movement and its ideology were built upon a series of *topoi* widely spread in Romanian culture as

most of the elements of the Legionary palingenetic ideology had been elaborated in the pre-World War I namely the idea of rebirth and regeneration, its codification in the cult of Michael the Brave and his patron saint, the Archangel Michael, the cult of the martyrs, fear of degeneration and rabid Anti-Semitism, and the central role assigned to the army and the values of militarism in the regeneration of the nation.¹⁵⁵

Indeed, the leader of the fascist movement boasted of the military education he had received in one of Romania's elite military schools near the Monastery of Dealu Mare.¹⁵⁶ He saw himself as a man of arms and the movement would be fashioned as to having all the appearance of a military force both in terms of discipline and military ethos.¹⁵⁷ Thus, it is worth noting that Codreanu was addressed to – in its quality of the leader of the movement – as *Capitanul* [The Captain]. More important seems to be not only Codreanu's military background but also the whole process of militarization Romania underwent as a modern state and which – not surprisingly – can be traced to the same series of measures in which originated the legislation of 1864 concerning the state of siege.¹⁵⁸ Accordingly, Romanian citizens were to be not only drafted in times of war, but also military training would be organized for non-drafted citizens.¹⁵⁹

Codreanu was not only trained as a military man. Significantly enough for the aim of this investigation, in October 1919 he also joined as a student the Faculty of Law in Iași whose dean was none other than his godfather, A.C. Cuza, professor of political economy and a blatant anti-Semite.¹⁶⁰ After his brief engagement with the short-lived Guard of National Awareness as a political activist, the then young student of law became involved in university politics. As the leader of the Students of Law association he would promote a program of extracurricular anti-Semitism,¹⁶¹ defend the *numerus clausus* chauvinistic movement, exert violence against his Jewish colleagues and overall disturb academics and students alike.¹⁶² By a decision of the Senate of the

¹⁵⁴) Ibid., 351.

¹⁵⁵) Ibid., 350.

¹⁵⁶) Ornea, *The Romanian Extreme Right*, 265; Codreanu, *Pentru legionari*, 5; Iordachi, 'God's Chosen Warriors,' 338.

¹⁵⁷) Iordachi, 'God's Chosen Warriors,' 339.

¹⁵⁸) Ibid., 333–336, 334

¹⁵⁹) Ibid., 334

¹⁶⁰) Ornea, *The Romanian Extreme Right*, 265; Codreanu, *Pentru legionari*, 9.

¹⁶¹) Codreanu, *Pentru legionari*, 28.

¹⁶²) Ornea, *The Romanian Extreme Right*, 266.

university, he was expelled, but the Faculty of Law refused to comply with this decision and chose not to be represented in the Senate anymore. As Codreanu noted, his benefactors – in the person of the same A.C. Cuza, the dean of the Faculty, and of Matei B. Cantacuzino, a still highly regarded professor of civil law – took great care of him by opposing the Senate and thus defending their ultra-nationalist creeds.¹⁶³ At the time of the graduation, the military-trained student's award of the diploma was refused by the university and he would practice as a lawyer on the basis of a certificate delivered by the Faculty.¹⁶⁴

If the post-war political landscape is placed under the sign of revolutionary and counter-revolutionary turmoil, legal life itself follows this trend. The state of siege is the most prominent case of this new sense of uncertainty, but not the only one. Public trials, such as in the case of the senate plot, or that of the ringleaders of the Tatar Bunary uprising¹⁶⁵ bear witness for a public concern with the functioning legal institutions and the administration of justice. In this context, following the foundation of the National-Christian League under the leadership of A.C. Cuza and militating against the constitution which granted full citizenship to the Jewish population, Codreanu and his followers were imprisoned for conspiring to assassinate members of the government – amongst which was also Gheorghe Mârzescu who orchestrated the repression of the strike in 1918.¹⁶⁶ He would soon be acquitted, as the legislation of the time did not criminalize preparatory acts to a crime, but only attempts.¹⁶⁷ After the experience of imprisonment and drifting away from the former allies, Codreanu put the basis of a youth organization still associated with the League, for the time being, under the name of *Frăția de cruce* [The Brotherhood of the Cross].¹⁶⁸ Following a conflict with the local chief of police in Iași, Codreanu killed the latter in the building of the Magistrate's Court in Iași, during the proceedings of a trial in which he acted as a lawyer. After a trial under the regular procedure before a jury in Turnu Severin, Codreanu was freed on the basis of having acted in self-defense. He then moved to France to resume his studies within a doctoral programme in political economy in Grenoble. Upon his return, in 1927, Codreanu built on the basis of the Brotherhood, the Legion of Archangel Michael.¹⁶⁹

¹⁶³) Codreanu, *Pentru legionari*, 27.

¹⁶⁴) Ornea, *The Romanian Extreme Right*, 267.

¹⁶⁵) See, e.g., Constantin Costa-Foru, *Abuzurile și crimele Siguranței generale a Statului* (Bucharest: Tipografia Triumful, 1925).

¹⁶⁶) Ornea, *The Romanian Extreme Right*, 266.

¹⁶⁷) Ibid. During the trial, Ioan Moța, one of the leading figures of the emerging movement, would shoot a former member who had been exposed as an informer. He will be soon acquitted for self-defense.

¹⁶⁸) Ibid. See also Mann, *Fascists*, 265.

¹⁶⁹) Ornea, *The Romanian Extreme Right*, 267–268.

In the early days of the trade union based Guard of National Awareness, Romanian ultranationalists would pledge allegiance to the King and country, seeing themselves as a force of defence against international communism.¹⁷⁰ In this sense, they advocated for a socialist order which should have benefitted only Romanians, the other 'foreign elements' being excluded from the community. It is also important to note, that Codreanu identified the communist movement as a threat to the legal order itself, which he pledged to protect.¹⁷¹ The actions of breaking the strikes, the alleged support and proven leniency Averescu's government had for this emerging movement as well as Vaida-Voievod's later support¹⁷² clearly define the movement as an agent of the state of siege, a force which was not regulated by law, but which aimed at protecting the existing status-quo.

Later actions are more complex and relate to the inner ideological drives of the Romanian ultranationalists. The movement's pledge to deal with the workers' and peasants' problems without any form of political mediation, their later attempts to create a legionary commerce which they boasted to be equally equitable and devoid of 'Jewishness',¹⁷³ all point towards a form of subtraction from the authority of the state and the eventual the creation of a parallel state. The later moves, such as participation into parliamentary elections and the profession of political violence against representatives of the authorities are paradoxical inasmuch as they recognize the basic form of the political nomos while they deny its concrete instantiations. This paradox could not be pointed out better than in the movement's creed stated by Codreanu himself. In his own words, 'I believe in a new Romania, which we want to vanquish through Christ's Church and integral nationalism, according to the laws of the country'.¹⁷⁴

What is striking at this point is the reference to the movement conceived as a lawful entity, acting for the protection of the legal order and the laws of the land. Acts of violence as well as perpetration of crimes would be constantly followed by a recognition of the state authority as long as members of the movement, either would be freed by legal means, or would turn themselves to justice. It is in this sense, that the whole ultra-nationalist movement can be related not only to the state of siege reigning over Romania since the times of the First World War up until 1928, but also to the more general state of exception which governed the status of the legal sphere as such. By education a military man and a lawyer as well, Codreanu is the product of a legal culture under the strain of the excess specific to the post-World War.

¹⁷⁰⁾ Codreanu, *Pentru legionari*, 15; Mann, *Fascists*, 266–267.

¹⁷¹⁾ Codreanu, *Pentru legionari*, 20.

¹⁷²⁾ Ornea, *The Romanian Extreme Right*, 270.

¹⁷³⁾ Haynes, 'Corneliu Zelea Codreanu: The Romanian "New Man"', 176.

¹⁷⁴⁾ Corneliu Zelea Codreanu, *Cărticica șefului de cuib* (Bucharest: Tipografia C.S.M.C., 1940), 47.

The mythical or phantasmatic origins of the movement gravitate not only along a religious reference and a language of palingenesis, but also along a vocabulary and a practice of secrecy and a poetics if not a mystique of ritualized oaths of allegiance. From the oath in the forests of Moldavia opening the autobiography of the leader,¹⁷⁵ to the oaths at graduation,¹⁷⁶ to the later rituals of the entry into the Legion,¹⁷⁷ the history of Romanian ultranationalism is filled with rites of passage and sacralized forms of conspiracy. The foundation of the movement on secrecy and on the charisma of the leader¹⁷⁸ points towards an inherent opposition to the ostensible characteristics of modern law which privileges transparency and rationality. The Legion would eventually become thus a 'secret society in broad daylight',¹⁷⁹ one which was strongly connected both to the military rituals and the underside of the law. Indeed, the Legion in its violent form had very much in common with the figure of the great criminal both rhetorically¹⁸⁰ and structurally as the violence it exerts threatens the law preserving violence of the state.¹⁸¹

However, even if Romanian fascism draws on this trope, it cannot be reduced to it. As the state of siege has cut through the symbolic level of the politico-juridical landscape by blurring the essential categories of peace, war and citizenship, the ultranationalists' position thus benefitted from the new configuration. For as the state of exception entails confusion between fact and norm, the possibility to distinguish between state-sanctioned violence and violence exacted in the name of the state is also minimized. As the state is deemed to be under threat and in such times, the law rests in the body politic of the citizens,¹⁸² the Legion acts not as a movement directed against the law, but as an excrescence of the mechanism brought in by the state of exception. It is thus both para-military and para-legal in the most basic sense, as it considers itself as an agent of the law.

Conclusion

Fascist calls for a Romania for Romanians, the Legion's counter-revolutionary pledges, its anti-Semitism and anti-Communism are thus forms of a military

¹⁷⁵) Codreanu, *Pentru legionari*, 3.

¹⁷⁶) Ibid., 25.

¹⁷⁷) Ornea, *The Romanian Extreme Right*, 271.

¹⁷⁸) Constantin Iordachi, 'Charisma Religion and Ideology: Romania's Interwar Legion of the Archangel Michael,' in *Ideologies and National Identities*, ed. John R. Lampe and Mark Mazower (Budapest: Central European University Press, 2004), 19–53.

¹⁷⁹) Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, 1966), 376.

¹⁸⁰) Ornea, *The Romanian Extreme Right*, 271–73.

¹⁸¹) Benjamin, 'Critique of violence,' 281.

¹⁸²) Agamben, *State of exception*, 41–42.

logic which constantly creates enemies out of the body politic of the nation itself. It is useful at this point to turn towards a Foucauldian standpoint and to ask to which extent the return of the old forms of sovereignty, that is of the assertions of the power over life, is inextricably linked to the emergence of modern biopolitical governmentality itself.¹⁸³ The racism professed by the members of the fascist movement is not a novel creation, but a symptom of a general political tension between the universal promises of modern constitutionalism and the counter-discourses of nationalist ideology undermining it. Accordingly, the fascist movement places itself in a tradition of Romanian cultural and political nationalism which emerged out of the tensed equation between revolution and Nation already apparent in the complex network of events leading to the birth of the Romanian state.

While driving itself against the postulates of the constitution, the Legion did not profess a radical reconsideration of the existing politico-legal *nomos*. Rather, what it was defending was precisely the old order and the gamut of titles of an imagined *ancien régime*. It was defending the ‘true’ mythical law which has been disrupted by the emergence of modernity. As such, it reasserts the already existent anxiety amongst Romanian lawyers. For as none other than Constantin Disescu wrote in his younger days, ‘when a people abandons its national institutions in order to replace them by foreign institutions, it suppresses its own vital germs’.¹⁸⁴ There might be as well at work a legal palinogenetic thrust to the appeal to the higher law of the country, to the opposition to the foreign bourgeois institutions borrowed from France which are part of the fascist discourse.¹⁸⁵ But this opposition stays secondary as the revolutionary pledges would also do. For the Romanian ultranationalist *passage à l’acte* originates in the suspension of the law, is complicit with the status quo, and it places itself on the side of violence underlying the legal system. It springs up from the powers of the myth; it is mythical violence which ‘demands sacrifice’ and which sustains the law.¹⁸⁶

To be sure, the trajectory of the Legion in relation to the constituted power is not one-dimensional. The original stand of the movement on the ‘right’ side of the law and its positioning as a defender of the order changed through time. The Legion thus shifted status from a vigilante organization to that of an outlaw group and to that of a political party through the 1930s. The ideological tenets of the movement also became more radical and to some extent even more refined especially through the cooption of the intelligentsia and

¹⁸³) Michel Foucault, *Il faut défendre la société* (Paris: Le Seuil, 1997 [1976]), 213–235.

¹⁸⁴) Constantin Disescu, *Les origines du droit roumain* (Paris: Chamerot and Renouard, 1899), 69.

¹⁸⁵) Ornea, *The Romanian Extreme Right*, 25–31.

¹⁸⁶) Benjamin, ‘Critique of Violence,’ 297.

the fascination it exerted over intellectual figures during this later stage. Whether this change took the forms of a dramatic alteration able to deal away with the ideological creeds of its initial trajectory is in itself a subject of inquiry. Additionally, the relation lawyers – theorists and practitioners alike – entertained with the movement, as well as the overall tendency of ‘revolutionizing’ legal thought and practice need to be further explored in order to situate the movement in relation with constituted power. What should become clearer at the end of this intervention is the multifaceted relation Romanian fascist movement kept with a legal framework already caught in a crisis of meaning which goes beyond the fascist moment. This should suffice to make at least difficult to attribute a clear-cut authentic revolutionary thrust to Romanian fascism. Consequently, an analysis of other fascist movements through a critical exploration of their respective legal landscape could shed new lights on their ideological trajectory and also contribute to an archaeology of the darker legacies of law.

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