

Ștefan Cristian Ionescu. *Jewish Resistance to 'Romanianization', 1940–44.* Basingstoke: Palgrave Macmillan, 2015. xv + 270 pp. \$90.00, cloth, ISBN 978-1-137-48458-1.



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Published on H-Nationalism (April, 2016)

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Despite law's historical embeddedness, encounters between lawyers and historians are unfortunately still only sporadic and rather limited. Yet, this is far from springing out of a pure theoretical necessity and it is most certainly not the result of a very interesting way of looking at either law or history. It follows that there are areas which challenge some of the core presuppositions of the field, and in which one is forced to move away from the routine of statute interpretation or archival work and ask for a deeper meaning and significance of these moments marking both legal history and history *tout court*.

Ștefan Cristian Ionescu's book deals precisely with one of these developments in which intellectual, social, and material history became primarily enmeshed with the history of law. This is not only because law, as a discourse, has a peculiar parasitical existence determining it to prey on any form or content and translate it in its own reality. [1] It is also because the context of the Holocaust itself that this book explores is a foundational event for the regime of legality in which we find

ourselves.[2] Furthermore, it is the event enabling us to understand and challenge the central presuppositions of the ethical, political, and historical choices underpinning our current understanding of the law. I shall thus look at Ionescu's book primarily through a legal lens, one that is still attentive to and conscious of the conventions and limits of the historiography of Romanian Holocaust, but which by its focus is following the law placed in this specific context.

It should be stated from the outset that the book is an important contribution to the understanding of one of the rather technical, yet key aspects of the juridico-political killing machinery devised by the Romanian state against Jews and Roma. The territory explored by Ionescu's intervention is not the dramatic realm of the legalized killing, the forced displacement, or the camps.[3] It is also not the domain of diplomacy, geopolitics, or military conflict, although it is, of course, not unrelated to all of these fields. The focus is rather on the policies of seizures of property, of ownership transfers and administrative regulations. In

short, it is an analysis of the arcane, repetitive, and grey aspects of the Second World War archived by private law proceedings and transactions, or administrative-law statutes and ministerial notes. This is the sort of work that certainly requires patience, but which can shed an important light on the ways in which the state apparatuses functioned within the context of the Holocaust. It is a book about the governmentality of the Holocaust and not about its necropolitical aims. Thus, Ionescu emphasizes a central aspect, namely that behind the lawless representation of the killing enterprise lay an important administrative machinery functioning within and outside of the boundaries of a legal framework written and interpreted by lawyers, built on a body of knowledge which involved economic thought, ultranationalist ideology, and jurisprudence. Its primary function was not to physically eliminate the legal subjects, but to dispose of their property in various ways, to limit their participation to economic activities, and to ultimately exclude them from the economy.

This mechanism, beyond its rational facade, if rational is the right word for describing an apparatus assembling statutes, policies, officials, and practices, is placed in a specific space and time and all of its components have their own histories. Some of the significant aspects of this historical inscription are carefully noted. In this sense, Ionescu rightly observes that the process of Romanianization should be regarded as an essentially Romanian one: "rooted in local tradition, Romanianization of the economy reeked only superficially of Nazi influence" (p. 6). Accordingly, if one looks at the ideological frame traversing this assemblage, one could find its intellectual roots in a very Romanian context of state-building related to the post-1918 period, marked by conflict, but also by a constant obsession with national unity and ethnic purity. In economical thought, this took the form of various projects revolving around an ide-

alized ethnic community of entrepreneurs springing from the middle class.

But it is not only the ideas behind the seizure of Jewish and foreign property that have their own history--the seizure and nationalization understood as administrative processes and policies and as legal institutions were not new themselves. Somewhat confusingly, perhaps under the spell of a functionalist illusion, Romanianization is compared to the secularization of monastic estates and to the land reform of 1919-21. At this juncture a rather simple legal taxonomy operating along the lines of the categories subjected to such measures would have kept the confusion at bay.

But perhaps a step further could have been taken. Through the host of laws and policies enacted by the two Second World War regimes, something more was done than the mere seizure of property: by distinguishing between foreigners and Romanians, as well as by singling out Jews and Roma, categories were constructed legally to the point that the new body politic of the ultranationalist polity was given a legal form. In this way, on the background of the administrative and private law dimension of these seizures of property, a patchwork constitutional frame emerged, embodying the ideological creeds of the regime. These processes in fact created a powerful symbolic framework distinguishing between who counted as a full legal subject and those who were disempowered, outlawed, and put at the mercy of administrative discretion.

This definitional politics entailed of course extremely problematic considerations about nationhood and political belonging that Ionescu is very attentive to observe. Indeed, what could "Romanian," "Jew," or "foreigner" mean within the legal and political framework of the Romanian state? The difficulties in finding such definitions are central, as they put into question not only the dubious category of ethnicity that the framers of the legislation had in mind, but also the previous construction of Romanians within the nineteenth-

century process of nation-building. As one of the main actors of this legal drama, the minister of justice Constantin Stoicescu observed, “it is very difficult to prove ethnic origin. Each of us would have a hard time in proving ethnic origin” (p. 46). The consequences were paradoxical and reveal the irrational dimension of the whole process of grounding nationhood on ethnicity. Perhaps even more disturbing is the answer that authorities constructed on the way as a *de facto* solution to a legal definition of Romanian ethnicity. If there was no ground for distinguishing between foreigner and Romanian, yet administrators needed to make this distinction, they relied on the arbitrary ethnic connotation of the name. Some of the results verge on the border of the grotesque, and Ionescu astutely explores these paradoxes.

Once put in place the machinery did not quite function as intended. Its operators were unqualified, it acted within the framework of a wartime economy, it was unable to make even the most basic legal distinctions needed for its functioning, and everyone was dissatisfied with the results. This included both high-ranking officials and the rank and file accused of being dishonest and incompetent, but also beneficiaries and bystanders. Moreover, to complicate things even further, those subject to its measures resisted, shaping and wielding themselves the language of the apparatus, sometimes even better than those in charge of protecting its work.

When putting Romanianization in its context, Ionescu certainly offers us a good map of the main trends undermining its consistency: lack of resources, poor decisions, uncertainty, inconclusiveness, as well as political indecision and change of political goals. To this is added what should have been the main structural focus of this endeavor, namely Jewish resistance. Here, one encounters one of the potentially problematic points of this otherwise compelling exploration of the right-wing authoritarian project of stripping Jews and Roma of their property. Limited to the territo-

ry of Bucharest, and trying to recuperate the experience of Jewish legal and extralegal resistance, the struggle held in courtrooms and through practices of “camouflage” and “sabotage” strikes one as being secondary to the inherent inefficiency of the system.

If this is the case, we are facing a first ambiguity, which calls perhaps for further exploration: to what extent did the structural inefficiency of the Romanianization apparatus render possible this resistance? And even more, to what extent did the beneficiaries of the Romanianization, in their competition for Jewish property, sometimes part of camouflage schemes, help resistance? This ambiguity should perhaps be resolved insofar as it limits a clear cartography of resistance. But it is also doubled by a stronger, even more fundamental ambiguity which cuts through the structure of the book, that between legality and illegality. Now, this is surely not a book of jurisprudential inquiry, and it is perhaps not the historian’s task to clarify these issues, yet it is a good example of how a specific area of research requires a more refined interpretive framework. Be it as it may, this tension between the legality and illegality of the process takes the form of describing quite often the expropriation as a “robbery” assuming an “appearance of legality” (e.g., pp. 39-40; p. 41). This hesitation affects not only the possibility of drawing a dividing line between the Romanian National Legionary State (September 1940-January 1941) and the Antonescu-ruled National Social State (1941-44) in terms of illegal and legal practices, but also the final conclusions about the ways in which a legal framework did indeed open the space for resistance and contestation.

While robbery is a criminal legal term commonly defining larceny by force or under threat of force, it cannot aptly describe other than metaphorically the process of Romanianization, which, as Ionescu notes, operated through a complex, incoherent and long-range, of legal statutes. This use of the term could be understood as a le-

gal licence, yet it obscures in an important way the nature of the regime and of the status of the legality it employed. In a sense, what we seem to be dealing with is the paradox of a *magnum la-trocinum* operating legally. If this is an exact description, acknowledging a lawless law at the core of the regime is, jurisprudentially speaking, an *aporia*. If Antonescu portrayed himself as a defender of law and order, and his understanding of law is revelatory for a certain legal cynicism that instrumentalizes law's ability to found and sustain an order (p. 41), can we be content with the description offered by Romanian legal scholars that Antonescu's regime was, constitutionally speaking, "difficult to define" (p. 41)?

I believe that at this point Ionescu touches upon one of the limits of legal theory, which certainly impacts on the possibility of ascribing a stable meaning to the nature of the "evil law" operating under Antonescu's regime. In this sense, it might be useful to read Romanianization as a process taking place not in a legal vacuum, but in a constitutionally complex framework that was aimed at dissolving legal protections through the suspension of the constitution and the creation of a dual mechanism based on an intermingling of law, administrative, and military powers.

The possibility of legal resistance within this framework had less to do with the values protected by law as such, but with its inner structural limits. It was not by chance that the legal treatment of the Jewish population in Romanian territory proper and in Bessarabia, Bukovina, and the territories under Romanian military administration differed significantly, as the state apparatus functioned precisely along the duality of the "normative state" subsisting by and large in the old territory and the "prerogative state" operating in the area of what was declared to be a zone of military operations.[4] One should not obliterate, and Ionescu makes this clear, the hybrid nature of this legality, which was marked by numerous exceptions (p. 157). Following this line of argumenta-

tion, it is not surprising that the law played a crucial role in devising these aspects of Romanianization: judges were among the interpreters and the beneficiaries of the process, most of the drafters and the desk bureaucracy were trained as lawyers, and in many respects the statutes themselves did not depart in legal technique and concept from the prewar legal framework.

It thus appears too much to say that the existence of a body of law created "some sort of autonomous judiciary and enabled members of prosecuted groups ... to defend their rights using legal tools" (p. 157). It would be perhaps more apt to observe that the law got caught within its own web, but by no means upheld any form of substantial protection. To word it differently, we might say that it was *in spite* of the existence of this body of law and regulations that resistance took place and was ultimately disruptive. By framing resistance in such a way, not only do we achieve more sense of the agency involved in opposing the law, but we are also able to understand why it was an option for only some categories of the prosecuted population.

Despite these theoretical limitations, which are perhaps not central to his own historiographical project, Ionescu's work offers an important exploratory inquiry into the daily life of Romanians, Jews, and Roma under the shadow of Holocaust. Through a well-documented and attentive analysis of the institutional, political, and sociological aspects of Romanianization, he enables us to clarify the limits of this project and its ultimate failure.

Notes

[1]. Anton Schütz, "Thinking the Law with and against Luhmann, Legendre, Agamben," *Law and Critique* 11 (2000): 111; Giorgio Agamben and Homo Sacer, *Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998 [1995]), 27.

[2]. David Fraser, *Law after Auschwitz: Towards a Jurisprudence of the Holocaust* (Durham, NC: Carolina Academic Press, 2005), 4-7.

[3]. With specific reference to the Romanian context see Radu Ioanid, *The Holocaust in Romania: The Destruction of Jews and Gypsies under the Antonescu Regime, 1940-1944* (Chicago: Ivan R Dee, 2000); Jean Ancel, *The History of the Holocaust in Romania*, trans. Yaffah Murciano (Lincoln: Nebraska University Press, 2011); Vladimir Solonari, *Purifying the Nation: Population Exchange and Ethnic Cleansing in Nazi-Allied Romania* (Baltimore, MD: Johns Hopkins University Press, 2010).

[4]. Ernst Fraenkel, *The Dual State: A Contribution to the Theory of Dictatorship*, trans. E. A. Shills (New York: Oxford University Press, 1941), 71.

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Citation: Cosmin Sebastian Cercel. Review of Ionescu, Ștefan Cristian. *Jewish Resistance to 'Romanianization', 1940–44*. H-Nationalism, H-Net Reviews. April, 2016.

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