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Darker Legacies Of Anti-corruption: Fascist Criticisms of the Law in Inter-war Romania

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Abstract

The aim of this article is to open a new way of understanding corruption by examining its place within the law and culture of the European semi-periphery, with a focus on inter-war Romania. My intention is to operate a twofold displacement of the analysis of the anti-corruption and the status of constitutional practice in this context. First, I aim to reposition the question of political corruption within a jurisprudential and legal historical context. In this way I inquire what is the legal theoretical importance of political corruption in a post-dependency context? In other words, what can the representation of corruption entail for law, and for a particular legal historical trajectory within the European periphery. Second, I move towards exploring the context of the inter-war period as well as the discursive construction of political corruption within the law and through the fascist criticism levelled against it.

Keywords: legal history; contemporary history; legal theory; fascism; constitutional theory

1 Introduction

Until recently, political corruption and the fight against it represented the main framework through which law and politics in Romania were approached by political and legal scholars, foreign commentators and public intellectuals. Despite, or perhaps because of, the relentless anti-corruption campaigns organised and implemented by national authorities in the process of joining the EU, political corruption continued to be the marker and identifier, as well as the label, through which one would describe the general political situation in the country. Compared to the rise of populism in Poland (Sadurski, 2019) and Hungary (Pap, 2018) and the illiberal politics being entrenched in Central and Eastern Europe and elsewhere, political corruption remained a somewhat minor threat to the general inscription of the polity within the European Union and more generally within the European project. Despite a relative political instability, generated by the now humdrum squabbles between centre-right coalitions and the slowly dissolving centre-left, Romania seemed – at least at the surface – to have been spared by the populist rise and the onslaught against judicial independence, academic freedom and formal equality before the law (Bojin and Mercescu, 2020) affecting other countries in the region.

Yet, the context has changed dramatically in recent years: under the strain of the COVID 19 pandemic, the emergency regime of lockdowns and repressive measures, all against the background of rising social inequality, new political forces aligned at the far-right of the political spectrum have joined Parliament and entered on the stage of established politics (Coțofană, 2023; Buti and Constantin, 2021). The war in Ukraine, in the proximity of the country, brought a new level of strain to the political and legal texture of the state: after navigating the difficult tensions of medical and administrative expediency and constitutional guarantees during the pandemic

(Mercescu, 2021; Poenaru, 2021) law officials must now address tensions between military and security expediency and fundamental rights, once again against a background of economic and social hardships (Iancu, Dima and Dumbravă, 2021). Somewhat ironically, while anti-corruption left the spotlight, more difficult challenges to the rule of law and institutional reform arose, seemingly out of nowhere.

I argue that these challenges have always been present, and anti-corruption, as an institutional discourse and practice, has constantly entertained implicit and at times explicit ties to deeper symbolic cultural layers closely connected to the self-representation of state power within the Romanian context. Faced with a shifting legal and political landscape, it is crucial to understand the historical burden of these legacies. Furthermore, I claim that by examining anti-corruption discourse and practices in a *longue durée* timeframe, and by considering the defining layers of Romanian constitutional history, we are able to reveal anti-corruption in a new light, one that would be able to explain its political potential in radically disrupting the existing legal status quo. The case of Romania is important in this respect insofar as, for no less than fifteen years, anti-corruption held a central role in fashioning public debates on the political future of the country, as well as impacting constitutional provisions, public law and unsurprisingly areas of substantive and procedural criminal law (Mendelski, 2012; Iancu, 2021). More importantly, as a catalyst of European integration, anti-corruption has contained both an important element of sovereign affirmation and a dialectical relation of mutual recognition specific to the relation between the Centre and the periphery (Bhabha, 1994, pp. 122–123). While the current status of anti-corruption, understood as a process of integrating the legal and institutional frameworks and models of the Centre in addressing undue influence, as well as political and private distortions of the administrative and democratic process, has been under scrutiny for a while now, my focus is somewhat different. I seek to identify and delineate the terms in which political corruption has been understood within the context of the inter-war era, with a specific focus on fascist imageries of fighting corruption.

Given that the law was a central trope within this discourse, I shall follow the external and internal criticisms of the legal form that fascists have deployed in opposing liberal constitutionalism and liberal legality. Studies of Romanian anti-corruption so far have generally operated within a limited timeframe. This is understandable, insofar as the main body of anti-corruption measures have been implemented as a part of Romania's EU integration (Tănăsioiu and Racoviță, 2012). First, these measures took the form of pre-accession conditions determining important changes to the legal structure of the state – such as the constitutional provisions concerning the independence of the judiciary as well as special statutes concerning prosecutorial powers (Iancu, 2021, pp. 1218–1219). Later, anti-corruption was driven by post-accession conditionalities contained by the Cooperation and Verification Mechanism (CVM, hereafter), an institutional device in place until the summer of 2022, whose main goal was to ensure that the EU Commission continued to scrutinise reforms through monitoring and reporting assessed benchmarks (Tănăsioiu and Racoviță, 2012, p. 243).

The specificities of Romanian anti-corruption strategies, with the integration of political corruption within the agenda of the National Defence Council as early as 2004, the co-option of the state intelligence structures within the anti-corruption policies, as well as the interconnection between anti-corruption and lustration within the judiciary, underlined explicit formal and substantive continuities with Romania's troubled legal and political past (Iancu, 2021, p. 1230). Despite these caveats, there seems to be a consensus over the fact that anti-corruption was a relative success (Bratu *et al.*, 2017), especially having in mind that the European Council has lifted the CVM conditionalities and thus formally attested that a specific overseeing by the Commission was no longer necessary.¹ However, beyond these formal acknowledgements, a growing body of

¹Report of the Commission to the European Parliament and the Council. On Progress in Romania under the Cooperation and Verification Mechanism on Progress in Romania under the Cooperation and Verification Mechanism, 22 November 2022, COM(2022) 664.

literature addresses the darker sides of the anti-corruption strategy and their potential to disrupt rule of law-based processes. This strain of literature has pointed out the political intricacies of anti-corruption, which was turned into a somewhat blunt instrument for silencing opposition and has ultimately affected the general trust in public offices as well as in the sphere of established politics (Mungiu-Pippidi, 2018). Other analyses have criticised the reliance on a biased model of fact-finding and benchmarking, which was inductive to a repressive model of anti-corruption, relying mainly on the repressive machinery of the state, such as the intelligence services and prosecutors (Mendelski, 2021). Last, but not least, the entanglement between anti-corruption, lustration, transitional justice and anti-communist politics has definitely thwarted the process and has increased the tensions between a rule of law model and an extraordinary, exceptional model of fighting against corruption (Iancu, 2021, pp. 1229–1230).

In what follows, while acknowledging these criticisms, I aim to open a new way of understanding corruption by focusing on its place within the law and culture of the European semi-periphery. My intention is to operate a twofold displacement of the analysis of anti-corruption and the current status of constitutional practice. First, I aim to reposition the question of political corruption within a jurisprudential and legal historical context. In this way I inquire what is the legal theoretical importance of political corruption in a post-dependency context? In other words, what can the representation of corruption entail for law, and for a particular legal historical trajectory within the European periphery. Second, I move towards exploring the context of the inter-war era as well as the discursive construction of political corruption within the law of the time and through fascist criticism levelled against it. In doing so, my aim is not only to expand the timeframe of the current analyses on corruption in Romania, but also to reflect on the structural and formal conditions of its utterance within the law (Foucault, 1970, p. 128), as well as on the path dependency and the historical lines of continuities within the inter-war era.

This analysis draws explicitly on the growing literature exploring the darker legacies of law (Joerges and Singh Ghaleigh, 2003) in an attempt to seize and work through the politico-legal heritage of right-wing authoritarianism in Europe (Stolleis, 1998; Fraser, 2005; Cercel, 2013; Skinner, 2015; Skinner, 2019; Cercel, 2021a). To this day, corruption and anti-corruption have been analysed with reference to the socialist past (Tismăneanu, 1989), and the fight against corruption was understood as a clear form of cutting away from a past that was perceived as morally reprehensible, economically inefficient, politically criminal, in short, corrupt (Cercel, 2018, p. 15). However, the frames shaping this discourse were forged earlier on, and carry the numerous signatures of the projects of state building, legal reform and reconstruction that have marked Romania's modern history. It is the aim of this article to unearth an important part of their genealogy.

2 The stain of corruption: law, modernity and the periphery

The concept of political corruption finds its original environment within political theory. Long before it became a specific indicator within the general performance of states in terms of delivering good governance, it served as an explanation for the failings of politics in establishing a good society (Philp, 2015, p. 17). Whereas classical political theory is perhaps no longer apt to map the realities of multcentred, plural, globally connected, 'complex' modern societies, some of the semantic weight, moral and political connotations survived to this day as a specific residue in contemporary uses of the term. As a minimum, political corruption presupposes the existence of a division between public and private, an understanding of the public office as particular institution ultimately grounded in a set of norms, that is thoroughly different from the person of the individual, as well as a particular form of 'rationalisation' of the rules (Philp, 2015, p. 22). Otherwise said, in order for political corruption to be understood as such, a minimum of alienation (Weber, 1978 [1921], pp. 951–952) is a prerequisite.

Within this definitional structure, references to the good, well-ordered society abound, inasmuch as what creates political corruption is a transgression from within: corruption contains in negative the values for which the polity is meant to be built. Yet, as we can observe, most of these values do not simply point to purely political concepts, but also refer to legal theoretical constructs, insofar as they presuppose a specific organisation based on rules. It would be then serviceable to note and explore at this stage the concept of corruption as a limit-concept, situated at the borders between political theoretical inquiry and jurisprudential understanding. As a process that thwarts and taints the functioning of the state apparatus, corruption is generally translated into law through several criminal law crimes and offences that aim to protect the neutrality of the public office, and ultimately to secure the authority of the state:

‘the objects of corruption in judicial systems are not first-order norms of settled purposes as with executive functions, but rather second-order procedural norms of adjudication. The integrity of the process involves a confidence that, when the truth is unknown and the demands of fairness and equity ambiguous, argumentation and advocacy are the best ways of approximating true, fair, and equitable outcomes’. (Warren, 2006, p. 805)

But within this very process of framing corruption, the original hybrid character of political corruption is revealed: political corruption is an amphiboly, at the borders between law and politics.

First, this is because corruption relies on a series of jurisprudential presuppositions about the division between public and private, one to which the law in both common law and continental tradition was central. Second, it is because it operates with a specific understanding of public office that was developed within a legal historical tradition harking back to Western political, legal and theological semantic layers that construct the impersonality of the office (Agamben, 2013, pp. 65–86; Kantorowicz, 1997 [1957], pp. 152–153; Buratti, 2016, pp. 84–85). Third, this is because corruption ultimately relies on the existence of a body of rules that support the institutional framework in which it takes place and which through their very transgression render possible that such an act be understood as a crime that risks affecting the whole legal edifice (Raz, 1980 [1970], pp. 203–204).

Before investigating further these necessary legal infrastructures on which imaginaries of the well-ordered society rely, it is useful to note the jurisprudential characteristics of political corruption. Through its radical entanglement and disruptive potential, corruption goes to the core of the old jurisprudential questions about legal authority. The classic jurisprudential conundrum about the distinction between the tax collector’s order and the highwayman’s coercion (Raz, 1979, p. 158; Kelsen, 1991 [1979], pp. 27, 53–55) offers a good example of how political corruption enters within the field of legal theory. At halfway between the lack of ‘legal’ authority of the highwayman and the punctilious application of law by the tax-collector, the politically corrupt official is the figure of a not-fully institutionalised legal system or of a usurpation of office. Within the classical theoretical frameworks of Kelsen’s normativism (Kelsen, 1992 [1934], pp. 102–103), what we witness in this instance is a matter of a violation of rules by the officials authorised to their application. Within this tortuous application of the law, the division between normative validity and social efficacy becomes apparent. Under the rules of the system, guaranteed by a *Grundnorm*, the system authorises the officials in their actions, while they as private persons transgress socially the limits of this authorisation.

In Hartian terms, within the operative system governed by a rule of recognition (Hart, 1994 [1961], pp. 105–106), one is able to recognise the legal validity of the actions of the corrupt law official, while the social motives and their moral significance are fully reprehensible (Hart, 1958, p. 624). Looked at through the lenses of classical jurisprudence, the theoretical status of the concept of corruption should become clearer: the transgression of the limits of the office has the potential to damage not only the private beneficiaries of the process, and the public at large at

some particular point in time, but to undermine the whole legal system by sapping its very validity. This is because a normative legal system with limited efficacy or completely lacking it would not be able to function. Norms must be followed, and if the degree of transgression and non-observance of the rules goes beyond a particular threshold, the legal order cannot be either valid or effective. In Kelsen's words: 'the validity of a legal system governing the behaviour of particular human beings depends in a certain way, then, on the fact that their real behaviour corresponds to the legal system' (Kelsen, 1992 [1934], p. 60).

More sociologically attuned readings of the phenomenon point in a rather different direction: political corruption exposes the limits of the legal system, but as a form of a limited formalisation that the law is able to produce in a particular context. Kelsen's intellectual nemesis, Austrian sociologist Eugen Ehrlich emphasised the distinction between formal law and the 'living law', as 'the old law that still survives' (Ehrlich, 2017 [1913], p. 498). According to him, 'the old law, which is popular law and not merely juristic law, lives on under a thin surface of modern statute law, and dominates the conduct and the legal consciousness of the people' (Ehrlich, 2017 [1913], p. 498). Such a position, reveals the unpalatable – at least for a specific brand of legal formalism – paradox of multiple legal orders and basic norms, claiming both legal validity and efficacy over the same territory, at the same time, without any form of hierarchy between them. In other words, the paradox of strong legal pluralism that most of the established legal canon expunges *ab initio* as impossible. According to Raz's criticism of Kelsen, 'there is nothing in the theory to prevent two legal systems from applying to the same territory. Everything depends on the ability to identify the basic norm, but it cannot be identified before the identity of the legal system is known' (Raz, 1979, p. 129).

Placing political corruption not only on the side of transgression, but as a potential threat to the validity of the legal order is able to reveal better its operation within the legal field: political corruption points towards the limits of legal formalisation, and is at least potentially at the threshold between the officialdom of the state – and the formless social rules and roles specific to the 'pre-legal world' (Hart, 1994 [1961], p. 100). While individual acts of political corruption stay within the remit of the notion of transgression, and do fit criminal law categories of crimes and offences, the concept as such distinguishes itself only through the serial, repetitive and potentially existential danger that it represents to the existing legal status quo (Philp, 2015, p. 26). In this sense, it presents itself as a systematic, repetitive transgression that threatens the legal order as a whole and marks law's incompleteness, insofar as 'the more widespread it . . . is, the more difficult it is to identify any institution or office in the political system that could authoritatively signal that the activity is unacceptable' (Philp, 2015, p. 26). Ultimately it is law's role within a modern society that finds itself in jeopardy as the whole system regresses to a pre-constitutional, pre-legal state: 'the harm to democracy is that the rule of law becomes less certain, excluding citizens from the legal rights, protections, and securities to which they are entitled' (Warren, 2006, p. 805).

While Kelsen's paradigm and its mirroring in Ehrlich's opposition between formality and informality in the law can provide a model for explaining the particular *excess* that political corruption represents for a legal system of rules, they do offer only a somewhat disembodied and a-historical picture. Weber's concept of rationalisation is perhaps more apt in explaining how a legal system, as a system of rules supported by an administrative apparatus and a bureaucratic infrastructure, faces limitations in replacing or tackling irrational forms of domination. The disruptive remainder that risks subverting the system and that constantly undermines it from the inside, is the residual persistence of a social formation that resists rationalisation (Weber, 1978 [1921], pp. 284–333). In more dramatic terms, it is the resistance or limit to Enlightenment (Weber, 1978 [1921], p. 1209; Bauman, 1991, p. 21; Litowitz, 2011, p. 59).

At this juncture, the jurisprudential and political presuppositions on the operation of political corruption should be both historically and culturally clearer: such a discourse is possible only within the framework of a particular form of modernity originating within the European context and imposing itself both materially and epistemically as the norm. In short, 'corruption arises

within a set of largely Western assumptions about politics and its character' (Philp, 2015, p. 20). Historians and cultural theorists have highlighted the inner political importance and weight of representational strategies of the other, as an invitation 'to control, contain and otherwise govern (through superior knowledge and accommodating power)' (Said, 1978, p. 56). The place occupied by Eastern Europe (Wolff, 1994) and the Balkans (Todorova, 2009) within geographical imaginaries has undoubtedly produced very real political consequences going forward from the times of the Enlightenment to late twentieth century. As Larry Wolff noted,

'It was Western Europe that invented Eastern Europe as its complementary other half in the eighteenth century, the age of Enlightenment. It was also the Enlightenment, with its intellectual centers in Western Europe, that cultivated and appropriated to itself the new notion of "civilization," an eighteenth-century neologism, and civilization discovered its complement, within the same continent, in shadowed lands of backwardness, even barbarism' (Wolff 1994, 4).

Whereas the law has not been particularly a subject of analysis in this body of literature, political corruption certainly played a crucial role in building the representational frames through which the states of the region have been represented (Wolff, 1994, p. 273; Todorova, 2009, p. 35). Perceived as a taint of the Ottoman occupation (Todorova, 2009, p. 90), or a remnant of the unenlightened imagined Scythian traditions (Wolff, 1994, p. 285), political corruption was often a trait that foreign travellers, and later diplomats, scholars and anthropologists would ascribe to the political class in Eastern Europe and will soon become a shorthand explanation for the economic and political backwardness of the region (Todorova, 2009, p. 132). This representation is by no means unilateral, with a European Centre deploying its hegemonic gaze over the Eastern object. Rather, a dialectical relation between the Centre, as a reified form of hegemonic civilisation and the Eastern subject that aims to its own subjection is at play, as the gaze of the Centre is internalised already towards the turn of the twentieth century (Todorova, 2009, p. 57). What seems to transpire through this structure of representation, is the object of corruption as a distinctive mark of a space untouched by 'civilisation', a remnant of pre-modernity that the newly emerging polities aim to overcome.

3 Legal modernity as syncretism: the path to the inter-war era

In the case of Romania, the assessment of an intrinsic link between political corruption and backwardness was perceived by the local elites of nineteenth century as nothing short of accurate (Hitchins, 2014, p. 88; Jianu, 2011; Jelavich, 1984, p. 50). But one should not overemphasise the role of this representational logic at the expense of a historical materialist understanding of the phenomenon at hand. At the time when the Romanian principalities – Wallachia and Moldavia – were welcoming modernity through the first constitutional reforms, and the local elites were embracing studies in Western universities – mainly in law and letters (Bibesco, 1894, p. 210; Rădulescu, 1912, p. 41), the countries were also integrating the world capitalist system. The treaties opening trade on the Danube to ensure the circulation of grains and agricultural products, would, at the same time, enable a discourse on the need to proceed to a modernisation of state institutions (Hitchins, 2014, p. 121).

The building of the Romanian state following the revolutions of 1848 and the Treaty of Paris of 1856 ending the Crimean war epitomises the processes at work. At an economic level, the drive towards expanding new markets towards the East opens the way for the creation of a rationalised polity at the borders of the Ottoman, Russian and Austrian Empires, that will soon embrace a Western-style model of administration, a liberal inspired constitution and will embark on a Herculean project of legal reform. Significantly, the legal superstructure was initially based

on the Treaty of Paris,² and later on, in 1864, was unilaterally modified by Prince Cuza in a Bonapartist coup³ (Hitchins, 2014, p. 109), emphasising to which extent local politics mimicked the French model (Guşan, 2013, p. 344). Having the basic law grounded in an international binding document is also indicative of the symbolic status of the country: a formal vassal of the Ottoman Empire, it found itself under the guarantee of the Protective Powers – the Great Powers of the concert of nations,⁴ that acted as the external support for the unstable internal sovereignty. Legal and constitutional identity were constituted through this very act of being guaranteed by the power and the gaze of the Centre.

During the short-lived rule of Prince Cuza (1859–1866) the legal system witnesses a fast reform – the Civil and Criminal Codes are adopted in 1864, and modelled on the French codes, in a process that was presented as a ‘great step towards civilisation’ insofar as ‘the French law [was] the best, the most accomplished . . . adopted by most of the civilised States’ (Rădulescu, 1926, p. 13). The forced abdication of Cuza, as a result of his personal ambitions and the somewhat radical project of land reform and secularism he aimed to pursue (Hitchins, 2014, pp. 109–111), was followed by the coronation of Prince Carol, of the Hohenzollern house, and the adoption of a constitution in 1866.

For its part, the constitution of 1866 followed the constitution of Belgium, in an attempt to reproduce the politico-legal basis of a limited monarchy. By the time of its independence from the Ottoman Empire, in 1878, the country could boast of having been legally integrated within the concert of civilised nations insofar as it conformed to its standards (Gongg, 1984, pp. 14–15). It should be emphasised that this process of a slow but steady attempt to modernise, and to surreptitiously integrate within the structures created by the Centre, was not a direct form of colonialism. Rather than having an unmediated imposition of a legal, constitutional or administrative model, the reception of Western forms of legality – separation of powers, neutral and rational law supported by judicial review and, as early as 1912, constitutional review – were a result of a fragile yet existing consensus amongst the elites over the path to be followed by the country (Guşan, 2017, p. 67). What characterises this semi-peripheral condition, is therefore the specific hybridity of the socio-legal systems, in which important layers of the official and public discourse, as well as the institutional landscape, were already modern and rationalised, while at the same time social relations as well as the bulk of the relations of production were lagging behind. This represents the fertile ground for the emergence of a discourse on political corruption perceived as a stop-gap nested between the social reality and normative prescription that prevents the fulfilment of the promises of modernity.

Critics of the modernisation on the conservative side of the political spectrum would decry the opposition between the *form* of the state, and its modernised layers – from law to cultural production and its social, political and economic *basis*. For instance, for Romanian literary critic and professor of Civil Law at the Faculty in Iasi Titu, Maiorescu, the Romanian reality was a ‘form without a basis’ (Maiorescu, 1874). More attentive to the particularities of the law within this context, legal historian and public law scholar Constantin Dissescu would consider that the legal realities were not based on facts, and did not emerge from a purportedly natural growth, but were created by the law themselves as pure normativity that was not supported by the social relations: ‘it is a law that has not been lived, that has not emerged from the facts. On the contrary, it has created them’ (Dissescu, 1923, p. 298).

²Art. 23 of the Treaty of Paris of 1856.

³The ‘Constitution’ was entitled ‘Additional Document of the Convention of 19 August 1858’ and it was agreed upon by the Protective Powers in June 1864. By virtue of articles 2 and 3 of this Statute, the Prince wielded the core of the constitutional powers.

⁴According to Article 22 of the Treaty of Paris, ‘The Principalities of Wallachia and Moldavia shall continue to enjoy under the Suzerainty of the Porte, and under the Guarantee of the Contracting Powers, the Privileges and Immunities of which they are in possession’.

Writing at the turn of the century, Marxist sociologists would describe in no less disparaging terms the status of the country as being marked by backwardness. Identifying the characteristics of a specific social formation marked by hybridity, Constantin Dobrogeanu-Gherea set the tone for later decades of social criticism (Dobrogeanu-Gherea, 1977 [1910]; Aronovici, 1911): on one hand the country was already a bourgeois state with an incipient form of capitalism, while on the other hand feudal remnants and feudal relations carried on their existence in an adulterated form (State, 2016). This position resonated with the diagnosis provided by Austro-Marxists active around that time on the other side of the Carpathians. According to this reading, the regimes within the context of the periphery was resolutely dual: a veneer of capitalist modernity that coexisted with remnants of feudalism (Bauer, 1978 [1918], p. 148). To sum up, the characteristics of legal modernity within the European semi-periphery are built on an elite-fuelled project in which national emancipation went hand-in-hand with integrating Western models of legality. In the case of Romania, it was the French model within civil law and criminal law, and the Belgian constitution, alongside important jurisprudential developments and public law concepts borrowed from the French doctrine. Yet, the legal development was limited, just as the process of national emancipation and state-building was limited.

First, it was limited by the economic dependence of the country on foreign investment. Second, it was the project of a very thin layer of the population. What was initially the project of a 'circle of friends' in the mid-nineteenth century, ended up being extended to a maximum of 6 per cent of the overall male population at the beginning of the twentieth century (Iancu, 2020, p. 243). Political participation was based on census vote, with vast parts of society being excluded from the state – women, Jews, foreigners, the poor. A scathing observer such as Leon Trotsky writing during the Balkan wars, shortly before the Great War, noted precisely this disparity between the educated elites, citizens of a somewhat liberal Kingdom and the bulk of the population, policed, and brutally repressed – at times with the support of the military and the instauration of martial law (Trotsky, 1980 [1913], pp. 355–366).

Within this context, the question of corruption was still in its infancy: a body of rules concerning state administration and offenses to the authority of the state in financial matters were already part of the Criminal Code of 1864. For instance, article 144 incriminated the bribery of public officials, an offence punishable by up to two years in prison, while articles 151–153 incriminated abuses of power against the interests of private parties, and 158–160 abuses of power against the interests of the state.⁵ Corruption scandals, such as the financing of the tramway system in Bucharest of 1912 (Rădulescu, 1935, pp. 64–70), and of the railway during the late nineteenth century under German influence did spark a level of attention and controversy (Iordachi, 2019, p. 347; Stern, 1979, pp. 351–393): they did not, however, question the structure or the nature of the state project. Under the conditions of the relatively homogenous and hierarchical society from before the First World War, corruption was a matter of party politics, rather than of constitutional importance. Still firmly grounded in a political project determined to modernise the state and to break with its former historical roots by embracing legal modernity and the rational apparatus of the state, the polity was able to contain the excess of political corruption. At the very least the framing of political corruption was that of a backward legacy that could be overcome.

4 Framing political corruption: law, violence and antisemitism

The period following the First World War marked a watershed in the ways in which political corruption was reconstructed in public discourse, insofar as it became an object necessarily connected to the multiple crises of the 1930s. During this time, corruption moved from being a matter of criminal law interest and political squabbles towards conveying a deeper constitutional significance related to the very existence of the state. After all, corruption was an all too easily

⁵Criminal Code of 1864, M. Of., No. 240, 30 October 1864.

identifiable, pervasive and all-encompassing explanation for the failings of state policies: the image of the corrupt politician or state official became a recurring trope. Under its presence lay, of course, more complex social forces at work: a limited drive towards modernisation and the unchallenged remnants of a status society, caught under the conditions of mass politics. Core to this semantic displacement of corruption were the emergence of a formal, yet nonetheless real, mass democracy, the development of constitutionalism towards a more inclusive body politic as well as the multiethnic nature of state following the Treaty of Versailles (Torrey, 1992).

As early as 1919 the census system was replaced by universal male suffrage. The land reform, promised during 1917 in the midst of the war, added another layer of shifts within political life (Hitchins, 2014, p. 178). With voting rights extended to important parts of the population, and the property of the landed aristocracy reduced, political discourse shifted radically towards a mass democracy: traditional parties, such as the Conservative party lost significance, new political forces such as the Peasant Party, or the populist Popular Front, emerged.

In the wake of the First World War Romania did indeed present, at least from a formal point of view, all the characteristics of a modern state. It could boast a constitution that at least guaranteed fundamental rights to its citizens, secured the separation of powers and due process of law. The supremacy of the constitution was guaranteed legally by a diffuse constitutional review (Rădulescu, 1935, pp. 74–79), criminal law provisions were rationalised through constitution and a Criminal Code, while commercial and private transactions as well as personhood were minutely regulated by a Civil Code modelled on the French *Code Napoléon*. Moreover, the country had embarked, albeit reluctantly, on a project of increasing the scope of constitutional rights and their bearers, by granting full citizenship to all the inhabitants within its borders (Cercel, 2020, p. 28).

At first glance what we call today political corruption is reducible to a set of transgressions that could have been easily tackled by a rather straightforward application of the Criminal Code. Unfortunately, on closer inspection the context was less clear than it could appear at a strictly formalist analysis. The specific excess of political corruption re-emerged under the new historical conditions with a vengeance: the syncretic nature of the social formations was now overtly and fully at odds with the legal system, and the tensions and public perceptions of injustice became a diffuse concern for the body politic. Moreover, they were voiced publicly and taken over by mass parties, becoming part of a general distrust of state institutions.

True, the Constitution of 1866 and the later Constitution of 1923, were supporting a layer of liberal legality: yet they still held authoritarian features, with state power being organised around the figure of the monarch. Furthermore, political practice consisted for a long period of time in an alternance to power, with the elections being organised by the King-appointed prime minister (Hitchins, 2014, pp. 167–169), which effectively made the parties, rather than expressions of the freedom of assembly, commissioners of the state (Barbu, 1999, p. 173). During the first decade following the war, the National Liberal Party continued to dominate the Romanian public sphere and despite all the contestation, held its grip over the country's politics in an effort to centralise and impose its vision of a project of national industrialisation and protectionism, at odds with the country's position within the international stage, as economically dependent on foreign investment and geopolitically relying on the Versailles order (Riley, 2019, pp. 123–126). Public perceptions of liberal dominance as a continual exercise of political corruption were common during the 1920s, and were supported to some extent by the quasi-authoritarian outlook of the state: elections were marked by electoral fraud, intimidation, vote buying or machine politics (Roucek, 1932).

Moreover, the use of martial law and emergency powers for political ends not always determined by objective conditions impacted further the confusion between law, politics and the public perception of corruption. Between 1915 and 1928 most of the country found itself under the provisions of partial or general state of siege. Essentially a mechanism of defence of the state order modelled on the French *état de siège*, the state of siege was used until 1923 under the

doctrine of necessity, not being accommodated by the 1866 constitution (Cercel, 2021b, p. 221). It consisted in the transfer of all order maintaining, and judicial powers from, civilian authorities to military ones in case of danger to the state. During its application, fundamental rights and constitutional protections were severely limited. Under the Constitution of 1923 the state of siege was accommodated explicitly by the constitution and it became a common presence within the functioning of the state (Cercel, 2013).

The impact of emergency powers on the overall functioning of the state should not be underestimated, as they not only opened the way to numerous abuses emphasised by both foreign observers (Clark, 1927, p. 173; Roucek, 1932) and legal practitioners of the time (Costa-Foru, 1925) but also affected further the entire field of criminal legislation (Cercel, 2015) as well as public opinion (Pintilescu, 2018). This is because over a long period of time, despite the perceived normalisation of the post-war conditions, the threat of a communist revolution was considered as more than a simple possibility. Romania's intervention in quelling the Soviet Republic of Hungary, the Polish-Soviet War, local uprisings and major strikes, offered real or imagined grounds for instituting the state of siege during the first decades after the war (Cercel, 2013). The legal dispositives honed within the context of emergency were also embedded in regular legislation, expanding the scope of criminal repression.

Additionally, the recurrent use of emergency powers has also created a zone of indistinction between legal concepts and political ones, by bringing political security concerns within the sphere of criminal justice. These important changes highlight the inner fragility of the legal system in responding to a context of political crisis, social change and general upheaval. The inherently authoritarian nature of this practice, that connected liberal legality to military expediency and security concerns, cannot be overemphasised and it is useful to note how this impacted the representation of the polity as being constantly under threat.

As foreign commentators of the time observed, the country was ruled virtually as a dictatorship under the NPL hegemony (Roucek, 1932, p. 423). The rise to power of the National Peasant Party in 1928, in arguably the first genuinely free elections since 1923 (Hitchins, 2014, p. 178), was celebrated as a moment of respite and as a democratic victory – despite the overt popular pressure by the NPP party through protests against the liberal government (Riley, 2019, p. 127). However, the promises of an honest government that would rule the country within the boundaries of the constitutional provisions, and without recourse to emergency powers, were overshadowed by two distinct events. First, there was the financial crisis of 1929 and its effects on a country already indebted by the industrialisation policy pursued under the NPL, closely connected to the uncertain policy of moving towards an agrarian model of society, in which the main production would be constituted by land small-holders (Riley, 2019, p. 128). Second, ever since 1926 the country was facing a dynastic crisis. Crown Prince Carol was forced to abdicate in favour of his son, as a result of the estrangement with his spouse and his unconcealed extra-marital affair. Afterwards, he lived between Paris and London as a private individual, insofar as he was, by law, no longer a member of the royal family. Following the death of King Ferdinand in 1927, a regency was instituted (Cercel, 2020, p. 34).

The rising effects of the economic crisis and the difficulties faced by the government in securing foreign loans, as well as the general political instability, pushed the leader of the NPP, Iuliu Maniu, to accommodate the idea of a return of the Crown Prince as a constitutional monarch, who could rally the country and use the wide powers vested in the person of the King by the constitution. In 1930 Carol returned and was re-instituted as the king, in what was an ostensible transgression of the law and the constitution (Cercel, 2020, p. 35). Unfortunately, he also had a political programme of ruling the country as a modern, bonapartist-style monarch. More specifically, he had his own vision of modernising the country through by-passing political pluralism and by developing a mass nationalist, pro-monarchist movement. In his support were a series of advisers from the ranks of the right-wing nationalist movement, such as Nae Ionescu, Mihail Manoilescu and Nicolae Iorga (Riley, 2019, pp. 130–131).

Under these new conditions political corruption is thematised as a distinctively different subject at the interface between law, politics, social science and economics that will evolve and influence important aspects of the political life of the inter-war period. With an incipient form of formal democracy guaranteed by the constitution and supported materially by the land reform – arguably the most radical land reform at that time in Europe save the Soviet Union (Gorni, 1931, pp. 218–223) – a relative and limited increase in literacy, the conditions for speaking about corruption changed and the political dimension of the discourse became more apparent. Furthermore, given the overall sense of emergency, the ubiquity of expedient measures in dealing with radical political dissent and social strife, as well as the primacy of security concerns, corruption became more than simply cases tried by criminal courts. It is a phenomenon that seems to traverse all the capillaries of the state and distort its actions. Through its constant presence – and supported by the general sense of impunity that political elites shared during the NPL hegemony – it echoed also fears about a possible dissolution of state authority. Let us recollect that state authority was already fragile and questioned on many levels: from the international geopolitical situation, to the internal dissent, abuses of state power and graft were just another aspect of the general malaise.

The most vocal and in many respects simplest explanation for corruption came from within the ranks of the far-right. Building on a long tradition of antisemitism, pervading already many of the layers of national culture through the nineteenth century, the far-right rallied during the first years after the First World War around the fear of the communist threat. The first political organisations were effectively acting as strike-breaking forces during the strikes of 1918 and the general strike of 1920, supporting as para-military groups the actions of the state military and the gendarmerie (Clark, 2015, p. 24; Cercel, 2013). Joining forces with older antisemitic leagues, the young far-right secured an important foothold within the student milieu in Iasi and Bucharest, under the leadership of Corneliu Zelea Codreanu (Clark, 2015, p. 24).

As both antisemitic and anti-communist, the student movement under Codreanu opposed explicitly the Constitution of 1923, especially the provisions granting full protection to the Jewish community in Romania, which previously found itself under a legally precarious status. The constitution was perceived as nothing short of an act of treason, through which a corrupt elite aimed at protecting a foreign body within the body politic of the nation. Drawing inspiration from the works of Alexandru C. Cuza, the main ideologue of the antisemitic movement in Romania, the newly emerging political group around Codreanu articulated the connection between corruption, antisemitism and nationalist politics. A professor of economics at the Faculty of Law in Iasi and member of the Romanian parliament, Cuza was the author of an antisemitic tract parading as economics entitled *On population (Despre poporatie)* in which he advanced the idea that the economic growth of Romania was stifled from within by foreign inhabitants, and especially by the Jewish community living within the borders of the Kingdom (Cuza, 1929 [1899], pp. 542–555). While the tract was mainly repeating tropes specific to the *fin de siècle* antisemitism, it was effectively advocating for a reconstruction of the notion of citizenship along ethnic and racial lines.

The ultra-nationalist student movement recuperated these ideas and added an activist dimension, engaging not only in protests and direct action against the proclamation of the constitution, but also in acts of vigilantism (Clark, 2015, p. 34–36). As Codreanu was a lawyer and military by training, concepts of legality, justice and warfare were moulded into the discourse of the movement. At the wake of the proclamation of the constitution he was arrested for having plotted the assassination of prime minister IIC Bratianu and a number of members of the political and economic elite of the time (Clark, 2015, pp. 42–46). In his memoirs, written as propaganda for his movement in 1935, Codreanu described his actions as a plan to cleanse the country of corrupt politicians (Codreanu, 1936, p. 29). Corruption, within this initial position of the far-right movement, was read through antisemitic lenses: politicians are acting on behalf of Jewish interests and against Romanian interests: ‘the first and greatest culprits are the Romanian scoundrels, who for the sake of the Jewish silver betrayed their nation’ (Codreanu, 1936, p. 29).

Acquitted insofar as the legislation of that time required an actual attempt for an attempted murdered to be prosecuted (Ornea, 1999, p. 266), Codreanu founded the Legion as a youth branch of the League for National Christian Defence. During the following years, until 1927, the Legion acted within the confines of the league, engaging in antisemitic campaigns and political violence. Codreanu shot to death the Chief of Police in Iasi, and was once again acquitted on the grounds that he was acting in self-defence (Clark, 2015, pp. 50–53). In 1927, following a break with Cuza, the Legion of the Archangel Michael would register as a distinct political party promoting a radical antisemitic agenda. Due to the constant agitation and the unleashed political violence, the Legion was banned by an order of the Ministry of the Interior in 1931. This did not prevent Codreanu from running for elections and gaining a seat in Parliament in June 1931. On the occasion of his investiture as a member of Parliament he gave a controversial speech articulating explicitly the goals of the Legion as an anti-corruption programme. In his statement, he insisted on two important points for the purpose of this investigation. First, he conveyed the idea that corruption is inherently engrained in the democratic form, which under the particular historical conditions of the early 1930s was doomed to disappearance.

In his words,

‘we are of those who believe that the Sun does not rise from Moscow, but from Rome . . . Our generation . . . notes that: 1. A political party is just a stock company exploiting universal vote; . . . 3. That (parties) neglect the interests of the people and of the Fatherland, while satisfying only the private interests of their partisans; that democracy is irresponsible, and lacks the power of sanction; that all the parties commit lawless acts’ (Codreanu 1931, 11).

Second, he emphasised that the state apparatus and the law themselves were corrupt. Railing against the politics of the government struggling to appease the effects of the financial crisis by austerity measures, Codreanu stated: ‘Neither you nor anyone has the right to demand the poor’s [sic] honest money until there will be brought within the state vaults the last penny stolen by the bandits who robbed the country’ (Codreanu, 1931, p. 9). In a demagogic appeal concluding the speech, he added: ‘we demand the review and the seizure of property of all who have robbed the poor country . . . We demand criminal prosecution of all the politicians who will be proved to have been involved in incorrect businesses’ (Codreanu, 1931, p. 14).

While these appeals are not antisemitic on their surface, and they seem to presuppose a level of neutrality of the law that could be used as an instrument in fighting corruption, it should be noted that the Legion also demanded ‘priority rights in all domains . . . for the Romanian element’, as well as ‘the expulsion of the bands of unforgiving exploiters’ (Codreanu, 1931, p. 15). The speech ended with an ominous call; articulating clearly the disruptive force of the discourse of anti-corruption as well as its role in fuelling a fascist revolution: ‘if the country’s leaders are at this time prevented from taking measures in this direction by the Constitutions or the laws in force, then we are of the opinion that they should dissolve the legislative bodies, to appeal to the people and call for a constitutional assembly, so that the people [can] indicate the one who is called to take the necessary measures for saving Romania’ (Codreanu, 1931, p. 15).

5 Fighting political corruption: justice beyond the law

In the years following Codreanu’s address to the Chamber of Deputies the economic, political and legal context shifted at an unprecedented pace, putting an important strain on the veneer of democracy and the liberal constitutional mechanisms supported by the Constitution of 1923. First, the centre-right government lead by the Peasant National Party passed a law instituting the state of siege in response to strikes within the extractive industries and the railways. This was an important break with the party’s policy of consciously avoiding the use of extraordinary measures.

To put things in their context, at the same time as the state of emergency was declared in Germany as a result of the Reichstag fire, emergency powers were exercised in Romania by a self-professed democratic party (Cercel, 2020, p. 35).

Days later, the uncovering of undue state contracts in military procurement was shaking the political spectrum and cast an important shadow over the dealings of a party that came to power on an agenda of promoting honesty, fairness and bringing democratic rule to the centre of daily politics. In short, following an investigation by tax authorities at the premises of Skoda's representative in Bucharest, it was discovered that the manager was in possession of Romanian military secret documents, that state contracts for the purchase of artillery were being pursued and payments still being made even if military experts considered them unfit. Moreover, it appeared that the Skoda representative was protected by higher powers within the Romanian state's administration or military hierarchy that took advantage of the provisions of the state of siege to cover up Skoda's dealings. A suspicion of embezzlement was cast over the higher echelons of the state including Romania's King Carol himself. As a result of the uncovering and the general embarrassment of the government, snap elections followed. Skoda's representative was charged with espionage, the military officer responsible for the direct dealings with the Czechoslovak company committed suicide, and a general public distrust towards the state institution became common currency even within the mainstream media (Chioveanu, 2000).

Against this background, the fascist movement reacted through direct action to the government's attempts at limiting its activity through subsequent bans. The process culminated in the assassination of liberal prime-minister IG Duca by a fascist death-squad, the first major political assassination in Romania since 1862. Following a period in hiding, Codreanu was judged and acquitted by the military tribunal, as allegedly he could not be implicated for aiding and abetting the murder of the prime-minister (Clark, 2015, p. 103). Just months after the trial, Codreanu set out the basis of a new party, on the structure of the former Iron Guard. This party was supported not only by a wide infrastructure of the para-military organisation of followers, but also by increasingly wider circles of Romanian society. Until 1935, the King himself was not only amicable to the Legion, but hoped to co-opt the movement in his support. The relation was mutual, insofar as the Legion did not overtly attack the person of the King until 1935 and never questioned the monarchy as such until, arguably, 1940.

The rupture between the King and the Legion did not have much to do with the political violence unleashed by the Legion, and not even with its antisemitism. Rather, the rabid antisemitism of the ultranationalist movement prompted them to question the King's extra-marital affair with his mistress Elena Lupescu who was considered of Jewish origin. Following this moment, accusations of corruption against the King's camarilla as well as against the allegedly malign influence of Elena Lupescu over Romanian politics started to become common currency in fascist propaganda (Haynes, 2007, p. 110). However, despite the apparent contingent and anecdotic flavour of this historical trajectory, this shift within the politics of the Legion had important symbolic consequences, insofar as it extended the opposition of the movement to the whole political spectrum. It was not only the fundamental rights protections of the constitution that were put into question, but the very legal infrastructure of the democratic state. In short, even if acting within the electoral system and attempting to seize power by democratic means, the fascist movement's goal was a radical transformation of the whole political and constitutional system. Within its strategy the criticism of the law, constitutionalism and democracy as nurturing corruption and unable to limit its spread was crucial.

The accusations of corruption point less to particular violations and transgressions of the law, rather they are presented as systemic and as a threat to the very existence of the nation. In this sense, at the intersection between law, morality and politics, they constitute the material that grounds a specific form of claiming the exercise of a specific sovereign power: in times of crisis for the nation, the corruption is to be cleansed by the forces of political salvation through any means. This is precisely the specific feature brought by the ultranationalist movement in its understanding

of corruption. As Roger Griffin argues, the litmus test for generic fascism is that of palingenesis, that is the call for a radical reconstruction of the polity by and through a sacralisation of the past (Griffin, 1993, pp. 44–45). While it is true that the Romanian Legionary movement had embraced this element of palingenesis built on a mythical history and Orthodox imagery (Iordachi, 2010), the meaning of political corruption is related to an excisionary politics that aims to do away with modern democracy. The argument advanced by the ultranationalist camp was that corruption was inherent to the very form of democracy and the only way to subdue it was by dismantling the whole legal system.

While this is essentially a phantasmatic projection, and an obvious distortion of the real legal and political issues at stake, it hints nonetheless towards a specific deadlock and trauma of a hybrid social structure in relation to modern legality. If, in the early years of building modernity, corruption was a backward remnant of the past, by the 1930s, it is the imprint of a foreign element within the body politic, becoming part of an antisemitic imaginary (Cârstocea, 2014, p. 48). Moreover, insofar as political corruption and its criticism can be articulated only from within the position of a modern legality, the ultranationalist call of dismantling the law is not only faulty and disingenuous but telling in its distortion of reality: it is a call for a phantasmatic return to an imaginary, idealised, pre-modern community unalienated by foreign liberal legality.

By the mid-1930s, the Legion gained an important foothold within the intelligentsia and legal profession as well as a wide range of publications. Amongst them, the sociology journal *Sociological Notes*, published under the direction of Traian Brăileanu, professor of sociology at the University of Czernowitz is of particular interest as it hosted contributions of members and sympathisers of the Legion, reviews and contributions of far-right intellectuals and antisemites abroad.

Despite the haphazard collection of texts in various spheres ranging from racial demography, linguistics and political philosophy to international politics, a clear programmatic line of antisemitic politics and legionary ideology was a constant presence within the collection of text published monthly during its relatively short existence between 1935 and 1941. Amongst them, the theme of corruption is recurrent. The particular tropes through which political corruption is articulated are significant, insofar as they capture the ideological frames through which the Legion addressed this topic, and reveal anti-corruption as a specific feature of an anti-democratic project. Corruption has first a moral and political dimension, the corrupt politician being the product of a process of degeneration of the polity. Through their venality, demagogues and corrupt politicians are the unwitting agents of a phantasmatic Jewish plot to take over the country and institute communist dictatorship. The economic crisis and perceived backwardness of the country are part of this plan of destructive forces, in which the corrupt politician plays an important part, being driven by personal gain. According to Brăileanu, writing in October 1935,

‘The problem becomes more complicated when the normal flow of money into the State treasury is stopped by the disorganization of the State apparatus, when “corruption” makes it impossible for the money to be collected by the State, and the money collected is used to satisfy the luxury needs of a decadent and degenerate political class’ (Brăileanu 1935a, p. 9).

Placed within the ideological tropes of antisemitism and ethnonationalism, the economic and social consequences of the global financial crisis of the 1930s are read as the results of acts of individuals, and the structural and systemic forces at work in world economy are reduced to subjective moral stands. Corruption is conflated in this instance to a specific subjective position, to a disposition of a particular caste that is already un-Romanian, as it has been tainted by the collusion of Jewish cosmopolitanism. The way forward to be taken by the Legion and the country, is to dispose of this caste, ‘this gang of political crooks, adventurers, nomads of our country should be crushed and banished’ (Brăileanu, 1935a, p. 12). If some room is to be made within this framework for structural economic factors, in order to grasp the role of corruption and the

economic limitations of a country dependent on foreign capital, they are particularly understood in clearly colonial terms. This is not something necessarily new in the Legion's imaginary and vocabulary, usually mixing a colonial and imperial worldview in which history is written by pure force and communities occupy a particular hierarchy due to their imagined racial characters and cultural traits. What is to be noted is the ambivalent position that Romania occupies within this spectrum at the interface between being a dependent nation, the potential for being an independent one and exercising its sovereign force in world history. In short, what hampers a country in fulfilling its potential is precisely the collusion between the Jewish communities and venal politicians:

'The extensive living of our political class, its needs of luxury, which exceed those of the political classes of the colonial empires, have not only drained all the sources from which the basic institutions of the State are sustained, but have even led to financial transactions with foreign countries which threaten the enslavement of the whole nation and the establishment of a foreign political class, the Judeo-Masonic soviets. The party struggles resulted from this drain on the country's wealth, from the greed of a political class which, in the rush to enrich itself, broke up into factions ready to revolt the multitude in order to gain exclusive control of the state's revenues and of "business" with foreign countries' (Brăileanu, 1935a, p. 5).

The only way to achieve independence is through a radical administrative reform that could put at the centre of the public office an elite that is placed above party politics, a form of politics that has been already been devalued through acts of corruption: 'in a nation state which has no possibility of colonial expansion only an "ascetic elite" can ensure the power, freedom and progress of the nation and that, our status being in this situation, the economic asceticism of our political class is a fundamental condition for the preservation of our national freedom' (Brăileanu, 1935, p. 5). Asceticism, another recurring theme of a movement organised around ideas of national salvation, monastic values and a call for a messianic ethnonationalist rebirth (Iordachi, 2010), was a form of regaining the authority of officialdom and of reconstructing the state (Cercel, 2013).

However, such a radical change could not have been brought about short of a revolutionary reconstruction of the whole political system. At this juncture, the decadence of the Romanian state, and the political corruption within its functioning, are connected to an abstract historical theory of degeneration of politics and the law that echoes tropes of the far-right movement in Europe. More specifically, democracy and parliamentary rule are considered to have been the bitter legacy of the French revolution that sapped both the unity and the authority of the state. The parallelism with Schmitt's scathing criticism of parliamentary politics in Germany developed in *The Crisis of Parliamentary Democracy*, *Dictatorship* and *The Concept of the Political* is striking. According to Schmitt, democracy was a dissolving force that undermined the political unity of the state and threatened to dissolve it into political factions, a process that was bound to culminate in a civil war. In Brăileanu's view,

'in some countries, and especially in ours, demagoguery has turned parliament into an institution of corruption and the dismantling of institutions of the state. "Politicking" is the term by which we get to characterize the situation we have reached. Universal suffrage has unleashed extermination battles between demagogues formed into "clubs"' (Brăileanu, 1935b, p. 7).

For Barbu Șlusușchi, another contributor to Brăileanu's journal and one of Brăileanu's students, 'democratism today is the environment of masonry and degradation of the Romanian political elite, turning it into a gelatinous plasma, historically unsustainable, which far from opposing the Marxist spirit, is overtly favourable to its germination. Romanian democracy is the prelude to communism, to which this path must be closed' (Șlusușchi, 1936, p. 26). The logical consequence

of this position was doing away with the forms and processes specific to parliamentary democracy. The path was not only the instauration of the dictatorship, as in the works of the German jurist, rather, it is the start of an internal racial war: ‘the Romanian nation stands at war with an enemy that has entered the country with the help of venal demagogues. The fight cannot have any chance of success for us, if the solidarity of our army and the unity of the leadership is not established’ (Brăileanu, 1935b, p. 11). The unity of command could not have been organised otherwise than through a totalitarian regime.

By late 1937, the Legion has become a significant political force ranking 3rd in the December 1937 elections. Facing its rise, the King forced the instauration of a care-taker government which was entrusted with organising new elections, led by another antisemitic party, the National Christian Party. Due to a tense international reaction to a first wave of antisemitic legislation passed in January 1938, the King suspended the Constitution, and instituted a regime of personal rule. This was formalised in March 1938 through a new constitution that banned political parties. The Legion was dissolved and banned once again, and Corneliu Zelea Codreanu was tried on counts of rebellion and high treason by a military court, and later shot for allegedly fleeing from his escort together with other leaders of the Legionary movement. Navigating through the troubled waters of the post-Munich agreement in a desperate attempt to align Romania with Nazi Germany, Carol II’s regime was forced to submit to territorial cessions to Hungary, the Soviet Union and Bulgaria in the summer of 1940. A coalition of fascist forces, with the support of the military, forced the King to abdicate in September 1940 and instituted a totalitarian regime under the name of the National Legionary State. During its short-lived existence, the Legionary movement engaged in extra-judicial killings of members of the former governments and the representatives of the elite of the King’s camarilla, exacted illegal seizure of Jewish property and acts of violence (Ionescu, 2015, pp. 150–157). The legionary revolution culminated in a rebellion in January 1941 that aimed to take full control over the state apparatus that was swiftly crushed by the military. During the days of the rebellion, when the Legionary police and their followers had control over Bucharest, pogroms against the Jewish population were exacted.

The ultranationalist approach to corruption is hard to grasp conceptually insofar as it is a piecemeal of statements, acts and public positions that is somewhat disconcerting in its all-encompassing character. As the ultimate evil that taints the body politic and blocks the economic and social development of the polity, corruption is imagined as an attribute of the phantasmatic Jew of antisemitic discourse to the point of a full confusion with foreign influence, subaltern status in international relations and a general instability and crisis that plagues society and the polity from within. Against such a nefarious influence – that included a plethora of markers of modernity from individualism to democracy and communism (Cârstocea, 2014, p. 48) – it was only the messianic force of the Legion that could resist. This position hints towards the a-legal path taken by the ultranationalist movement in addressing the question of corruption: in order to save the state from corruption, it attempted to break its legal armature by positively and consciously moving against its form. If we are to risk a jurisprudential interpretation of this position, it is the full social efficiency of an unofficial rule that is bound to destroy legal validity. In many respects this could be best captured by a Schmittian understanding of the nature of sovereign power: faced with the degeneration of the system brought about by political corruption the fascists affirm themselves as the true locus of sovereignty that cannot be bound by rules (Schmitt, 1985, p. 12). In more historically sensitive terms, what we can witness is an attempt to overcome the hybrid nature of peripheral legality by its full destitution.

6 Conclusions

The discourse of corruption developed by this strand of the Romanian far-right offers an important example of a call for anti-corruption that goes beyond the boundaries of the law. It

represents also a first historical example of a discourse on anti-corruption gone awry, in which a confusion between legal, moral and political layers was turned into a powerful ultranationalist narrative calling for a palingenetic rebirth through a cataclysmic change, that fuelled racism and antisemitism and effectively supported the right-wing dictatorships of 1940 and 1941. Keeping in mind that anti-corruption fuelled the staunchest – and perhaps the only open armed opposition to state authority in Romanian contemporary history before 1989 – it also constituted a core element of the fascist claim for exercising sovereign power (Cercel, 2023). In the context of inter-war Romania, this discourse imposes itself once the material, intellectual and institutional conditions of possibility for conceptualising and thematising *corruption* within the framework of the modern state have been created.

As I tried to underline, the discourse of anti-corruption appears only once a Western-style concept of legality is articulated, and when a shift towards mass-democracy is produced. However, instead of taking an institutionalised form, within the liberal legal framework of the state, it calls for a radical reshuffling of the system, being merged with an anti-Western, antisemitic and anti-communist rhetoric. Because of its connection to modernity, constitutionalism and the era of national-state building, it cannot be regarded as a mere historical accident that can be simply relegated to the past. Rather, as a seemingly forgotten ‘dark legacy’, it compels us to consider anti-corruption policies with a particular caution, and as a historical caveat for contemporary practices in which the fight against corruption has the potential to sap the rule of law infrastructure. The recent rise of the far-right, with explicit links to historical fascism (Biliuță, 2021, p. 2) and implicit antisemitic ideology (Marincea, 2022), calls for a thorough engagement with this dark legacy of anti-corruption and its relation to legal institutions. This is, of course, not to say that political corruption was never an issue in Romania either during the inter-war era or nowadays. As a phenomenon that is specifically connected to an unfinished project of institutional building, social inequality and dysfunctional application of the law, political corruption was constantly in the shadow of attempts by the polity to re-unite with the Centre and find its place within the modern capitalism of the nineteenth century, the post-Versailles world or the post-1989 global order. However, the ways in which corruption was thematised, and especially the ways in which its meaning was displaced during the multiple crises of the 1930s, should be further worked through.

We are certainly not living in the 1930s anymore, even though the multiple crises – from the challenges of the international status quo, to the dissolution of international legality and the dismantling of the liberal constitutional consensus – render more legible the specific anxieties and uncertainty specific to those times of crisis. The rise of the far right in Romania – an anti-European, or at least anti-EU, sovereigntist and ultranationalist one – in the midst of the pandemic, against the background of conspiracy theories and the global rise of illiberalism, shares a lot with the crisis of the 1930s. This is not only at the level of the rhetoric, ideology and personal convictions, but also in the ways in which political corruption is thematised. After being at the forefront of various political projects since 2004 corruption came to be understood as the ultimate limit preventing the country fully achieving its potential in the post-EU accession period. For its part, the corrupt politician, a phoenix-like figure, has become the embodiment of democracy for many, enabling calls for a radical change that would do away with the liberal democratic form.

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