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RESEARCH ARTICLE

The unwanted citizens: The 'Legality' of Jewish destruction in Croatia and Romania during World War II

Goran Miljan and Anders E.B. Blomqvist *

This article examines the establishment of the legal framework that led to the destruction and elimination of Jewish communities in Croatia and Romania during World War II. It argues that both regimes, supported by domestic fascist ideologies, evolving antisemitism, and inspired by the Nazi regime, promulgated anti-Jewish legal norms to present and establish new political, ideological, and social values and categories to their citizens. This article employs the theoretical framework of norms developed by Paul Morrow, whereby norms are seen as practical prescriptions, permissions or prohibitions. We argue that these destructive norms served as guidelines for individuals within the fascist new worldview and new reality. As such, these norms received state authorisation and implementation, serving as the 'legal' basis for the institutional destruction of unwanted citizens. This gave local and state actors a 'legal' pretext for the persecution and murder of Jews, who were stripped of their rights, assets, properties and right to life. The article concludes that the two legal frameworks enacted the process by which Jewish communities in Croatia and Romania faced a devastation of unseen proportions, which testifies to the importance and impact of legal norms on individuals, be they victims, bystanders or perpetrators.

Keywords: Holocaust; antisemitism; legal norms; Croatia; Romania; fascism

1. Introduction

A handful of honest men could organise themselves and take power, change our laws, and sweep the Jews out of the country. Let's expropriate their property … and distribute the wealth they have stolen from us.[1]

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[1]Alexandru Ventonic, *Istoria adevarată*, (1925) qtd in Jean Ancel and Wilhelm Filderman, *Memoirs and Diaries, 1900–1940* (Yad Vashem 2004) vol 1, 289.

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In the introduction to his acclaimed book *Why? Explaining the Holocaust,* Peter Hayes argues that the Holocaust was 'the product of particular time and context' and that 'the murder of the Jews of Europe was neither pre-programmed by German history nor an exclusively German project … it suited the objectives of many other Europeans'.[2] Hayes's argument on the participation and responsibility of other national actors in the Holocaust is perhaps best validated by looking at the two regimes in question here, namely Ante Pavelić's fascist regime, the Independent State of Croatia – NDH, and Ion Antonescu's military dictatorship in Romania during World War II. The political elite and officials of these two regimes ardently joined the Nazi regime in establishing a 'New Europe', an essential part of which was the annihilation of European Jews. While Pavelić's regime belonged to the broader family of European fascism and was an ideological ally of Nazi Germany, indebted to Hitler for the establishment of the regime, Antonescu's Romania was a military dictatorship and more of an opportunistic partner that used the Nazi's economic and political policies to pursue national goals.[3]

Despite the evident ideological differences between the two regimes, their proponents played an active role. They employed their agency towards the social and economic elimination and physical destruction of their Jewish citizens. Such actions suited their political and ideological objectives, state-and-nation building, or economic goals within the framework of economic nationalism, and in some cases, both, ie, economic nationalisation.[4] No matter which prevailed, they identified one common enemy: the Jew. In their ideological worldview, the designation of a Jew was one of a foreign element within the national body, a perpetual, cunning foe attempting to subdue and dominate the nation. Their narrative and convictions resembled and were derived from the Nazi 'story of national origins at the centre of which were the evil Jews'.[5] To transform their societies and liberate them from the 'evil Jew', both regimes promulgated

[2]Peter Hayes, *Why? Explaining the Holocaust* (WW Norton & Company, 1st edn 2017) xv.
[3]Regarding the nature and policies of these two regimes see Ivo Goldstein and Slavko Goldstein, *The Holocaust in Croatia* (University of Pittsburgh Press and the United States Holocaust Memorial Museum 2016); Goran Miljan, *Croatia and the Rise of Fascism: The Youth Movement and the Ustasha During WWII* (IB Tauris 2018); Rory Yeomans, *Visions of Annihilation: The Ustasha Regime and the Cultural Politics of Fascism, 1941–1945* (University of Pittsburgh Press 2013); Dennis Deletant, *Hitler's Forgotten Ally: Ion Antonescu and His Regime, Romania 1940–1944* (Palgrave Macmillan 2006); Jean Ancel, *The History of the Holocaust in Romania* (University of Nebraska Press and Yad Vashem 2011); Ștefan Cristian Ionescu, *Jewish Resistance to 'Romanianization', 1940–1944* (Palgrave Macmillan 2015).
[4]Anders E B Blomqvist, *Economic Nationalizing in the Ethnic Borderlands of Hungary and Romania: Inclusion, Exclusion and Annihilation in Szatmár/Satu-Mare 1867–1944* (Stockholm University 2014).
[5]Alon Confino, *A World without Jews: The Nazi Imagination from Persecution to Genocide* (Yale University Press 2014) 11.

new legal norms that established a macro-level framework and served as the starting point for their policies of 'rebirth-through-cleansing', to use Aristotle Kallis's concept.[6]

2. *The 'Legality' of the Holocaust*

This subheading is a form of oxymoron. From a contemporary perspective, to purposely annihilate an entire community of people, in this case, the European Jews, and to codify this in law is deplorable and unacceptable (and illegal by present-day standards). And so it should be. However implausible it may sound, sources and research have since shown that the 'legality' of this elimination and destruction was something that the perpetrators of the Holocaust, at state, institutional and individual levels, were well aware of and had worked eagerly to establish.[7]

Legal pretext mattered greatly to the Nazis and other fascist or authoritarian regimes who sided with them. Recently, David Fraser has argued that to understand Nazi Germany better, we should reject the criminal state paradigm and accept that 'law was a central element of the Nazi state'.[8] Similarly, Alan S Steinweis and Robert D Rachlin argued that the lack of academic interest in the legal history of Nazi Germany resulted from the 'erroneous perception that the law did not matter in Germany during the Nazi period'.[9] According to Simon Lavis, interpretations of Nazi Germany as a criminal state, a lawless state that was 'both arbitrary and lacking in law', are primarily based on a 'rupture thesis', according to which the regime itself 'constitutes a radical, atavistic rupture' in the process of law and politics in the West. He further argues that the enduring influence of such a view contributes significantly to the lack of research in the sense of 'jurisprudential and legal historical consideration of the Nazi regime as a legal system' and 'historical comparisons with the legal regimes in other

[6]For more on this concept of rebirth-through-cleansing, as well as the role of violence within fascist ideology and practices see Aristotle A Kallis, *Genocide and Fascism: The Eliminationist Drive in Fascist Europe* (Routledge 2009) 85–112.

[7]Martin Dean, *Robbing the Jews: The Confiscation of Jewish Property in the Holocaust, 1933–1945* (Cambridge UP 2008) 4–5; Diemut Majer and United States Holocaust Memorial Museum, *'Non-Germans' Under the Third Reich: The Nazi Judicial and Administrative System in Germany and Occupied Eastern Europe with Special Regard to Occupied Poland, 1939–1945* (Johns Hopkins UP 2003) 1–73; Michael J Bazyler, *Holocaust, Genocide, and the Law: A Quest for Justice in a Post-Holocaust World* (Oxford UP 2016) 1–32.

[8]David Fraser, 'Criminal Law in Auschwitz: Positivism, Natural Law, and the Career of SS Lawyer Konrad Morgen' in Stephen Skinner (ed), *Ideology and Criminal Law: Fascist, National Socialist, and Authoritarian Regimes* (Hart Publishing 2019) 34.

[9]Alan E Steinweis and Robert D Rachlin, 'Introduction: The Law in Nazi Germany and the Holocaust' in Alan E Steinweis and Robert D Rachlin (ed), *The Law in Nazi Germany: Ideology, Opportunism, and the Perversion of Justice* (Berghahn Books 2013) 1–2.

fascist or authoritarian regimes'.[10] In addition, Lavis suggests that 'more general comparisons with democratic, liberal legal orders' are needed to examine 'the process of transformation from one sort of regime to the other (because the rupture thesis implies only absolute difference)'.[11]

In his study, *Unconscionable Crimes: How Norms Explain and Constrain Mass Atrocities,* Paul Morrow recognised the importance of social, moral and legal norms in discussing genocide and mass atrocities in academic investigations. Morrow argues that genocide and mass atrocities are social processes that reflect a larger social structure and, as such, 'reflect(s) the presence, rather than absence, of norms', which are crucial for 'both the explanation and the prevention of large-scale crimes'.[12] He also argues for the importance of legal norms as essential in examining the 'aetiology of large-scale crimes' and as sources of evidence for these crimes, thus being 'integral to the explanation of genocide and mass atrocity'.[13]

In line with this, we analyse the anti-Jewish legislation of the two regimes as 'the authoritative source of rules of behaviour imposed on subjects living under its provisions'.[14] We argue that the two regimes developed and implemented a set of new legal norms that classified their subjects into different categories, thus ascribing them with specific characteristics and rights. Regimes' officials observed, developed, adjusted and promulgated new legal norms that suited their national goals and ideological worldviews. In this way, these norms provided a new national 'legal' framework, in line with the 'legal' framework of the Nazi 'New Europe', where those whom the proponents of the regimes deemed as undesirable and dangerous elements were disenfranchised, ie, barred from membership of their respective national communities.

Building on Morrow's definition that norms 'are practical prescriptions, permissions or prohibitions accepted by individuals belonging to a particular group', we comprehend the legal norms promulgated by the two regimes as a set of new criteria to be accepted by the individuals and are intended to guide individual's actions and behaviour.[15] These norms were a product of the proponents' ideological convictions and, to an extent, the outcomes of social practices observable in the societies in question. The extent to which these norms received broad social recognition by individuals remains beyond the scope of this article. What is important here is that these legal norms established a legal pretext for

[10]Simon Lavis, 'Nazi Law as Non-Law in Academic Discourse' in Stephen Skinner (ed), *Ideology and Criminal Law: Fascist, National Socialist, and Authoritarian Regimes* (Hart Publishing 2019) 60.
[11]Ibid.
[12]Paul C Morrow, *Unconscionable Crimes: How Norms Explain and Constrain Mass Atrocities* (MIT Press 2020) 8–10.
[13]Ibid 82.
[14]Antonio Padoa Schioppa, *A History of Law in Europe: From the Early Middle Ages to the Twentieth Century* (Cambridge UP 2017) ix.
[15]Morrow (n 12) 19.

new prescriptions, permissions and prohibitions upon which state policies of the persecution, spoliation and physical destruction of Jews were institutionalised, implemented and executed in Croatia and Romania during the war. As such, these norms proscribed new social and political values and categories based on the ideological structure of fascist and authoritarian regimes. Through such norms, the radical anti-Jewish state policies became a force of law in the eyes and actions of state actors and institutions, organisations and individuals.

Primarily based on the hierarchy of races, these new social and political values and categories emphasised the importance of racial purity within the national community (*Volksgemeinschaft*), which 'presupposed the exclusion of "undesirable elements"'.[16] In this way, social norms based on a racial hierarchy of people, on a social model of a 'pure' national community, received their 'legal' justification by introducing new legal norms. These norms proscribed, permitted and prohibited the actions of those members ascribed with the right to belong to the new national community in the making. This game of inclusion vs exclusion aimed to either impose new norms or to exploit or further accentuate the pre-existing social norms in the society in question. It therefore provided an easily readable and understandable boundary between 'us' (those who have the right to belong) and 'them' (those who do not have the right to belong). Such binary demarcation had multiple purposes. The straightforwardness gave proponents an unambiguous, black-and-white picture of the leadership's vision of present-day society, with easily legible prescriptions, permissions and prohibitions. It also empowered group members deemed as belonging as opposed to those unworthy of belonging, the purpose of which was to make new norms effective. The effectiveness of new norms depended on an individual's acceptance and 'commitment to comply' with them and the 'commitment to sanction' those group members who, for some reason, failed to adhere to the established norms.

The analyses of the 'legal pretext' of Jewish elimination and destruction established in the two regimes do not imply that we endorse or wish to vindicate their ideologies or practices. On the contrary, our analysis aims to understand the processes and actors involved in destroying European Jews and provide a decentralised understanding of the process which 'legally' disenfranchised the Jews and their ideological and social definition as foreign and destructive elements within a national body. On the one hand, this analysis provides a macro-level insight into the fundamental anti-Jewish legislation promulgated by the two regimes that established a 'legal' pretext for the destruction of the Jews. On the other hand, we wish to show that 'legalisation' – the process of rendering a pre-existing, albeit inchoate, social norm as a legal norm – was a primary means of achieving

[16]Frank Bajohr and Andrea Löw, 'Beyond the "Bystander": Social Processes and Social Dynamics in European Societies as Context for the Holocaust' in Andrea Löw and Frank Bajohr (eds), *The Holocaust and European Societies: Social Processes and Social Dynamics* (Palgrave Macmillan 2016) 5.

the social realisation of their worldview, which was influenced by the dominant Nazi worldview of 'New Europe'. This process resulted in societies guided by new legal norms that would eventually entrain new social norms in the sense of 'shared normative beliefs and attitudes among members of particular populations'.[17]

The main argument presented in this paper follows the above-stated views and claims that the law mattered for the proponents of both regimes analysed here. We argue that the 'legality' of elimination was at the core of their policies regarding the destruction and annihilation of their unwanted Jewish citizens. The two regimes established what they considered a required 'legal' basis for their Jewish communities' economic, material, and eventually physical destruction. In both regimes, authoritarian legality meant a new type of authoritarian understanding of the role of law and its subordination to the will of the ruler. In that sense, both regimes instrumentalised authoritarian legality in order to reverse the norms established by liberal legality.[18]

3. Antisemitism

In pursuing their ideological goal to restructure their respective societies and establish political, social and economic dominance of their ethnic groups, both regimes enforced legal norms against a subjectively determined 'enemy'. No matter how idiosyncratic their policies were in their adaptation to a specific national context, it is vital to remember the influence of the supranational context of the dominant ideological, political and legal impact of Nazi Germany. From that perspective, it is essential to outline the actors' ideological worldviews and developmental trajectories. In the case of Croatia, we speak of a radical nationalist organisation whose ideology was developed and radicalised under the influence of the then-dominant fascist ideology and worldview and was put into practice immediately upon the assumption of power in April 1941. In the case of Romania, we talk about a continuation of a state with extreme antisemitism and evolving anti-Jewish legislation, which peaked during World War II.

The common denominator of antisemitism in Croatia and Romania was the impact of Christianity, which was translated over centuries into legalised

[17]Morrow (n 12) 127–28. Morrow makes a clear distinction between social and legal norms in a sense that unlike legal norms, social norms lack standing procedures and stem from either perceived or real social practices. This resembles the division within the institutional theory of formal and informal institutions, whereby formal institutions are written laws and decrees, while informal institutions reflect social norms.

[18]For more on the notions of authoritarian and liberal legality see Ștefan Cristian Ionescu, 'Perceptions of Legality during the Antonescu Regime, 1940–1944' (2020) 2 Journal of Romanian Studies 53; Cosmin Cercel, 'Reversing Liberal Legality: Romania's Path to Dictatorship, 1930–1938' (2020) 2 Journal of Romanian Studies 23.

discrimination, Jewish servitude, ghettoisation and a narrow field of economic activity of Jewry.[19] Modern antisemitism was a reaction to Jewish emancipation at the end of the nineteenth century. István Deák argued that antisemitism in Eastern Europe was a problem that mainly haunted the countries of the former Habsburg monarchy, including Croatia and parts of Romania (together with Poland, Ukraine and Lithuania).[20] Antisemitism in the Habsburg Empire, to which Croatia, Transylvania and Bucovina belonged, increased during crises and wars. The goal of antisemitic agitation was to return the Jews to their previous social and economic status before they were emancipated.[21] In the interwar period, antisemitism increased in both countries, especially during the 1930s.

In the newly established post-World War I Kingdom of Serbs, Croats and Slovenes, antisemitism never became widespread or dominant in political life, either in an ideological sense or in the social ability to achieve the mass mobilisation of citizens.[22] There are several reasons for this. One reason is that some of its Jewish citizens were granted the right to full civil equality in 1782 by the Edict of Tolerance issued by Emperor Joseph II, by which Jews in the Habsburg territories gained the freedom to worship and improved their legal status.[23] These, as well as subsequent rights, were confirmed in the newly established kingdom by the *Law on the Religious Community of Jews in the Kingdom of Yugoslavia* from 1929, while their state funding was regulated in April 1930 by the *Decree on Permanent Annual State Aid to the Religious Community of Jews in the Kingdom of Yugoslavia*.[24] Another reason is that the Yugoslav Jewish community was relatively small in number when compared with neighbouring countries. According to the 1931 population census, there were 68,405 citizens of the Jewish faith, most of whom lived in urban areas. Croatia had 20,153 Jewish people – 32,000 if we consider the later territory of the NDH, which included Bosnia and

[19]Robert S Wistrich, *Antisemitism: The Longest Hatred* (Pantheon Books, 1st American edn 1991) 23.
[20]István Deák, 'Antisemitism in Eastern Europe (Excluding Russia and the Soviet Empire) since 1848' in Albert S Lindemann and Richard S Levy (eds), *Antisemitism: A History* (Oxford UP 2010) 225.
[21]Wistrich (n 19) 27–29.
[22]Laslo Sekelj, 'Antisemitizam u Jugoslaviji (1918–1945)' (1981) 11 Revija za sociologiju 179; Ivo Goldstein, 'Dva antisemitska zakona u Kraljevini Jugoslaviji' in Damir Agičić (ed), *Zbornik Mire Kolar-Dimitrijević* (FF press and Odsjek za povijest Filozofskog fakulteta Sveučilišta u Zagrebu 2003) 395–405, Milan Koljanin, 'The Jewish Community and Antisemitism in the Kingdom of Serbs, Croats and Slovenes/Yugoslavia 1918–1941' (2020) 9 Colloquia Humanistica 139.
[23]Goldstein and Goldstein (n 3) 8.
[24]Koljanin (n 22) 141. For a more detailed analysis of antisemitism and Jewish history in interwar Kingdom of Yugoslavia see Milan Koljanin, *Jevreji i antisemitizam u Kraljevini Jugoslaviji, 1918–1941* (Insititut za savremenu istoriju 2008).

Herzegovina.[25] This does not mean that antisemitism was absent but that it never played any significant political role.

Several factors can explain the rise of antisemitism in the kingdom: (i) differences in political cultures and attitudes toward the Jews; (ii) internal political relations; and (iii) international context. Koljanin argues that the international context, influenced by the Nazi's rise to power, had the most significant influence of these three.[26] The second half of the 1930s witnessed increased antisemitic tendencies and actions. Testimonies to this increase are the two anti-Jewish laws introduced on 5 October 1940. These were the *Decree on Measures Concerning Jews and the Performance of Activities with Items of Human Nutrition* and the *Decree on the Enrolment of Persons of Jewish Descent at the University, Secondary Schools, Teacher Training College and Other Vocational Schools.* While the first decree banned Jews from conducting any business or being involved in enterprises dealing with food and nutrition, the second decree introduced an ethnic quota – *numerus clausus* – to limit the number of Jewish university students in proportion to their representation in the total population.[27] Despite this, the fact remains that, unlike other parts of Eastern Europe, the kingdom never witnessed the political adoption of antisemitism as an explicit political programme. Also, the kingdom never witnessed any organised physical violence against its Jewish citizens.[28] Within the political life of the kingdom, antisemitism never reached the same level of 'intensity, scope, diffusion, function and meaning' as it did in the majority of European countries.[29] However, this reality radically changed with the Nazi invasion of the kingdom and the establishment of the Ustasha regime.

In the Ustasha worldview, a Jew was primarily an ideological enemy who entered the Ustasha mindset during the mid-1930s. According to Ivo Goldstein, the Ustasha antisemitic attitude derived directly from Nazi Germany.[30] However, Nevenko Bartulin and Mark Biondich disagree with this and argue that antisemitism in this period was prominent within Ustasha ideology and race theory, thus being developed and adjusted according to their nation-state idea and fascist worldview.[31] Within such a system of beliefs, the depiction of

[25]Rudolf Andrejka, *Definitivni rezultati popisa stanovništva od 31. marta 1931 godine* (Prisutno stanovništvo po veroispovesti) (Državna štamparija 1938) vol 2, viii–xii.
[26]Koljanin (n 22) 143.
[27]Ivo Goldstein, 'The Jews of Yugoslavia 1918–1941: Antisemitism and the Struggle for Equality' in András Kovács (ed), *Jewish Studies at the CEU*, vol 2 (Jewish Studies CEU 1999–2001) 10.
[28]Ibid 8.
[29]Ivo Goldstein, *Antisemitizam u Hrvatskoj od srednjega vijeka do danas* (Fraktura 2022) 215.
[30]Goldstein and Goldstein (n 3) 93.
[31]Nevenko Bartulin, *Honorary Aryans: National-Racial Identity and Protected Jews in the Independent State of Croatia* (Palgrave Macmillan, 1st edn 2013) 49–56. For more on this see Nevenko Bartulin, *The Racial Idea in the Independent State of Croatia: Origins and Theory* (Brill 2014); Mark Biondich, 'Nazi Germany and the Holocaust in the Independent

Jews was that of a group that carried and supported Bolshevism, used capitalism to attain economic dominance, controlled finances and commercial goods, and used 'internationalism' to destroy nations, *ad nauseam*.[32] In the Ustasha version of the notion of the 'evil omnipresence' of Jews, they were described as an ally and fervent supporter of the Serbian elite during the interwar period and, as such, were depicted as the national enemy, a 'foreign element' within the national body.

Ante Pavelić, the *Poglavnik* (leader) of the Ustasha organisation, expressed such views in his 1936 treatise *Die Kroatische Frage,* where he connected Bolshevism, Jewry and the Yugoslav idea. According to him, all three represented mortal enemies of the Ustasha organisation, ie, the Croatian nation, which allowed the 'culturally poorer' and politically and socially weaker Serbian nation to rule over a western, European Croatian nation. Pavelić described the Jews as supporters of the post-1918 kingdom since, according to him, this new state developed following their predictions of 'becoming the real Eldorado of Jewishness due to the corrupted public life in Serbia'.[33] For Pavelić, Jews were the enemy of Croats, an ever-present corruptive factor in Croatia that succeeded in infiltrating all sections of life from journalism, banking system, trade and universities, and 'in cooperation [with Serbs] they conduct communist propaganda in Croatia'.[34] He said this was no surprise since 'Communism and Jewishness are complementary in that sense [of supporting the idea of Yugoslav state] and are working together against the national liberation of Croatia'.[35] In Croatia, antisemitism gained momentum during the early 1930s, especially during the second half of the decade, where it became a constant theme in journals such as *Mlada Hrvatska*, *Danica* and *Nezavisnost*.[36] While the authors of antisemitic articles

State of Croatia' in Mirna Zakić and Christopher A Molnar (eds), *German-Balkan Entangled Histories on the Twentieth Century* (University of Pittsburgh Press 2020). It is important to emphasise that the Ustasha organisation went through several processes of radicalisation during the 1930s: Constantin Iordachi and Goran Miljan, '"Why We Have Become Revolutionaries and Murderers": Radicalization, Terrorism, and Fascism in the Ustaša-Croatian Revolutionary Organization' (2022) Terrorism and Political Violence <tandfonline.com/doi/full/10.1080/09546553.2022.2077730> accessed 14 August 2023; Tomislav Dulić and Goran Miljan, 'The Ustašas and Fascism: "Abolitionism," Revolution, and Ideology (1929–942)' (2020) 6 Journal of Soviet and Post-Soviet Politics and Society 281.

[32]Bartulin, *Honorary Aryans* 66–68; Tomislav Dulić, *Utopias of Nation: Local Mass Killing in Bosnia and Herzegovina, 1941–1942* (Acta Universitatis Upsaliensis 2005) 89–90; Miljan (n 3); Goldstein and Goldstein (n 3) 93–100.

[33]Ivo Bogdan (ed), *Dr. Ante Pavelić riješio je hrvatsko pitanje* (Tipografija 1942) 25.

[34]Ibid 26.

[35]Ibid 27.

[36]Ivo Goldstein and Slavko Goldstein, *Holokaust u Zagrebu* (Novi liber 2001) 31–66. For a more detailed account of the presence of antisemitism in Croatia before World War II see Ognjen Kraus and Ivo Goldstein, *Antisemitizam, holokaust, antifas˘izam* (Z˘idovska općina 1996).

and proponents of antisemitism may not have been sworn members of the Ustasha organisation, they were ideologically close to it and 'contributed towards the development of more extreme antisemitic viewpoints within certain sections of the population'.[37]

As shown, antisemitism was a vital ideological component of the Ustasha organisation and part of their worldview in which fascism stood as 'an original idea of the new arrangement of the national state and social system … not an "antithesis to democracy", as often wrongly claimed, but as the "antithesis of communism", that is, of bolshevism'.[38] In that sense, the ideology and policies implemented upon establishing the Ustasha regime stem from a significantly different context than those ideologies and policies that were developed and implemented in Romania.

In the Romanian case, antisemitism had a long history amongst Romanian nationalists and intellectual elites. Before World War I, antisemitism was mainly political and elite-driven and manifested in antisemitic public statements and legal discrimination, resulting in the exclusion of Jews from different sectors of public life. According to the 1866 Romanian constitution, Jews were denied Romanian citizenship, reserved for foreigners of the Christian faith as the only subjects who could be naturalised. Under pressure from the Great Powers and the intervention of the Jewish communities in Germany and Great Britain, the Romanian parliament modified the constitution in 1879, causing a heated debate in both parliament and society.[39] Consequently, a small number of Jews, just 1,000 out of a total population of 270,000 Jews, were naturalised on a case-by-case basis, which had to be approved by both chambers of parliament.[40] Thus, Romania and Tsarist Russia remained the only European countries to deny Jewish emancipation before World War I. In Romania, a firm anti-assimilationist policy was introduced with the intention of increasing the segregation of the Jewish community and prompting them to leave the country. Thereby, Romanian authorities turned Jews into stateless people using jurisprudence as a tool of exclusion and discrimination.[41]

The most worrying aspect of Romanian antisemitism was its legal discrimination, which heavily impacted the Jews of Romania before World War I. From

[37]Ivo Goldstein, 'Antisemitizam u Hrvatskoj' in Kraus and Goldstein (n 36) 34.
[38]Ante Pavelić, *Strahote zabluda: komunizam i boljševizam u Rusiji i svijetu* (Tiskara Knjižare St Kugli 1941) 261.
[39]Constantin Iordachi, *Liberalism, Constitutional Nationalism, and Minorities: the Making of Romanian Citizenship, c. 1750–1918* (Brill 2019) 312–30; Keith Hitchins, *Rumania, 1866–1947* (Oxford UP 1994).
[40]Mariana Hausleitner, 'Antisemitism in Romania: Modes of Expression between 1866 and 2009' in Hans-Christian Petersen and Samuel Salzborn (eds), *Antisemitism in Eastern Europe: History and Present in Comparison* (Peter Lang 2010) 202–04.
[41]Iordachi (n 39) 266–67.

1879 until 1913, successive Romanian governments passed over 200 antisemitic laws restricting Jews from acquiring citizenship rights through military service; participating in public education; working in liberal professions such as medicine or law; engaging in trade and practising handicrafts.[42] By 1913, the Jews of Romania could not take positions as officers, clerks or students of military schools, gendarmes, physicians, veterinary doctors, midwives, chemists, pharmacists, nurses, attorneys, tobacco or alcohol sellers, itinerant traders, stockbrokers or members of the journalists' union.[43] As a result, the number of Jews in Romania declined from around 267,000 to 240,000, making Romania and Russia the most antisemitic countries in Europe.[44] Both countries witnessed organised violence against Jews taking place in the form of pogroms and expulsions.[45]

The period following the end of World War I witnessed more organised antisemitic violence and the emergence of radical movements aiming to exclude and even eliminate the Jews. This violent form of antisemitism mainly manifested itself amongst Romanian university students.[46] In 1922, antisemitic university students began to use terrorist methods against Jews. Disturbances were reported in the medical faculty in Cluj, and antisemitism was spread by professors to other universities.[47] The interwar period saw increased political and intellectual dissemination of antisemitic notions and sentiments, during which the Jews became depicted as social and political parasites and the internal enemy. In 1910, historian and politician Nicolae Iorga and economist and politician Alexandru C Cuza founded the first political party with a programme that contained a robust antisemitic platform – the Nationalist Democratic Party. Cuza split from the party in 1919 and formed a more radical party called the National Christian Union. In 1922, he launched an antisemitic platform in which the party's goal was 'to fight the Jews, using all legal means and to support economic, political, and social interests against them'.[48] The party attacked the Minorities Treaty, which granted Jews civil rights, and its programme explicitly stated that its ultimate goal was the expulsion

[42]Carol Iancu, *Emanciparea Evreilor din România: 1913–1919* (Hasefer 1998) 37.
[43]Carol Iancu, *Jews in Romania, 1866–1919: From Exclusion to Emancipation* (East European Monographs 1996) 110–24.
[44]Ezra Mendelsohn, *The Jews of East Central Europe Between the World Wars* (Indiana UP 1983) 174.
[45]Radu Ioanid, *The Holocaust in Romania: the Destruction of Jews and Gypsies under the Antonescu Regime, 1940–1944* (Ivan R Dee 2000) 8; Maria Mădălina Irimia, 'Violența antisemită în a doua jumătate a secolului al XIX-lea. Pogromul de la Iași din 1899' (2020) 20–21 Revista de istorie a evreilor din România 45; Emanuel Bălan, 'Evreii din județele Neamț, Roman și Bacău în timpul răscoalei de la 1907' (2020) 20–21 Revista de istorie a evreilor din România 116.
[46]Mendelsohn (n 44).
[47]Ana-Maria Stan, 'The 1922–1923 Student Revolts at the University of Cluj, Romania: From Local Anti-Semitic Academic Protests to National Events' in Peter Dhont and Elizabethanne Boran (eds), *Student Revolt, City, and Society in Europe* (Routledge 2018).
[48]AC Cuza, *Apel către toți românii* (Bucharest 1922).

of Jews from Romania. Another antisemitic intellectual who made a strong political impact was Octavian Goga. In 1937, he formed a short-lived antisemitic government together with Cuza. According to Goga, Jews were not only parasites exploiting the wealth of the Romanian nation; they were also destroying the culture and spirituality of the Romanian people by infiltrating the press, the arts and literature.[49]

Antisemitism was institutionalised as the primary state policy by the Goga-Guza government at the end of 1937 and continued through the royal dictatorship in 1938. It was during the interwar period and the formation of the Romanian fascist party by Corneliu Codreanu, the Legion of the Archangel Michael, renamed as Iron Guard in 1930, that antisemitism came to the fore and became a political tool used by the Iron Guard which, according to Stanley G Payne, was as vehemently antisemitic as the German Nazi Party.[50] Antisemitism peaked during the rule of the Iron Guard in 1940 and continued during the Antonescu regime throughout World War II. Corneliu Codreanu's fascist party emphasised the presence and influence of Christianity and its religious aspects. This is no surprise, considering Cuza inspired the Christian-based antisemitism inherited by Codreanu. The Iron Guard expanded the bounds of Christian hatred and added mysticism, inspiring them to commit crimes to achieve the movement's goals. While it was similar to Italian fascism in the sense of its ideology, its antisemitism was closer to the National Socialist worldview. According to Codreanu, antisemitism was a war of life and death, and as such, justifying all means. If this war against the Jews was to be won, 'a new legionary man' was required.[51] The main political goal of the Iron Guard was to overthrow the democratic system and replace it with an integral and totalitarian Romanian state.

While the period from 1927 to 1937 witnessed the rise of nationalistic parties, the majority of these parties remained committed to the democratic system. However, two phenomena hinted at a fascist takeover in Romania. First, all major political parties incorporated antisemitism into their political propaganda. Secondly, the leading advocates of extreme antisemitism were members of the younger generation, mainly university students. They focused primarily on the Jews residing in the three newly acquired provinces, accusing them of being foreign agents, including supporters of Communism and Hungarian

[49]Octavia Goga, *Mustul care fierbe* (Vicovul 1927).
[50]On the Legion of the Archangel Michael see Stanley G Payne, *A History of Fascism, 1914–1945* (University of Wisconsin Press 1995); Constantin Iordachi, *Charisma, Politics and Violence: the Legion of the 'Archangel Michael' in Inter-war Romania* (Trondheim Studies on East European Cultures & Societies 2004); Armin Heinen, *Die Legion 'Erzengel Michael' in Rumänien: soziale Bewegung und politische Organisation: ein Beitrag zum Problem des internationalen Faschismus* (R Oldenbourg 1986); Oliver Jens Schmitt, *Capitan Codreanu Aufstieg und Fall des rumänischen Faschistenführers* (Paul Zsolnay Verlag 2016).
[51]Jean Ancel, *The Economic Destruction of Romanian Jewry* (Yad Vashem 2007) 17–18.

revisionism.[52] Thus, in Romania, as well as in Croatia, Jews started to be perceived as the scapegoats for economic, social and political problems.

At the end of 1937 and the beginning of 1938, the Goga government introduced an antisemitic policy through a royal decree to revise citizenship. Romania thereby became the most antisemitic state in Europe with state-initiated anti-Jewish legislation. Following the revision of citizenship, around one-third of the Jewish population (203,423 persons, 73,523 of those subject to revision, lost their right to citizenship). This decree defined a Jew by declaring that 'Jews were considered people who, on 18 November 1918, were members of the Jewish faith even if they subsequently changed their faith'. This denaturalisation process deprived hundreds of thousands of Jews of their civil rights and of the opportunity to make a living since Romanian authorities and companies dismissed them as they had to comply with the new legislation for protecting national labour. Professional associations also excluded Jews, meaning Jewish citizens could not work in certain professions.[53] In 1938, Romania witnessed political turmoil when a royal dictatorship was introduced following Goga's resignation, forced on him by King Carol II. According to the 1938 constitution, the king became head of state, giving him the absolute right to convoke the legislative corps, limited only by the obligation to exercise this right at least once every year.[54] The king imposed the constitution, and the people confirmed it afterwards in a plebiscite. All political life was suppressed, and, using royal decrees, only one party was allowed: the Front of National Rebirth. The party aimed to 'mobilise national consciousness towards undertaking a solidary and unitary Romanian action of defence and elevation of the Fatherland and the consolidation of the State'.[55] The king continued the revision of the citizenship of Jews, and even if antisemitism was somewhat reduced, the disintegration of Greater Romania and the rise of Nazi Germany increased the domestic antisemitic forces against Jews.

Both Romanian and Croatian fascism used antisemitism as one of their ideological cornerstones, according to which Jews became the prime enemy and thus an unwanted element in their national communities. Parts of Romania and Croatia had inherited the legacy of the Austrian-Hungarian Empire, including Jewish emancipation and antisemitism. During the 1930s, fascism, as manifested in Italy and Germany, served as ideological inspiration and a model to radical political actors in Romania and Croatia. At the same time, Nazi Germany's Nuremberg laws set the agenda for their anti-Jewish policies and practices. However, Croatian and Romanian antisemitism are rooted in their historical context,

[52]Ibid 22–3.
[53]Ibid 42.
[54]Cosmin Cercel, 'The Law of Blood: Totalitarianism, Criminal Law and the Body Politic of Second World War Romania' in Stephen Skinner (ed), *Ideology and Criminal Law: Fascist, National Socialist and Authoritarian Regimes* (Hart 2019) 353.
[55]Ibid 355.

traditions and nationalisms. They were far from a simple replication of the Nazi German case. Regarding Romania, the antisemitic tradition was an integrated part of Romanian nationalism, which included legal discrimination.

Anti-Jewish legislation became a harsh reality in these two states during the 1930s and 1940s, having distinct ideological, political and/or economic motives. The significant difference was that the Romanian government revoked the citizenship of around one-third of its Jewish population from 1938 to 1940. The exclusion of Jews that occurred in both countries, as well as the ideological influence of fascism and antisemitism during the 1930s, can undoubtedly be attributed to the growing ideological and political influence of Nazi Germany. However, to fully grasp the consequences and understand the impact on the Jewish citizens in Croatia and Romania, it is crucial to account for the domestic processes shaped by both national and international settings in Croatia and Romania during World War II.

4. New reality and new norms

When, in 1941, Berta Postružnik's roommate, communist activist Branimir Friedman Fric, was arrested by the Ustashas and executed, she found herself in a new political and social reality in which people could disappear and/or be killed simply due to their political affiliation or racial/religious background.[56] A significant aspect of this new reality was the promulgation of legal norms by which Jews were stripped of their citizenship rights, property and assets, as well as forbidden from engaging in any economic, educational and social activities and, as such, became a group that was not worthy of belonging to the new Croatian national community.[57] This reality was experienced first-hand and destroyed the Jewish community in Croatia during World War II.[58] This reality is perhaps best described regarding an event from 1941, in which Postružnik's landlord cancelled her rental contract by telling her that 'as far as we're concerned, new laws are now applicable to Jews'.[59] Paul Schreiner describes a similar experience when he recollects how he continued high school until 'in April 1941, the headmaster kicked me out of the school by telling me that I could no longer attend classes because I am a Jew'.[60] Likewise, Judita Krivokuća recalled that when she was a sixteen-year-old living in the town of Virovitica, she was dismissed from the

[56]Jasminka Domaš, *Glasovi, sjećanja, život: Prilog istraživanju povijesti židovskih obitelji* (Biakova d o o and Židovska vjerska zajednica BET ISRAEL u Hrvatskoj 2015) 68.
[57]For more details regarding the Ustasha cultural policies and the idea of national rebirth and creation of new Croatian national community see Yeomans (n 3); Miljan (n 3).
[58]Melita Švob, *Židovi u Hrvatskoj – židovske zajednice* (KD Miroslav Šalom Freiberger i Židovska općina Zagreb 2004) vol 1, 361–65.
[59]Domaš, *Glasovi, sjećanja, život: Prilog istraživanju povijesti židovskih obitelji* 68.
[60]Paul Schreiner, *Spašeni iz Zagreba. Sjećanje troje preživjelih srodnika na hrvatski Holokaust* (Fraktura 2014) 43.

hospital, even though she had not yet fully recovered after an operation, recollecting the indifferent look of her schoolmate's mother when she came to hide, who told her that she could spend one night at their home and that '[w]e cannot have you here for longer'.[61] Which kind of new 'legal' norms constructed this discriminatory and brutal new reality for the Jews? What can we discern from such norms when knowing that most of the population abandoned and turned a blind eye to the brutal treatment and subsequent annihilation of their Jewish neighbours, friends, colleagues and classmates? What can we discern about the everyday impact of the legal norms proscribed by the Ustasha regime and their consequences for the Jewish community?

Within a month of its establishment, the Ustasha regime introduced basic legal provisions that allowed the Jews to be excommunicated and stripped of citizenship rights in the newly established state. On 17 April 1941, the *Legal Provision on the Defence of the People and State* came into effect, according to which a person who 'violates or has violated the honour and life interests of the Croatian people' or endangers the existence of the new regime or its government authority 'even if the deed remained a mere attempt, shall be found guilty of high treason'.[62] The penalty for such an act was death, which was to be adjudicated by 'special national courts'.[63] The introduction of an additional three new laws took place on 30 April 1941: (i) the *Legal Provision on Citizenship (LPC)*; (ii) the *Legal Provision on Racial Affiliation (LPRA)*; (iii) the *Legal Provision on the Protection of Aryan Blood and the Honour of Croatian people (LPPABHCP)*, by which the Jews lost all legal rights and, as such, were placed outside the law.[64] These three provisions established legal norms that determined who should be considered a citizen and thus enjoy 'the protection of the Independent State of Croatia'. To enjoy state protection and hold political rights, a person had to be of Aryan origin and good conduct. Additionally, individuals had to be 'ready to serve the Croatian people and the Independent State of Croatia'.[65]

[61] Judita Krivokuća, 'Probuđeno zlo' in Aleksandar Gaon (ed), *Mi smo preživeli ... Jevreji o holokaustu* (Jevrejski istorijski muzej i Savez jevrejskih opština Jugoslavije 2001) vol 1, 33.

[62] 17 April 1941, *Narodne novine: sluz˘beni list Nezavisne Države Hrvatske* 2.

[63] Ibid.

[64] 30 April 1941, *Narodne novine: sluz˘beni list Nezavisne Države Hrvatske* 1; Goldstein and Goldstein (n 3) 115.

[65] 30 April 1941, *Narodne novine: sluz˘beni list Nezavisne Države Hrvatske* 1. In line with the dominant Nazi racial hierarchy the Ustasha leadership considered Croats to be of Aryan origins and thus of higher standing within the nationalist-socialist new order. The idea of Croats being of non-Slavic origin was familiar within the intellectual circles as well as among the main Ustasha protagonists. Pavelić acknowledged the idea of Gothic origins in his 1936 treatise, *Die Kroatische Frage*, for which he probably drew inspiration from medieval intellectual thought. For more details on the early development of this theory see Danijel Dzino, *Becoming Slav, Becoming Croat: Identity Transformations in Post-Roman and Early Medieval Dalmatia* (Brill 2010).

However, it is important to state that even before these three provisions entered into force, strict rules and regulations concerning everyday activities were imposed upon Jewish citizens of the NDH. For example, by 22 April 1941, Jewish citizens were forbidden to enter restaurants and coffee houses, which was subsequently extended to cover cinemas, theatres and local markets, and visiting these places was only allowed after 10:00 pm. Additionally, even before these provisions were introduced, the Ustasha regime had established its first camps, a transit camp called Kerestinec near Zagreb on 19 April, to which 79 Jewish attorneys arrived on 1 May,[66] and a concentration camp called Danica near the town of Koprivnica to which the first transport of Jews arrived on 30 May.[67]

According to the LPRA, 'A person of Aryan origin is someone whose ancestors belong to the European racial community or who has descendants from such communities outside of Europe', which was to be proven by submitting a certificate of baptism, birth certificate or wedding certificate relating to their first or second-generation ancestors.[68] The same provision defined a Jew, according to Article 1, as a person 'descending from at least three ancestors of the Jewish race from the second generation'. Further on, it stated that a Jew is a person

> with two ancestors of the Jewish race of the second generation, in the following cases: a) If on 10 April 1941, they were of Jewish faith or have later converted to it; b) have a spouse who is considered Jewish under [Article] 1; c) If, after this provision comes into force, they have entered into a marriage with a person who has two or more ancestors of the Jewish race from the second generation, as well as the descendants from such a marriage; d) If they are illegal children of a Jew under 1, and are born after 31 January 1942; e) If the Ministry of the Interior, based on a well-reasoned argument from the Racial-Political Committee, decides that they are to be considered Jews.

Also, according to subsection 3, a Jew was 'a person born outside the territory of the NDH whose parents do not originate from the NDH if, on 10 April 1941, they were of Mosaic faith or had at least two ancestors of the Jewish race from the second generation, or are considered Jews under the law of the country from which they originate'. According to subsection 4, a Jew was also a 'person who, after this provision comes into force, will have entered into a forbidden marriage that bypasses the Legal Provision on the Protection of Aryan Blood, as well as their descendants', while subsection 5 stated that a Jew was also 'a person who is an illegitimate child of a Jew under [Article] 1′. Similar to the Romanian case, discussed further below, according to Article 6, the *Poglavnik* had the right to grant Aryan legal rights to those persons who 'prior to 10 April 1941, proved

[66]Goldstein and Goldstein (n 3) 203, 223.
[67]Ibid 237.
[68]30 April 1941, *Narodne novine: sluz˙beni list Nezavisne Države Hrvatske* 1.

to have been of merit to the Croatian people, especially their liberation, as well as to their spouses, with whom they entered into marriage prior to entering into force of this Provision, and to descendants form such marriage'.[69] This legal provision shows that the Ustasha regime and Pavelić, a lawyer by vocation, went to great lengths to set up a legal framework within which the Jews were to be defined, detected and eventually destroyed. Regarding any uncertain questions on the issues of definition, Article 5 stipulated the future establishment of a Racial-Political Committee, which was established on 4 June 1941 by the Ordinance on the Racial Political Committee's Structure and Scope of Work. According to Article 1, its task was to make 'drafts of laws, legal provisions and ordinances which deal with racial biology, racial policy, and racial hygiene or eugenics' and 'give opinions on all proposed laws, legal provisions and ordinances of the Independent State of Croatia which will be aligned with the principles and goals of racial policy and eugenics'. Additionally, members of the Committee were to provide opinions in ambiguous cases; provide incentives for scientific studies; enlighten the people regarding racial biology, racial policy and eugenics and maintain contacts with similar international institutions.[70] The LPPABHCP prohibited 'marriage between Jews and other persons of non-Aryan descent with persons of Aryan descent', as well as 'extramarital sexual intercourse between a Jew or a person of non-Aryan blood with a female of Aryan descent' and that 'Jews or other persons of non-Aryan descent shall not be employed in a household of a female of Aryan descent under 45 years of age', as well as that non-Aryans are 'forbidden to hoist the Croatian state and national flag as well as to display Croatian national colours and emblems' and that 'all changes of Jewish surnames made after 1 December 1918 are repealed and shall be replaced with the original surnames'.[71] With these new sets of legal norms, by which Jews were now excluded from society and stripped of legal security and state protection, the institutionalised elimination and destruction of the Jews in the NDH began. As noted by Raul Hilberg, the Ustasha racial laws 'dutifully followed, and even improved upon, the original Lösener definition'.[72] Similarly, Jonathan Steinberg concluded

[69]30 April 1941, *Narodne novine: službeni list Nezavisne Države Hrvatske* 1. Jews received honorary Aryan status on a subjective basis and criteria based on possessing Aryan spiritual characteristics and thus, according to the Ustasha racial nationalism, open to 'biological assimilation' (eradication). In addition this same Provision defined Roma people as 'a Gypsy is a person descending from two or more ancestors of the Gypsy race in the second generation'. For more details see Bartulin, *Honorary Aryans*.

[70]A Mataić (ed), *Zakoni, zakonske eodredbe i naredbe, knjiga II* (Tisak i naklada knjižare St Kugli 1941) 51–53.

[71]30 April 1941, *Narodne novine: službeni list Nezavisne Države Hrvatske* 1.

[72]Raul Hilberg, *The Destruction of the European Jews* (Yale UP, 3rd edn 2003) vol 2, 757. Dr Bernhard Lösener was a lawyer and Jewish expert in the Interior Ministry who participated in the drafting of the Nuremberg Laws in September 1935 and eventually drafted or helped draft 27 Jewish decrees. He was instrumental in the process of drafting the Reich Citizenship Law, especially the section concerning half-Jews. See ibid vol 1, 66–68.

that regarding the anti-Jewish legislation in the NDH, 'it rapidly passed laws that the Nazis had taken years to work out'.[73]

Parallel to providing the 'legal' basis for destroying its Jewish community, the Ustasha leadership enacted the process of its material and physical destruction. All three processes had a common goal: to eradicate those unworthy, the Jews, of belonging to the new community through what is often referred to as the *revolution of blood* while simultaneously providing a space, both physical and material, for a 'new' Croat – the Ustasha, through the *revolution of the soul*.[74] From April to July 1941, mass arrests of Jewish intellectuals, students and prominent citizens occurred in Zagreb, Karlovac, Varaždin and other cities. Most of these individuals were sent to the Danica or Kerestinec camp or the Gospić-Velebit-Pag camp system, the first centrally planned and directed camp system established in June 1941. It consisted of one prison, one camp and several transit camps in the town of Gospić itself. During the two months of its existence, around 2,500 Jews from the territory of the NDH disappeared.[75] A testimony to this camp's significance is that Jews from Varaždin were transported to this camp following the mass arrests on 12 July 1941, which made Varaždin the first city in the NDH to be 'cleansed' of Jews.[76] In August, the Jasenovac concentration camp complex was established by the closure of the Gospić-Velebit-Pag Island camp system. Jasenovac comprised five separate camps designated by the Roman numerals I to V. This camp system became the final destination for more than 80% of the NDH's Jewish population.[77]

Before introducing the provisions mentioned above and only eight days after the proclamation of the NDH, the *Legal Provision on the Preservation of National Properties* was introduced on 18 April 1941. This provision invalidated all business transactions between Jews as well as between Jews and other persons.[78] Parallel with the legal exclusion and physical destruction of their

[73]Jonathan Steinberg, 'Types of Genocide? Croatians, Serbs and Jews, 1941–1945' in David Cesarani (ed), *The Final Solution: Origins and Implementation* (Taylor & Francis Group 1994) 180. He was also referring here to the legal aspects pertaining to interrmarriage, employment of Aryan female servants in Jewish households, marking of Jewish shops and compulsory registration of Jewish property.

[74]'Revolution of blood' refers to the Ustasha policies aimed at eradication of foreign groups residing on the territory of the new state, while 'revolution of soul' refers to the upbringing, education and indoctrination of the 'new' Croat-the Ustasha. For more see Yeomans (n 3) 18–28; Miljan (n 3) 92–99.

[75]Goldstein and Goldstein (n 3) 245.

[76]Ibid 230.

[77]The full name of this camp complex was the Ustasha Defense Command of the Jasenovac Transit Camp. For more on the Jasenovac camp see Nataša Mataušić, *Jasenovac, 1941–1945: logor smrti i radni logor* (Javna ustanova Spomen-područje Jasenovac 2003); Nataša Mataušić, *Jasenovac* (Jasenovac Memorial Site 2018); Ivo Goldstein, *Jasenovac* (Fraktura 2018).

[78]Zlata Živaković Kerže, 'Podržavljenje imovine Židova u Osijeku u NDH' (2007) 39 Časopis za suvremenu povijest 97–116: 102.

Jewish citizens, the Ustasha regime established institutions whose primary purpose was to identify, enumerate, administer and run Jewish businesses and take control of their assets by enacting measures aimed at their complete material destruction.[79] The extent to which the annihilation of Jews was seen as a key prerequisite for the 'rebirth' of the Croatian nation and the establishment of the 'new Croat' is testified by the fact that it took only two months for the Ustashas to deprive Jews of their economic and material well-being. They achieved this by establishing a centralised system of state agencies tasked with coordinating activities regarding confiscated Jewish property. For this purpose, two directorates were established: the State Directorate of Reconstruction on 24 June 1941 and the State Directorate of Economic Reconstruction on 1 July 1941. Furthermore, on 10 October 1941, the *Legal Provision on the Nationalisation of Jewish Property and Jewish Businesses* was introduced. It authorised the newly formed State Directorate of Reconstruction, established on 15 September 1941, which combined the previous two into a single Directorate, 'for the sake of the national economy … to nationalise the property of every Jew as well as any Jewish businesses, with or without compensation, to the benefit of the Independent State of Croatia'.[80] This meant that besides stripping Jews of their citizenship rights and any legal protection in the new regime, Jewish property and assets now belonged to the institutions mentioned above that could own, rent or destroy them on behalf of the State Treasury.[81] As witnessed by Ješua Abinun:

> Not a single Jew at that time could find employment. They were all fired, and their shops and capital were confiscated … The Ustasha commissioner also visited us and brought a warrant stating that a shop that belonged to Levi is now his, and Levi is no longer the owner. That was from the government and was supposedly legal. Nobody came just like that, arbitrarily.[82]

While the entire process of Aryanisation was structured and perceived as a centrally coordinated process, this was only sometimes the case. High-ranking Ustasha members and officials of state institutions, such as the Ustasha youth organisation, often intervened outside the established 'legal' framework. They

[79]On 4 June 1941 the 'Legal Provision on the Marking of Jewish Shops' was adopted, followed by the 'Legal Provision on the Prevention of Concealing Jewish Properties' and instituted together with the 'Legal Provision on the Obligatory Registration of Jews and Jewish Firms': Goldstein and Goldstein (n 3) 162; Živaković Kerže (n 78) 102–03.

[80]As quoted in Nada Kisić Kolanović, 'Podržavljenje imovine Židova u NDH' (1998) 30 Časopis za suvremenu povijest 439; Goldstein and Goldstein (n 3) 165–66. On 30 October 1941 the Law Decree on the Nationalisation of Jewish Property was introduced by which Jewish property was formally transferred to the NDH.

[81]Živaković Kerže (n 78) 103–04.

[82]Ješua Abinun, 'Slučajno sam ostao živ' in Aleksandar Gaon (ed), *Mi smo preživeli ... Jevreji o holokaustu* (Jevrejski istorijski muzej Saveza jevrejskih opština Srbije 2007) vol 4, 180.

demanded that confiscated properties were allocated to their personal or organisational needs, which meant that Jewish property and assets often ended up in the hands of such officials or 'deserving' Ustasha officials.[83]

In Romania, similar regulations to those in the NDH were introduced, re-establishing the norms of excluding Jews and imposing a new reality. Lyonell Fliss, who was six years old at the time, recalls in his testimony how 'All kind of laws and regulations were issued, and Jewish children were not allowed … to attend public schools'. When he asked his mother why he could not attend the school like all the other children, his mother explained, 'Unfortunately, you're Jewish'.[84] Carol II, King of Romania, issued the anti-Jewish decree law of 8 August 1940 (no 2,650), 'by the grace of God and will of the nation'. The decree-law made a juridical and political distinction between 'Romanians by blood' and 'Romanian citizens'. The decree-law aimed to create a legislative and conceptual framework for future legislation and administrative regulations concerning the Jewish population. The decree-law defined and distinguished between Jews and 'Romanians by blood'. It thereby instituted a legal category of Jews and restricted Jews' access to work, public office and property acquisition.

The rationale for the decree-law was to 'administer justice for the Romanian people' regarding the 'Jewish question'.[85] On the same day, the king issued a second decree-law (no 2,651) prohibiting marriage between 'Romanians by blood and Jews'. The motivation for this decree-law was the 'purification of the nation of its parasitic and heterogeneous elements'.[86] The second decree-law regarding the prohibition of marriage between 'Romanian by blood' and 'Jews' emphasised the racial components of the law. It aimed to secure the imagined purity of the Romanian organic nation.[87] In the Ministry of Justice report, the decree was referred to as the 'law of blood' that would 'set aside … the foreign influences that would weaken the nation'.[88] Thus, nation and blood addressed the Jewish question as a religious and biological project. The Minister of Justice stated: 'we have considered Romanian blood as a principal element grounding

[83]Živaković Kerže (n 78) 445. See also Kolanović (n 80); Goran Miljan, 'The Ustasha Youth and the Aryanization of Jewish Property in the Independent State of Croatia, 1941–1945' in Gaëlle Fisher and Caroline Mezger (eds), *The Holocaust in the Borderlands: Interethnic Relations and the Dynamics of Violence in Occupied Eastern Europe* (Wallstein Verlag, 1st edn 2019).

[84]Linda Behr, Interview with Lyonell Fliss (1 Mar 1997) USC Shoah Foundation, testimony 26699.

[85]Ion V Gruia, 'Decret-lege pentru oprirea căsătoriilor între români de sânge şi evrei (2.651): referat către Consiliul de Miniştri (108.531)', *Monitorul Oficial*, Partea 1, Nr 183, 9 August 1940, 4087–88.

[86]Ibid 4088.

[87]Cercel (n 54) 363.

[88]'Decret-lege pentru oprirea' (n 85) 4087.

the Nation'.[89] However, despite racial discourse and terminology in practice, the law defined Jewishness based on religious affiliation.

Emil Dorian, a Romanian poet and physician, wrote in his diary on 9 August 1940, 'the absurdity upon which this law is based has no limits because the law is full of "pseudo-scientific hoaxes"'. According to Dorian's interpretation, all Jews, except those few Jewish citizens before 1916 or those who participated in the war from 1916 to 1918 and were honoured, 'shall no longer be citizens'. Thus, these Jews 'are devoid of any rights'.[90] According to Dorian's diary, in connection with the law's introduction, the Minister of Justice announced that 'Jews are irreversibly excluded from the life of the nation'. Dorian also wrote that a leading intellectual, Eugen Lovinescu, claimed the new law was 'liberal and equitable'.[91] This upset Dorian, and he wrote, 'Many gentiles do not understand the feeling of human degradation the Jew experiences now that he is a pariah in Romanian society'. Thus, the law reinforced the social norm of antisemitism and led to the further marginalisation and exclusion of Jews from Romanian society.

When Dorian met one of his Jewish friends, a poet, he asked Dorian rhetorically, 'My dear Dorian, what *is* it this Hitler wants to settle with you!' Thus, the perception of the Jews was that the law was introduced to reflect what was happening in Nazi Germany. Dorian argued that this was a mistake and '[t]he introduction of a totalitarian regime whose doctrine and institutions do not fit the Romanians' psychological, economic and political make-up'.[92] The 1935 Nuremberg laws inspired the anti-Jewish decree-law of 8 August 1940.[93] Similarly, the Romanian anti-Jewish decree-law defined Romanians and Jews regarding race determined by 'blood'. The second anti-Jewish decree-law prohibiting Romanians by blood and Jews from marrying was inspired by the Nuremberg law, entitled *The Protection of the German Blood and Honour*. The Romanian anti-Jewish law exempted Jews from provisions who had fought for Romania in wars and imposed most restrictions on those who had not fought, which the Nuremberg laws did not. As Antonescu explicitly stated: '[t]he whole struggle of the great national-socialist German Revolution and the Fascist achievements shall serve us as grounds for our experience in pruning on to the Romanian soul and needs the fruit of these organisations of peoples, grounds for a new world'.[94] Wilhelm Filderman, leader of the Romanian-Jewish community from 1919 to 1947, wrote in his memoirs: 'I reviewed the

[89]Ibid.
[90]Emil Dorian and Marguerite Dorian, *The Quality of Witness: A Romanian Diary, 1937–1944* (Jewish Publication Society of America 1982) 111.
[91]Ibid 111.
[92]Ibid 114.
[93]Constantin Iordachi and Ottmar Traşcă, 'Ideological Transfers and Bureaucratic Entanglements: Nazi "Experts" on the "Jewish Question" and the Romanian-German Relations, 1940–1944' (2015) 4 Fascism 63.
[94]Lya Benjamin, *The Jews in Romania Between 1940–1944 years*, Anti-Jewish Legislation (Hasefer 1993) vol 1, No LXXIX.

Legal Statute of 9 August and expressed the grief felt by the country's entire Jewish population in the face of the injustice being done to them. Our sadness is all the greater inasmuch as we feel we have performed our duty as citizens during the 20 years of civic equality'.[95]

According to the two decree-laws, Jews were defined as members of the Mosaic religion, including those whose parents were of the Mosaic religion and Jews born out of mixed marriages in which one of the parents was of the Mosaic religion. In addition, women who converted no later than one year before the establishment of the National Party (June 1939) were exempted from being categorised as Jews. Apart from this religious-based definition of Jews, Article 2 of the decree-law also stipulated that 'persons of Jewish blood who are atheists are considered Jews'.[96] Thus, the anti-Jewish decree laws created a sub-population based on race. The definition of Jews was stricter than in Germany, ie more racial, as the Nazi regime labelled Christians born to a Christian and a Jewish parent as second-degree *Mischlinge.* In contrast, the Romanian regime labelled them 'Jews' facing all restrictions.[97] The decree-laws divided Jews into three categories according to the date they were granted citizenship and variables regarding their service to the Romanian nation. Category 1, according to Article 4: Jews who came to Romania after 30 December 1918. Category 2, according to Article 5: Jews who were naturalised before 30 December 1918, or who were naturalised after serving Romania in the War of Independence or fought during the wars for Romania; those who were wounded, decorated, cited, distinguished for acts of bravery in times of war. Category 3, according to Article 6: Jews who do not belong to categories 1 or 2.[98] The first and third categories, to which the majority of the Jews belonged, were subjected to several restrictions regarding the exercise of economic activities, holding public office or being employed in the state administration.[99] Jews from the first and third categories could not be public officials, members of the Armed Forces, or have professions with any relationship to public authorities. Nor could they be tutors, members of sports associations or even janitors in public institutions. In addition, they were not permitted to be licensed to sell alcoholic beverages or hold a license under a state monopoly. They were not allowed to be active in commerce in rural communities. The decree-law also prohibited Jews from owning or directing media enterprises such as publishing houses or cinemas. Finally, it also stipulated that Jews could not participate as directors, members or players in national sports associations.[100]

[95]Jean Ancel and Wilhelm Filderman, *Memoirs and Diaries, 1900–1940* (Yad Vashem 2004) vol 1, 18.
[96]'Decret-lege privitor la starea juridică a locuitorilor evrei din România (2.650)', *Monitorul Oficial*, Partea 1, Nr 183, 9 August 1940, 4079.
[97]Ioanid (n 45) 20.
[98]'Decret-lege privitor la starea' (n 96).
[99]Ionescu (n 3) 37.
[100]'Decret-lege privitor la starea' (n 96).

Jews in the first and third categories were only allowed to occupy liberal professions within the limits set by the Council of Ministers. Jews belonging to any of these categories could not acquire rural property in Romania, according to Article 11. The same article allowed the Minister of Agriculture to expropriate rural Jewish property for public use. Jews could sell their land to persons of 'Romanian blood' with the right of first refusal given to the Ministry of Agriculture. Article 11 of the anti-Jewish decree-laws stipulated that 'Jews belonging to any of the categories may not acquire rural industrial enterprises in the future'.[101] The immediate consequence of the anti-Jewish decree laws was that the authorities of public institutions were expected to dismiss Jews within three months. Jews engaging in forbidden activities were obliged to end their occupations within six months, and the authorities were expected to dismiss Jews engaged in economic and social activities within six months. Jews who occupied positions entitled to a pension should maintain this right.[102] The anti-Jewish legislation aimed to reduce the economic position of Jews and remove them from public posts and employment. The anti-Jewish decrees rescinded the benefits of the Constitution of 1923 and the obligations of the Minority Treaties within the Versailles Peace. The decrees aimed to return to the pre-World War I status in order to reconstruct a subordinated group that was legally and politically distanced from the nation-state in a condition close to statelessness. The exclusive ethno-nation state of Romania created various layers of alienation from the state. The legal distinction between Romanians by blood and Romanian citizens was guided by the 'Romania for the Romanians' principle. Jews were positioned as foreigners, as 'strangers within'. As a sign of this alienation, they could no longer adopt Romanian names according to the first decree.

The enforcement of the fascist authoritarian regime was achieved by employing various tools, including the force of law.[103] The dual roles of the dictator king as both a charismatic leader in the political arena *and* a sovereign from a constitutional and legal perspective enabled the adoption of an antisemitic and fascist ideology without any form of mediation. The king acted and was presented as a modernising monarch, a protector of national culture, a legislator, a military commander, a predestined leader and a guarantor of law and order. The proponents of the Antonescu regime launched a eugenic project of nation and 'blood' using institutional, political and discursive strategies to combine political and biologically fixed categories. Biology failed to provide an uncontested formula, as the regime used religion to define Jewishness, not blood samples. Still, the law delivered an operational framework combining 'blood' and religion supported by criminal law sanctions.[104] Non-compliance with all other prohibitions was punishable

[101]Ibid.
[102]Ibid 4079–81.
[103]Ionescu (n 18).
[104]Cercel (n 54) 364–67.

by imprisonment from six months to two years. The criminalisation of the Jew entailed that a person could be forced into becoming a 'Jew' within the meaning of the law and punished not by the acts but by their status. Criminal sanctions controlled the ascribed status. Thus, the mechanism of criminal law formed the basis of the stated aim of the legislation.[105] The anti-Jewish decrees issued in August 1940 had questionable legal status as they were either laws or decrees. Article 46 gave the king power to issue decrees endowed with the force of law. However, the legal status of these decrees remained uncertain since parliamentary decisions could have rescinded them. At the same time, these decrees inherently possessed the force of law as acts enforced by the king's *own* legislative power. Thus, the question was whether they were actual laws or administrative acts of authority.[106] In the first anti-Jewish decree-law of 1940, Article 2 explicitly stated that the 'present decree-law has the force of law'. The anti-Jewish decree-law of 1940 raises questions of legality and constitutionality. Concerning the constitution of 1938, which was still formally in force, the decrees of 8 August violated the provisions of Article 5 of the 1938 constitution regarding provisions related to the equality of citizens before the law. Article 5 in the constitution explicitly states that 'all Romanian citizens, regardless of their ethnic origin or religious belief, are equal before the law'.[107]

The summer of 1940 was a fateful summer for Romania, marked by territorial cession to the USSR, Hungary and Bulgaria, exchange of populations, government reshuffles, and regime changes. Because of the territorial cessions, the king abdicated and appointed a short-lived government founded on an alliance between the Iron Guard and the military. The Minister of Justice, Ion Gruia, who held office for only one month, signed the two anti-Jewish decree laws. On 6 September 1940, Carol II abdicated after handing over power to Marshal Ion Antonescu as *Conducător* with unrestricted powers. After establishing the Legionary State, Wilhelm Filderman, lawyer and leader of the Romanian-Jewish community between 1919 and 1947, met with Antonescu in September 1940. Antonescu requested that Filderman tell his 'coreligionists not to sabotage the government'. Filderman explained he could not ask them this and argued that 'your government [has] 17 members of the Iron Guard, whose only goal is to ruin and murder us, as the Jews know very well'. Antonescu promised that if the Jews 'do not sabotage the government, either directly or behind the scenes, or politically or economically, they will not suffer'.[108] In the testimony of the Jewish survivor Leon Herscovici, who was 19 years of age in 1940 and lived in Bucharest, he stated that he was forced to do paramilitary exercises and that 'the officers who were with us were from the Iron Guard and they made us sing songs like "kill the Jews, kill the Jews". But soon, they expelled us from the

[105]Ibid 362.
[106]Ibid 359.
[107]'Constituţiune', *Monitorul Oficial,* Partea 1, Nr 48, 27 February 1938, 1110.
[108]Filderman and Ancel (n 95) 33.

university, army, from … and all this began'.[109] Herscovici described how this major change in social norms paved the way for radicalisation.

The Iron Guard was the only fascist movement in Europe outside Germany and Italy that came to power without foreign support.[110] The persecution of the Jews continued both legally and illegally as the fascist movement was urging for direct action. The decree-laws remained in force until they were abrogated by the publication of a statute on 19 December 1944. These decree-laws served as a generic framework referred to by various administrative and criminal law measures.[111] Until 1944, when Antonescu was deposed and Romania turned against Nazi Germany and joined the Allied war effort, over 30 anti-Jewish pieces of legislation were issued, most of them decree-laws. The primary purpose of this legislation served the aim of Romanianisation, the nationalisation of Jewish assets and the reduction of Jewish participation in the national economy.[112] Romanianisation was different from Aryanisation as it aimed at redistributing Jewish assets and jobs to ethnic Romanians and to minimise the takeover by non-Romanians, including members of ethnic minorities of 'Aryan' origin, such as Germans and Hungarians. This created tensions with Germany since the Romanian authorities *de facto* favoured ethnic Romanians at the expense of ethnic Germans.[113] Several of these decree-laws used their definitions of Jews, despite the first decree-law of 8 August 1940 remaining in force until December 1944. The legally ambiguous nature of these decree laws is characterised by the exemplary use of law for a totalitarian ideology. In reality, legal authorities and officials defined the concepts of Jews and Romanians based on racial legislation, and the courts decided on individual cases.[114] The instruments used by the totalitarian regime were a combination of constitutional ideology, criminal law repression and the force of law simultaneously, and administrative and military order.[115]

The inconsistency of Jewish status between decrees was noted in a memorandum of the Ministry of Justice at the beginning of 1941, which claimed that Christians born from parents of the Jewish faith but who had then been baptised were considered Romanian according to the decree-law of 8 August 1940 and could join the army and reach the rank of general. However, they could not attend

[109]Ruth Meyer, Interview with Leon Herscovici (3 Nov 1999) USC Shoah Foundation, testimony 50436.
[110]Eugen Weber, 'The Men of the Archangel' (1966) 1(1) Journal of Contemporary History 101–26: 103.
[111]Cercel (n 54) 368.
[112]Ancel (n 51); Ionescu (n 3).
[113]Iordachi and Trașcă (n 93).
[114]Mihaela Serban, 'Litigating Identity in Fascist and Post-Fascist Romania, 1940–1945' (2020) 2(2) Journal of Romanian Studies 81.
[115]For more on the question of totalitarianism as a political experiment see David D Roberts, *The Totalitarian Experiment in Twentieth-Century Europe: Understanding the Poverty of Great Politics* (Routledge 2006).

elementary school because of decree-law no 3,438 of 14 October 1940, which forbade access to school for all children born to Jewish parents.[116] They could not own land in rural areas because of decree-law no 3,347. However, they could be lawyers according to the decree-law of 8 August 1940, but not private office workers because of decree-law no 3,825 of 16 November 1940. The memorandum explained that 'the Jews' legal status has been regulated through numerous decrees without having a unitary law establishing who is Jewish', which 'creates permanent uncertainty since the same person can be [classified] Jewish or Romanian, depending upon which decree is applied'.[117] The Minister of Justice, Constantin Stoicescu, complained that it was difficult to 'assess ethnicity' and 'to prove ethnic origin', and instructed the magistrates to examine ethnic origin case by case.[118]

The racial nature of the legislation was stringent regarding the expropriation laws that aimed to Romanianise Jewish rural, urban, industrial and commercial properties. Romanianisation involved the penetration of Romanian elements into economic life and the 'purification of the atmosphere from Judaic elements', according to Antonescu,[119] who also stated that the policy of Romanianisation was a programme of national renewal. He proclaimed that the policy of Romanianisation had three aims:

> (1) to remove the Jewish element and the other parasitical alien elements from their domination in all economic fields which they achieved through fraud and corruption; (2) to return the property, wealth and economic goods on Romanian territory to Romanians; (3) to set up a new Romanian bourgeoisie that was capable of resisting and developing independently.[120]

The Legionary State under the Iron Guard issued the first decree-law of expropriation (no 3,347) on 4 October 1940. It stipulated that rural Jewish properties would be expropriated and that there would be no exceptions. New expropriation laws followed, including no 3,810 and no 3,850, involving commons, hay fields, forests, mills, presses, film studios, cinemas, tourist and travel agencies, etc.[121] Decree-law no 3,361 of 4 October 1940 provided that Romanianisation Commissions would take over all Jewish enterprises. The commissioners had unlimited power and were tasked with preparing an enterprise for the future national economy. In this process of expropriating industrial and trade enterprises, the Romanianisation of the working force was thoroughly conceived. First, Jews were not allowed to be educated in state schools and were forbidden from being artists, lawyers, engineers, physicians, pharmacists, artisans and apprentices.

[116]Benjamin (n 94) No LXXI.
[117]Ionescu (n 3) 46.
[118]Ibid.
[119]Benjamin (n 94) No LXXIII.
[120]Arhivele Naționale ale României, Ministerul Justiției, 114/1941, 4.
[121]Benjamin (n 94) No LXXVII.

On 12 November 1940, decree-law no 3,825 was signed for the Romanianisation of staff in enterprises. The motivation for the decree was the intention of the National Legionary State for the Romanianisation of the entire economy. In addition, the argument of national defence was used as the Jews were assumed to be the enemy. Social and commercial enterprises, except strictly religious and cultural Jewish institutions, could not have Jewish employees. The entire Jewish workforce had to be discharged by 31 December 1941. Some exceptions were made for war heroes. The discharges were carried out to the extent to which Romanians could replace Jewish specialists. The Jews kept their jobs until the Romanians who replaced them acquired the necessary skills. However, the deadline was extended several times.[122] Regarding rural property, the Antonescu regime introduced the law for Expropriating Jewish urban real estate on 27 March 1940. Decree-law no 143 of 9 March 1943 stipulated that Jews with special merits could 'be assimilated entirely or partly with Native Romanians by a State leader decree. According to this stipulation, several dozen people were exempted from the requirements of the Romanianisation laws.[123] Even though the second category was considered 'natives', their future was uncertain. Antonescu claimed, '[w]e shall deal with this later when the country will be rid of the other Jews'.[124] Thus, the authorities exempted Jews either because of their historical merits or because they were productive and had 'special merits'. In May 1941, the National Center for Romanianisation (NCR) was set up as a special body attached to the Presidency of the Council of Ministers. Its main function was to expropriate Jewish properties by gradually strengthening 'the Romanian element' by 'Romanianizing economic life'.[125] Despite the legal tools for Romanianisation, the Romanian regime failed to achieve a complete Romanianisation of real estate, businesses and jobs. This was partly due to the Jewish resistance, partly because of the regime's fear that radical Romanianisation could paralyse the economy, and partly due to foreign policy considerations. Ştefan Ionescu concluded that the process of Romanianisation under Antonescu resulted in a 'disproportionate but intense legal struggle between the state and local Jews'. The Romanian regime tried to exclude Jews from all branches of the economy, but Jews resisted this policy by adopting 'ingenious evasion strategies'.[126] However, according to Jean Ancel, by looking at the value of confiscated and nationalised Jewish property, which amounted to around 500 million dollars in 1942, Romanianisation caused significant redistribution and destruction of the Jewish economy.[127]

[122]Benjamin (n 94) No LXXX.
[123]Benjamin (n 94) No LXXIII.
[124]Benjamin (n 94).
[125]Benjamin (n 94) No LXXXIV.
[126]Ionescu (n 3) 184–88.
[127]Ancel (n 51) 363.

5. Conclusion

With establishing a 'legal' framework, state agencies and concentration camps for their material and physical destruction, the two regimes embarked on the institutional elimination of Jews as non-citizens and their forceful removal from their respective nations. It is important to mention that these norms did not rest on the idea of justice and equality. Thus, whether they are to be considered within the notions of positive law remains beyond the scope of this article.[128] What was important to the actors analysed in this article, which established this legal framework, was that it provided them with a 'legal' pretext for the persecution and murder of individuals who had been stripped of their rights, assets, properties and right to live in Croatia and Romania by enforcement of these legal norms. These policies, introduced by the two most murderous Nazi-allied regimes, resulted in an almost complete eradication of the Croatian Jewish community, with approximately eighty per cent of Jews murdered and the murder of almost 50 per cent of Romanian Jews.[129] According to Raul Hilberg, 'no country, besides Germany, was involved in massacres of Jews on such a scale' as Romania, where 280,000 to 380,000 Jews were murdered.[130] Also, the NDH was the only Axis partner besides Germany, which established and ran its own concentration and death camps, such as the Jasenovac concentration camp, where 'mass killings took place without the direct participation of the German Nazis'.[131] It is important here to note that these new norms provided a 'legal' pretext for implementing radical social engineering through which these actors wanted to achieve their vision of a new Croatian and Romanian society and the role of the individual in this society. On the one hand, these new legal norms proscribed and distinguished between those worthy of belonging to the new national community and those deemed unworthy of belonging to it. On the other hand, and more importantly, these new legal norms devastated lives, not least in the sense of their total physical destruction.

Knowledge on the outcome of the policies proscribed by these legal norms enables us to argue that people have observed and, to a considerable extent,

[128]The majority of scholars dealing with the question of law in the NDH, and criminal law in particular, often adhere to the above mentioned 'rupture thesis', for example Igor Vuković, 'An Order of Crime: The Criminal Law of the Independent State of Croatia (NDH) 1941–1945' (2017) 48 Balcanica 289–342: 340–41; Nikolina Srpak, 'Kazneno pravo u doba Nezavisne Države Hrvatske (1941–1945)' (2006) 13 Hrvatski ljetopis za kazneno pravo i praksu 1117–1144: 1141–43.

[129]For Croatia see Melita Švob, *Židovi u Hrvatskoj – židovske zajednice* (KD Miroslav Šalom Freiberger i Židovska Općina Zagreb 2004) vol 1, 363; Goldstein and Goldstein (n 3) 561–73. As previously mentioned, Romania had a Jewish population of around 800,000 out of which 280,000 to 380,000 were killed. See International Commission of the Study of Holocaust in Romania Radu Ioanid, Tuvia Friling and Mihail E Ionescu (eds), *Final Report* (Polirom 2005) 170, 381–82.

[130]Hilberg (n 72) vol 2, 809.

[131]Goldstein and Goldstein (n 3) 268.

acted according to these norms. In this process, political actors and the ideological elite proscribed the new legal framework for all citizens as guidance regarding their actions. These norms served as guidelines for the new worldview and reality in the sense of what was being prescribed, what was being 'legally' permitted and what was being 'legally' prohibited. As such, these norms received state authorisation and implementation, serving as the 'legal' basis for the institutional elimination of unwanted citizens.[132] There can be no doubt that certain strata of society perceived the outcome of this radical social engineering – undoubtedly inspired by the Nazis yet structurally adjusted to their respective specific national contexts – as an effort to eliminate their Jewish communities by 'legal' means. As witnessed by Holocaust survivor Mirko Najma from the city of Osijek: '[t]he crowd gathered around the synagogue shouting against the Jews while it was burning'. He also spoke of how he witnessed anti-Jewish propaganda on a daily basis and 'shops inscribed with signs like "Jews not wanted", while signs on coffee houses read "Jews forbidden"'.[133] The extent to which ordinary individuals became actively or passively involved or opposed to this process in their everyday lives on the micro level remains a matter of further research. Events from the same city of Osijek testify to the complexity of social reality and the actions of individuals. Citizens stood by when the synagogue burned down in 1941; while in August 1942, when the last Jewish residents were about to be deported, citizens openly showed their disapproval, either by shouting in protest or by handing out food and drink to their former neighbours.[134] To understand the dynamics of the micro-level process, analysis of macro-level frameworks is necessary, especially those that prescribe, permit and prohibit the actions of individuals and establish new legal norms that impact the everyday lives of individuals' reality.

By looking at this process from a macro perspective, this article has analysed the 'legal' framework established by the two regimes while in no way trying to diminish or avoid the significance of the dynamics of this destruction process. In the two cases analysed, the macro perspective was intentionally chosen to analyse the emergence of the new legal norms and prescriptions, permissions and prohibitions established regarding the destruction of Jewish communities. The primary goal was to analyse and understand the macro-level legal framework and norms. From their inception, these frameworks established the 'rule of the game' within which various meso and micro-level actors operated. Essential to

[132]It is important to notice that the NDH never introduced a new criminal law, but rather introduced changes and amendments to the pre-existing one from 1929: Srpak (n 128) 1118.

[133]Mirko Najman, 'Stradanje osječkih Jevreja' in Aleksandar Gaon (ed), *Mi smo preživeli ... Jevreji o holokaustu* (Jevrejski istorijski muzej Saveza jevejskih opština Srbije i Crne Gore 2003) vol 2, 208–09.

[134]Zlata Živaković-Kerže, *Stradanje i pamćenja. Holokaust u Osijeku i život koji se nastavlja* (Židovska općina Osijek 2006) 138–40.

keep in mind is the fact that this was never a clear-cut linear process but rather a dynamic process of the interplay amongst actors and institutions on macro, meso and micro levels who all acted, competed, obeyed, or, in certain instances, disobeyed the rules established by this legal framework. No matter which paths this dynamic process took, the fact remains that the two legal frameworks analysed here were responsible for the process by which Jewish communities in Croatia and Romania faced unimaginable devastation, the consequences of which are still felt today. This speaks to the extent of this destruction and the impact of this legal framework on individuals, be they victims, bystanders or perpetrators.

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