

ANNUAL LECTURE

A Typology of Traitors
in Late Nineteenth Century
Austria-Hungary

Mark Cornwall



FOUNDATION
FOR AUSTRIAN
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A heroic portrayal of the execution of the 'traitor' Lajos Batthyány in 1849
(French lithograph, c.1850).

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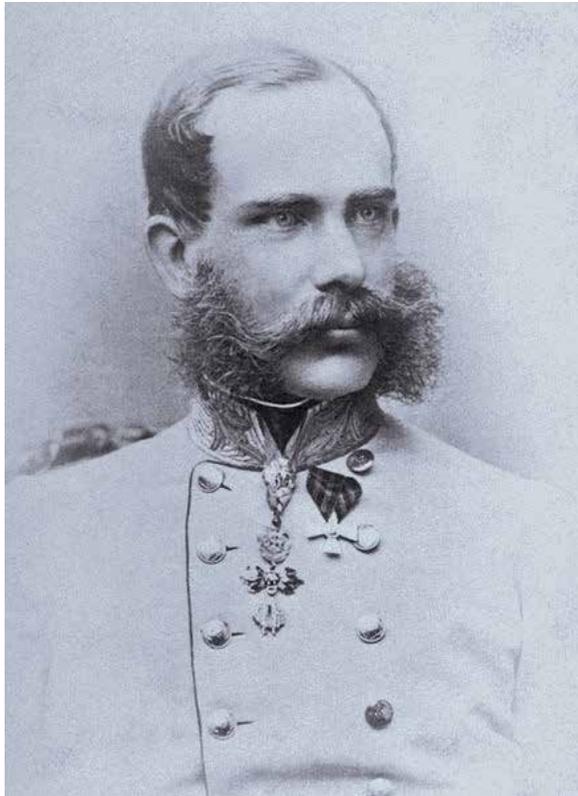


Figure 1: Emperor Franz Joseph in 1865.

I begin this first Austrian Studies Lecture with a dramatic event that occurred in Prague on the evening of 27 October 1866. In the aftermath of the Austro-Prussian War, Emperor Franz Joseph was on a tour of Bohemia, studying the region but also bringing it both material and moral support. According to one Prague newspaper, the visit was a great success: ‘Over everything there has radiated a spirit of attachment and loyalty towards the common state and its ruler, that genuine Austrian idea [*echter österreichischer Gedanke*] and that steadfast love for the fatherland’. The emperor even told the Czech patriot František Palacký that he had encountered ‘ein treues Volk’. It all seemed to disprove the rumours circulating during the recent Prussian occupation, that Bohemia was a hostile territory whose inhabitants were keen to secede from the Habsburg empire.¹

Yet Franz Joseph’s visit was also disturbed by a strange incident. One evening, he attended a performance of Smetana’s *Bartered Bride* at the Czech Provisional Theatre by the Vltava River; Smetana had just become principal conductor, and this opera had had its premiere there that spring. After the first act, the emperor left the theatre and entered his waiting carriage, whereupon an assassination attempt took place. A Czech tailor, Antonín Půst, was seen raising a fully-cocked pistol, only to be prevented from firing by somebody next to him who intervened and marched him over to the nearest policeman. The next day Půst was interrogated at Prague’s criminal court and told he was suspected of the crime of high treason (*Hochverrat*), of trying to murder the emperor. (*Figures 1 & 2*)

But had a treasonous act actually been foiled? While Půst constantly declared his innocence, there did seem to be incriminating evidence against him. Foremost was the word of the man who intervened and arrested him, an Englishman named

¹ ‘Der Kaiser in Prag’, *Politik*, 1 November 1866, 1.

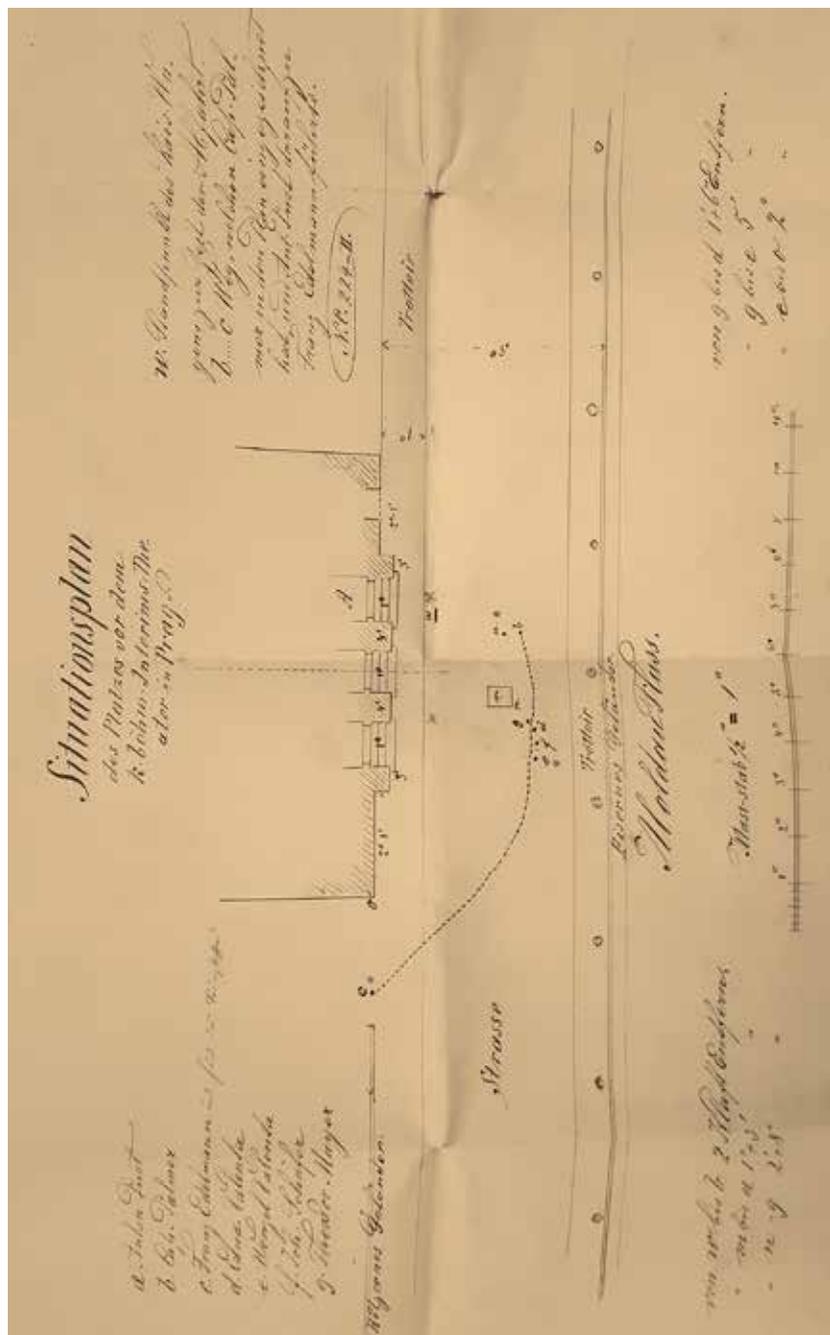


Figure 2: Scene of the 'assassination' outside the Czech theatre, according to the official investigation, November 1866 [source: SOAP, karton 248, A-2033/66].

Captain Hugh Palmer. Palmer too had been waiting outside the theatre, having attended part of the performance, and claimed to have seen Püst's pistol: 'The light of the [theatre] lamps flashed upon the barrel of the pistol I saw distinctly the prisoner raise his right hand in which I am ready to swear there was a pistol'.² Püst on his arrest had also allegedly dropped onto the ground a piece of black silk which was found to contain gunshot powder and a bullet. On the other hand, Palmer's account of the *Attentat* soon looked distinctly suspicious. For a start, no gun was found on Püst, but coincidentally a loaded pistol was discovered thirty steps away from the incident. The press commented that Püst was an industrious worker and good-hearted, who would not hurt a fly; if anything he had a stupid face, so no-one would deduce from his physiognomy that he could be a 'king murderer'.³

The authorities therefore quickly began to wonder if the 'assassination' was fabricated – Franz Joseph even surmised that – and they began to investigate the twenty-three-year-old 'Captain' Palmer too.⁴ Palmer claimed that he was a self-sufficient man of the world who came from a wealthy family since his father owned a mine in north Wales. Having bought a yacht at the age of twenty-one, he then dressed as a naval officer and began to dabble in buying and selling ships around Europe, notably in Denmark and Germany. However, it soon emerged that he was deeply corrupt and indebted, given according to a London lawyer to many 'swindling transactions' around Britain. He was also a potential fantasist, inclined to fabricate stories to gain attention. He had written to his father that Franz Joseph had placed a carriage and horses at his disposal.⁵ And according to the Czech newspaper, *Národní listy*, he had laid a wager that one day his name would be celebrated all over the world.⁶

Partly due to this evidence about their key witness, the criminal court in Prague decided in January 1867 to halt the case against Püst, and this ruling was upheld four months later by the Supreme

2 Státní oblastní archiv, Prague [SOAP], Krajský (zemský) soud trestní Praha, Trestní spisy zn. A: karton 248, A-2023/66 – Antonín Püst: č.9, protocol with Hugh Polson Fraser Palmer, 28 October 1866.

3 'Zu den wunderbaren Attentate', *Politik*, 1 November 1866, 4.

4 Ibid.

5 Ibid., č.190: Austrian Justice Minister to Landesgericht Prague, 11 December 1866: enclosing sworn statement by English attorney at law Thomas Harvey, 6 December 1866.

6 SOAP, protocol with Palmer, 28 October 1866.

Court in Vienna. Yet the Supreme Court still suggested that major suspicion lingered over Püst, and that Palmer for all his eccentricity might still be a credible witness. The case in fact was being stopped because under Austrian law the evidence of one man was insufficient to proceed, not least on a serious charge like treason. From this point in spring 1867 both protagonists completely disappear from the historical record. We know only that Hugh Palmer continued to visit Vienna, staying there in the prestigious Hotel Munsch, while Antonín Püst tried in vain to appeal against his public humiliation.⁷

This intriguing, unresolved and forgotten case introduces us to the whole contentious subject of treason and traitors in the late Austrian empire. Just as it was never clear whether Püst had intended or even performed an act of treason, so the crime of treason through the centuries has been notoriously hard for regimes to interpret and prosecute. Indeed, simply defining ‘treason’ is not as easy as we might think, often confused with generic concepts of ‘betrayal’.⁸ It has of course been a ubiquitous phenomenon in human history, with the word ‘traitor’ often used in political rhetoric as a way to vilify opponents who have betrayed strongly-held convictions, where a moral edge is always near the surface. When in 2019 the Greek parliament voted to agree the naming of their northern neighbour as North Macedonia, opponents labelled the MPs as ‘traitors’ who had committed ‘a national crime’.⁹ More recently, the term was used rather casually against Donald Trump’s ex-national security adviser when he published a memoir, leaking his views on an incompetent president. It was, said US secretary of state Mike Pompeo, ‘both sad and dangerous that John Bolton’s final public role is that of a traitor who damaged America by violating his sacred trust with its people’.¹⁰ Yet in its most concrete manifestation treason is a crime codified in law. There, since the ancient world, it has always been seen as the ultimate political crime, requiring the harshest punishment in order to set an example. In eighteenth-century Austria, the draconian penalty was still beheading for women, and quartering

⁷ *Neue Freie Presse, Abendblatt*, 29 April 1867, 4. On 1 December 1868 (p.11), *Fremden-Blatt* mentioned Hugh Palmer as residing at the Hotel Munsch.

⁸ For a thoughtful new introduction to concepts of betrayal, see Avishai Margalit, *On Betrayal* (Cambridge MA: Harvard University Press, 2017).

⁹ *The Guardian*, 26 January 2019, 40.

¹⁰ ‘Pompeo calls Bolton a traitor and accuses him of writing lies’, *Financial Times*, 20/21 June 2020, 8.

while still alive for men. Joseph II abolished the death penalty in 1783, but it was restored for treason in 1795 in the aftermath of the Jacobin trials, and the penalty was changed to hanging.¹¹

How then should we define treason? Treason means a violent crime directed at destroying the fundamental elements of the regime or the state; specifically, an individual through breaking some obligation of loyalty threatens the state’s integrity and stability. Violence in some form is also always a crucial ingredient. While in the modern era the crime has usually involved the security of the state (and the state community), the pre-modern focus was on upholding the security of the monarchical regime: treason was above all an attack on the monarch, either endangering his life or damaging his ability to govern. As we will see, late Habsburg laws on treason combined these older and newer interpretations of the crime. Indeed, in the overall history of treason, the Habsburg case is particularly suggestive, as an empire which in the late nineteenth century stood on the cusp between the early modern and modern eras. Other modern European states like Britain and France had now moved beyond the strictly monarchical dimension of treason, adjusting it more clearly towards threats to state security.

‘Habsburg treason’ is also a surprisingly unresearched topic. Across seventy years, the regime of Franz Joseph made regular use of treason law to manage some serious domestic enemies. The number of traitors convicted was often not large, or at least it fluctuated across different decades and in different parts of the Monarchy. In the Austrian half of the empire in the 1880s, apart from 1884 (a notable anarchist year), it was usually in single figures.¹² In contrast, in Croatia in the 1890s there was a steady run of convictions with 148 prosecutions in 1902 alone.¹³ The word ‘Hochverrat’ always resonated with the public and ensured there was much press publicity from even single incidents. Possibly the Habsburg prosecutions

¹¹ Gerhard Ammerer, *Das Ende für Schwert und Galgen? Legislativer Prozess und öffentlicher Diskurs zur Reduzierung der Todesstrafe im Ordentlichen Verfahren unter Joseph II. (1781-1787)* (Vienna: Österreichisches Staatsarchiv, 2010) 409-14.

¹² Statistics from Bureau der k.k. Statistischen Central-Commission (ed.), *Oesterreichische Statistik*, Band XV, Heft 3: *Die Ergebnisse der Strafrechtspflege in dem im Reichsrathe vertretenden Königreichen und Ländern im Jahre 1884* (Vienna, 1888); and other volumes in series. In 1884, 58 ‘traitors’ were prosecuted and 27 convicted.

¹³ See the statistics for Croatia-Slavonia: *A m. kir. kormány 1900. évi működéséről és az ország közállapotairól szóló jelentés és statisztikai évkönyv* (Budapest, 1901), 772; *ibid.* (Budapest, 1904), 447.

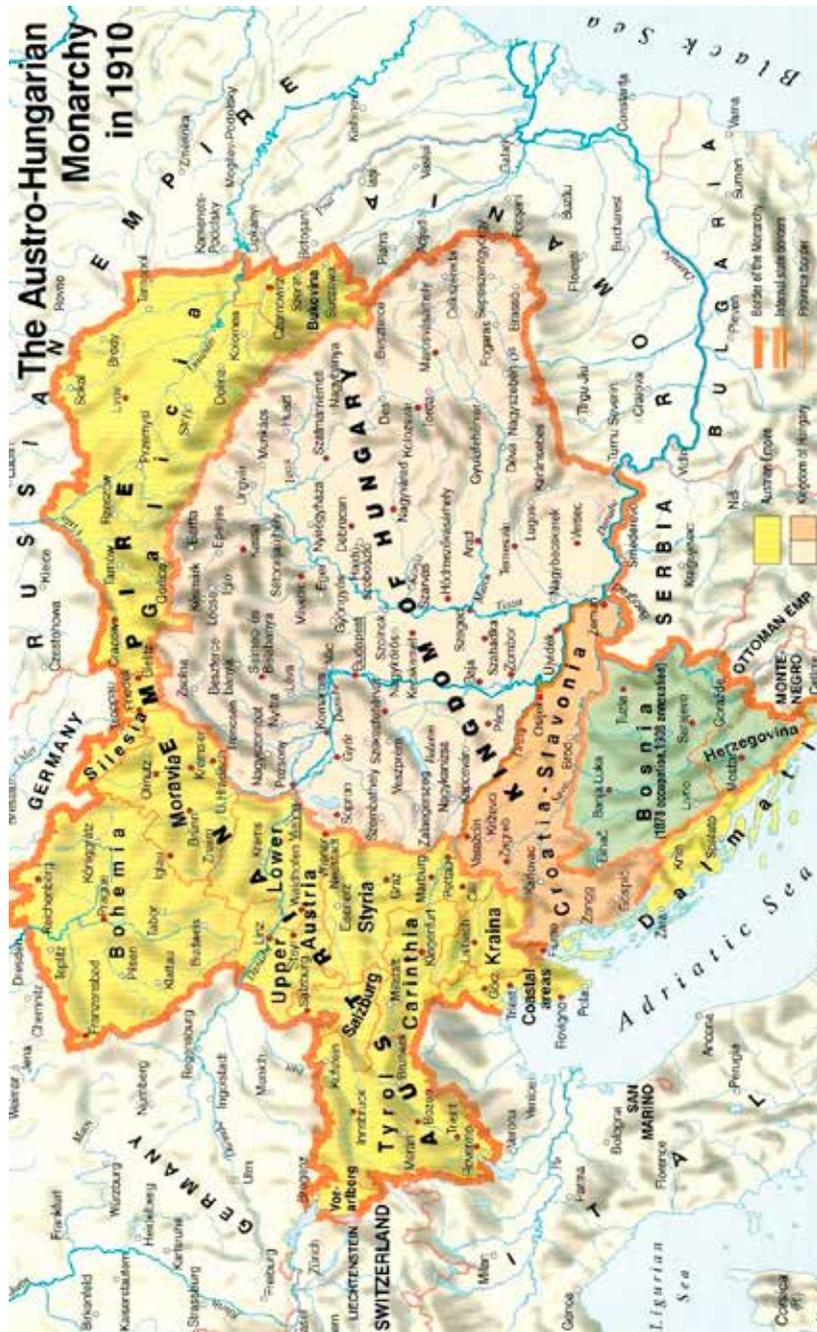


Figure 3: Austria-Hungary in 1910.

were on a par with those in Tsarist Russia; this requires further research. Certainly they vastly exceeded those in either Germany or Britain.¹⁴ Most notably, Habsburg traitors during the dualist era from the 1860s were being identified and prosecuted in peacetime, not just during times of revolution and war when one could expect many more transgressions of loyalty to the state. (Figure 3)

What then can we hope to learn from studying this excessive use of treason law? Firstly, it can tell us much about the mindset of the Habsburg regime in decades when its power, domestically and internationally, was constantly being challenged from new directions at home and abroad: the two were often interlinked. *Where* treason law was wielded in the empire highlights the major security threats to the state. But discovering the key locations will also make us question *why* the authorities decided to use this ‘blunt legal tool’ to crush their enemies.¹⁵ So, secondly, the study of treason is a new way to reassess the mythical rule of law – the *Rechtsstaat* - of late imperial Austria. This *Rechtsstaat* continues to be lauded by some historians; and after 1867 its basic structure was indeed in place within a new constitutional framework for the Austrian and Hungarian halves of the empire.¹⁶ However, there were always limits to how this operated, and many opportunities for its violation by any regime which needed to circumvent the law. In short, treason prosecutions reveal how the *Rechtsstaat* could be undermined through political interference in the law, with serious consequences for how citizens assessed the justice and legitimacy of the Habsburg state or its regional governments.

In the rest of this lecture we will take a walk through what Margret Boveri has called ‘the landscape of treason’.¹⁷ Specifically

14 For a useful comparative discussion from a German perspective, see Fritz van Calcker, ‘Hochverrat und Landesverrat. Majestätsbeleidigung’, in *Vergleichende Darstellung des deutschen und ausländischen Strafrechts. Vorarbeiten zur deutschen Strafrechtsreform* (eds. Karl Birkmeyer, Fritz van Calcker, Reinhard Frank et al), *Besonderer Teil. I Band: Verbrechen und Vergehen gegen Staat und die Staatsgewalt* (Berlin: Otto Liebmann, 1906), 2-71.

15 According to Otto Kirchheimer, an indictment for treason was ‘the heaviest and most cumbersome weapon in the fight for political power’: Otto Kirchheimer, *Political Justice: The Use of Legal Procedure for Political Ends* (Princeton: Princeton University Press, 1961), 76.

16 John Deak and Jonathan E. Gumz, ‘How to Break a State: The Habsburg Monarchy’s Internal War 1914-1918’, *American Historical Review* 122/4 (2017): 1117-18, 1125. Also Pieter M. Judson, *The Habsburg Empire: A New History* (Cambridge, MA: Harvard University Press, 2016), 106-7, 393.

17 Margret Boveri, *Der Verrat im 20. Jahrhundert* (Reinbeck bei Hamburg: Rowohlt Verlag, 1976), 7.

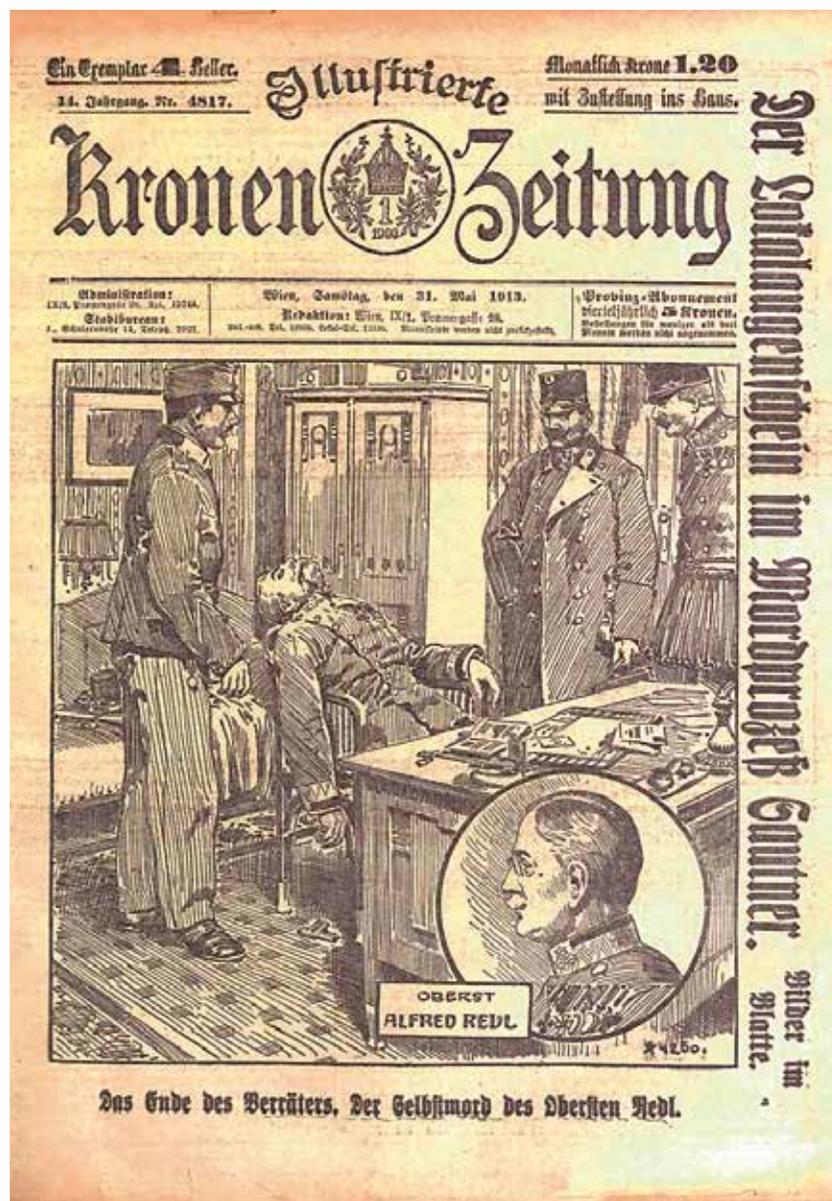


Figure 4: 'The End of the Traitor. The Suicide of Colonel Redl':
Illustrierte Kronen Zeitung, 31 May 1913.

I want to construct a rough typology of traitors as identified by the Austro-Hungarian regime in the late nineteenth century. Who were these traitors, where and why did they emerge, and how did they themselves interpret the charge of treason levelled against them? In the public imagination, 'traitors' are often stereotyped as men – and this was true in the Habsburg empire where female traitors such as the Hungarian heroine Blanka Teleki were a rarity.¹⁸ Often they are seen as flawed personalities who are prepared to take risks through some ideological obsession. Depending on one's viewpoint, they are immoral or moral individuals: either they are condemned as evil aliens within the community, or lauded as idealists notable for their heroism and martyrdom.

The most famous traitor in late Habsburg Austria was of course Colonel Alfred Redl. In 1913 this former head of Habsburg counter-espionage, a decorated general-staff officer, was suddenly exposed as a wolf in sheep's clothing who for a decade had been betraying official secrets to the Russians. Recent research has confirmed that not even Russia knew Colonel Redl's identity, for he was extremely astute with his anonymity and something of a loner despite his army collegiality.¹⁹ He also undoubtedly did untold damage to Habsburg security interests, especially through betraying his own country's agents to the Russian enemy. By the eve of the First World War he seems to have helped destroy the Austro-Hungarian network of spies operating in Russia. (Figure 4) Yet despite his notoriety – not least through a series of vivid portrayals in films and plays – Colonel Redl was not at all the typical Habsburg traitor. Certainly he fitted the trope of the immoral outsider, someone prepared to take risks, and also a 'flawed personality'. But in many ways he was unusual in terms of the history of treason in Austria-Hungary. He was aged forty-nine, not a young man like most traitors; and his was not an idealistic cause. Rather, he was motivated by greed in order to finance his homosexual tastes and life-style, constituting thereby the worst kind of traitor according to Rebecca West.²⁰

18 On the case of Blanka Teleki, see Györgyi Sáfrán (ed.), *Teleki Blanka és köre: Karacs Teréz, Teleki Blanka, Lóvei Klára* (Budapest: Szépirodalmi könyvkiadó, 1963).

19 Verena Moritz and Hannes Leidinger, *Oberst Redl. Der Spionagefall. Der Skandal. Die Fakten* (St Pölten-Salzburg-Vienna, 2012), 135-9. See also, John R. Schindler, 'Redl – Spy of the Century?', *International Journal of Intelligence and Counter Intelligence*, 18/3 (2005): 483-507.

20 Rebecca West, *The Meaning of Treason* (London: Virago, 1982), 415, 420.

Strafgesetz

vom 27. Mai 1852, Nr. 117 RGVl.,



Siebentes Hauptstück.

Von den Verbrechen des Hochverrates, der Beleidigung der Majestät und der Mitglieder des kaiserlichen Hauses, und der Störung der öffentlichen Ruhe.

Hochverrat.

* § 58 (52). Das Verbrechen des Hochverrates begeht: wer etwas unternimmt,

- a) wodurch die Person des Kaisers an Körper, Gesundheit oder Freiheit verletzt oder gefährdet, oder eine Verhinderung der Ausübung seiner Regierungsrechte bewirkt werden soll; — oder
- b) was auf eine gewaltfame Veränderung der Regierungsform; — oder
- c) auf die Losreißung eines Teiles von dem einheitlichen Staatsverbande oder Länderumfange des Kaisertums Österreich, oder auf Herbeiführung oder Vergrößerung einer Gefahr für den Staat von außen, oder einer Empörung oder eines Bürgerkrieges im Innern angelegt wäre; es geschehe solches öffentlich oder im verborgenen, von einzelnen Personen oder in Verbindungen, durch Anspinnung, Aufforderung, Aneiferung, Verleitung durch Wort, Schrift, Druckwerke oder bildliche Darstellung, Rat oder eigene Tat; mit oder ohne Ergreifung der Waffen, durch mitgeteilte zu solchen Zwecken leitende Geheimnisse oder Anschläge, durch Aufwieglung, Anwerbung, Auspähung, Unterstützung oder durch was sonst immer für eine dahin abzielende Handlung, wenn dieselbe auch ohne Erfolg geblieben wäre. —

Most importantly, he only partially qualified as a 'traitor' according to Austrian criminal law. If it had come to trial he would have been prosecuted for espionage not treason. Espionage as a crime was always codified separately from treason, falling under §321 of the military penal code; it too carried the ignominious penalty of death by hanging, not the honourable exit offered to Redl of shooting himself with a pistol in his Vienna hotel room. There is no doubt that Redl, labelled publicly at the time as a traitor, was indeed one in the general sense of the word. But essentially he was a 'traitor-spy' and a double agent of the type so common later in the twentieth century; the actual idealism of the traitor-spy Kim Philby has often been questioned.

If we are looking for the typical traitors of the late Habsburg era, we must focus instead on how treason was actually interpreted and prosecuted in law. Politicians might bandy about the insult of 'traitor', police and army officials might jump to a similar conclusion when making an arrest, especially in periods of war and revolution. But for the authorities - the state prosecutors and the courts - what mattered most were the types of treason that could be mapped on to the criminal code in order to pursue a successful prosecution and conviction.

Mainly this meant the Austrian penal code of 1852, where in paragraph 58 (a-c) it described three types of treason or *Hochverrat*, each of which carried the death penalty. (Figure 5) The later Hungarian penal code of 1878 brought in a much fuller definition of treason through its paragraphs on *felségsértés* and *hűtlenség* (§126-7, 142-51).²¹ Yet, as we will see, although many treason clauses might seem quite concrete, in fact they were sufficiently vague to allow for wide legal interpretation and abuse. In Hungarian law, moreover, these were not the only laws available to the state: older historic Hungarian laws on treason could be invoked if necessary before the 1878 code was operational.

Lastly, for the defendant on trial for treason, the whole legal process was in danger of being weighted against him through the powers of court procedure. This whole subject has recently been analysed in the British context by the historian André Krischer, who reveals how the introduction of courtroom rules, protocol,

Figure 5: 1852 Austrian Criminal Code: detailing §58.

²¹ The fullest discussion is now: Attila Barna, *Az állam elleni bűncselekmények szabályozása a 19. századi Magyarországon* (Győr: Universitas-Győr, 2015).

and space tended to privilege the prosecution.²² Similarly in the Habsburg Monarchy, the voice of the defence could be very weak (especially in military trials), and all might depend on the final say of the judicial bench. In Austria for example, jury trials were only introduced for all serious crimes in 1873; in Hungary and Croatia they remained rare, and in military courts they were non-existent.²³ Moreover, since treason involved a power struggle in the state, the regime was determined to win if it went down the path of prosecuting a perpetrator. The result was many miscarriages of justice. Habsburg case studies also reveal well the dangers of wielding this blunt instrument in a democratizing society. It could easily backfire if the state targeted popular leaders or large socio-political groups as traitors in the community. Britain had discovered this in the 1790s during its failed treason trials of radicals and reformers: then the British state had to take stock, adjusting its use and interpretation of treason law to suit the new democratic era.²⁴

Let us turn to examine three types of traitor, each of which mapped onto the criminal codes in the Habsburg Monarchy. Each illuminates a different aspect of insecurity for the authorities; each uncovers too the subjective viewpoint around so many treason trials that made them so contentious.

1. The Assassin

Of the various manifestations of treason, worst has always been to attack, injure or kill the monarch. From the early Roman empire it took special precedence, and this continued in European law down to the modern era. By the eighteenth century in the Germanic world it was the real embodiment of *Hochverrat* (and in English treason law the total focus). In the Austrian penal code of 1852 it constituted the first clause in paragraph 58 which described the crime of treason.

²² André Krischer, *Die Macht des Verfahrens: Englische Hochverratsprozesse 1554-1848* (Münster: Aschendorff Verlag, 2017).

²³ *Die Habsburgermonarchie 1848-1918, Band II: Verwaltung und Rechtswesen*, eds. Adam Wandruszka and Peter Urbanitsch (Vienna: Verlag der österreichischen Akademie der Wissenschaften, 1975), 560.

²⁴ See Alan Wharam, *The Treason Trials, 1794* (Leicester: Leicester University Press, 1992); Lisa Steffen, *Defining a British State: Treason and National Identity, 1608-1820* (Palgrave: Basingstoke, 2001), chapter 4.

In the wording of §58a, the crime was committed ‘*where the person of the Emperor in his body, health or independence is violated or endangered, or where such action prevents the exercise of his rights of government*’. It is important to emphasize that this crime, in any of its varieties could be committed not only in deed but also through intent or incitement. So it was open to legal interpretation whether the emperor’s life or powers had actually been threatened. We should also note that the crime was limited to the emperor – it did not cover other members of the imperial family. The anarchist Luigi Lucheni who murdered Empress Elisabeth in 1898 in Geneva could not have been tried for treason under §58a; nor could the assassins of Archduke Franz Ferdinand in 1914: a separate charge had to be constructed against them.²⁵ Nor was it treason simply to abuse or denigrate the monarch in writing or speech. In 1787, Emperor Joseph II in his radical law code had downgraded the crime of *lèse-majesté* or *Majestätsbeleidigung*. Though still prosecuted as a political crime – quite substantially in the late Habsburg era – simply to abuse the emperor was no longer interpreted as a form of treason.²⁶

For the Habsburg security services, threats to the life of Emperor Franz Joseph were a constant headache, and they gained the most publicity even if they were always a small minority of treason prosecutions. The way that the regime interpreted and punished this crime was set out early in the reign. On 18 February 1853, in the decade of Habsburg neo-absolutism, Franz Joseph was taking a lunch-time stroll on Vienna’s city walls when he was attacked by a man wielding a kitchen knife. The assailant was a young Hungarian tailor, János Libényi. The emperor was left concussed and bleeding but would recover after a few weeks. That evening in Stephanskirche, a *Te Deum* mass was sung, to thank ‘divine providence’ for the happy deliverance of His Majesty.²⁷ Indeed, the regime encouraged the public to view such treason as a moral struggle and an attack on the natural order. One loyal citizen duly commissioned a painting of the outrage which is now in the Wien

²⁵ See Mark Cornwall, ‘Traitors and the Meaning of Treason in Austria-Hungary’s Great War’, *Transactions of the Royal Historical Society*, XXV (2015): 125-8, for the use of §58c instead.

²⁶ Philip Czech, *Der Kaiser ist ein Lump und Spitzbube. Majestätsbeleidigung unter Kaiser Franz Joseph* (Vienna: Böhlau Verlag, 2010).

²⁷ Haus- Hof- und Staatsarchiv, Vienna [HHStA], Zeremonialprotokolle, ZA-Prot.65 (1853), 18 February 1853.



Figure 6: Libényi's *Attentat*. Copy of the painting by Ferdinand Braunsteiner (1853) [source: Wiener Kriminalmuseum].

Museum. It shows how Libényi was thwarted through the swift intervention of the emperor's aide-de-camp and a loyal passer-by; in the dramatic scene the monarch's boyish face is a stark contrast to the assassin's feral demeanour. Yet something is missing from the original painting, and is only revealed in the copies that were made.²⁸ (Figure 6) At the top of the painting had been an image of the Holy Trinity – God the Father, the Son and the Holy Spirit – who were surveying all and ensuring the failure of the treachery. This was a moral narrative that the regime soon pushed further. The emperor's brother Archduke Maximilian began a campaign to fund and build a special church in Vienna in commemoration. Twenty-five years later the *Votivkirche*, with its spires rising to heaven, was dedicated on the anniversary of Franz Joseph's silver wedding.

Inherent in this whole incident was both a moral and a power struggle. For some in society certainly saw Franz Joseph as the real traitor, a ruler who was using his power tyrannically to oppress the Italian provinces of Lombardy-Venetia. The emperor himself had at first exclaimed that it must be an Italian act of revenge, for a fortnight earlier in Milan, Austrian troops had put down a chaotic revolt. An anonymous letter was duly sent in to Vienna by 'an Italian' regretting that Libényi too had failed, for he could have removed 'a barbarian who was tyrannizing Italy'.²⁹ Others judged more accurately that the Hungarian Libényi had acted in response to Habsburg oppression in Hungary; to many people he was not a deranged or violent individual but a Hungarian hero, pursuing an ethical agenda. He was avenging those like the former Hungarian prime minister Lajos Batthyány who in 1849 had been tried and executed by vengeful Habsburg authorities and whose heroic martyrdom lived on in the public imagination.³⁰

In this case however it was the state that managed successfully to dominate the public discourse and mete out due punishment. Since the city of Vienna was still under martial law in the wake of the

28 A copy is to be found in the Wiener Kriminalmuseum.

29 Edmund Daniek, 'Der Mordversuch Johann Libenys an Kaiser Franz Joseph I', *Unsere Heimat. Monatsblatt des Vereines für Landeskunde von Niederösterreich und Wien*, 34 (1963): 23.

30 A typical abusive letter sent to the emperor from Budapest cursed him and warned him not to go out when the weather was good 'for there is a conspiracy against you': see HHStA, Kabinettsarchiv, GenAdj/GenDept, karton 4, GD 913, Max Poll [?] to the emperor, 26 April 1853.



Figure 7: Spinnerin am Kreuz: site of Libényi's execution [author's collection].

1848 revolutions, Libényi was given summary justice by a military court. The press also reported that he had fully repented at the end. Under military escort, he was taken out in a snow storm to his place of execution at 'Spinnerin am Kreuz' overlooking the city; a small crowd gathered to hear his final words, spoken in Hungarian with great sighs: 'My God, my God'. The theatre of the execution was also used to send out a public warning; the gallows were built higher than usual so that the corpse would be facing the city, visible from a distance and emphasizing his treason to the imperial community.³¹ (Figure 7)

In later decades - what we might call the early years of modern terrorism - fears for the emperor's safety naturally increased. With nihilists finally successful in murdering Tsar Alexander II in 1881, the Habsburg authorities were regularly warned about assassins at large. In 1884 for example, rumours arrived of a planned attack on the royal family at Gödöllő, which never materialized.³² The year 1884 was a particularly tense year for the security services (with an accompanying spike in Austrian treason trials), for radical socialists or anarchists had been resorting to the murder of prominent individuals - their notorious 'propaganda of the deed' - and this led the Austrian government temporarily to introduce a state of emergency in Vienna.³³

In the courts at this time, Austrian public prosecutors would often suggest that a crime had been committed under §58a if the individual's behaviour implied some violent threat to the emperor. This could amount to 'constructed treason', by which I mean the court prosecutor inferred guilt and often grouped together pieces of circumstantial evidence in order to prove the crime.³⁴ At other times, simple threats were interpreted as treason. Thus in 1869, two men in a Prague prison, who were heard crying out 'Long live the republic...kill the Germans, death to the emperor', were prosecuted for treason. In the same year another two young men were discovered spreading Czech nationalist

31 See 'Die Hinrichtung des Meuchelmörders Libenyi', *Die Presse*, 27 February 1853, 5.

32 See the many examples in the files of the Hungarian Ministry of Interior: MOL [Hungarian State Archives], Belügyminisztérium Elnöki bizalmas iratai (K 149), 5. tétel. The anonymous letter about a Gödöllő attack is in K 149-1884-5.tétel, 1884-5-1085.

33 Ludwig Brügel, *Geschichte der österreichischen Sozialdemokratie* (Vienna: Verlag der Wiener Volksbuchhandlung, 1922), 322-9.

34 It was a tactic notorious in early modern England (for example in the trial of the Earl of Strafford in 1641), from where the term 'constructed treason' derives, and it can usefully be applied to many Habsburg cases too.

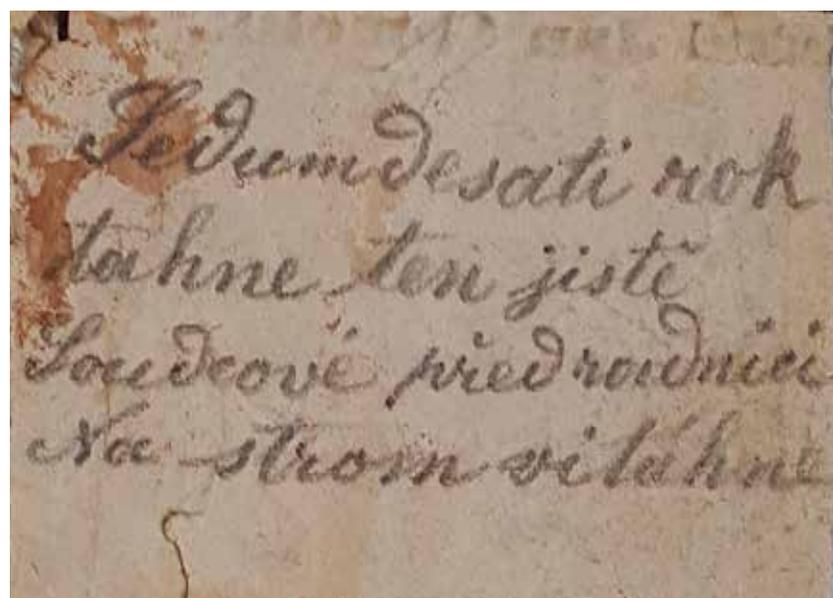
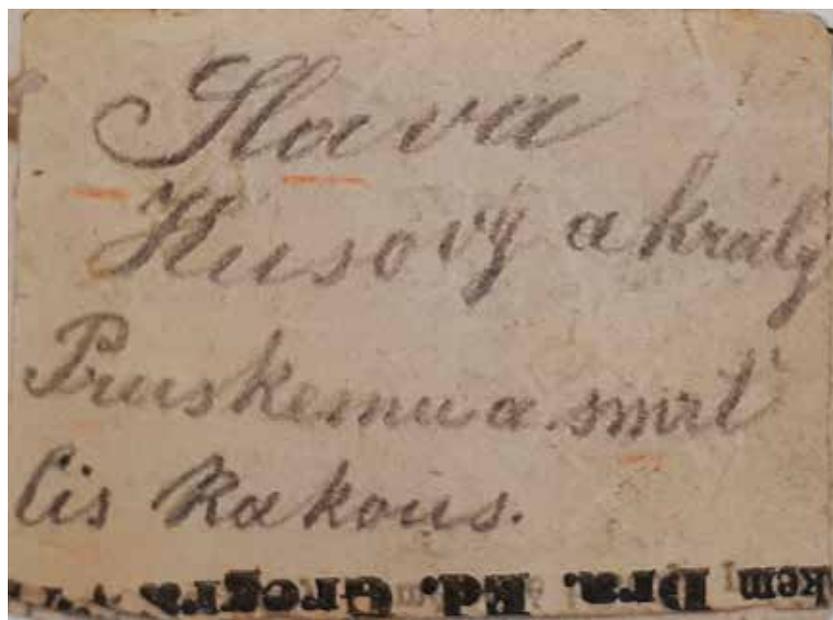


Figure 8a & 8b: Czech 'treasonous' leaflets from 1869 [source: SOAP, karton 551, C-576/69].

leaflets around Prague inscribed with 'death to the emperor'. (Figure 8a & 8b) In both these cases, the initial charge was under §58a – almost as a reflex action - but finally all were convicted under the lesser crime of disturbing public order and given prison sentences of up to two years.³⁵ In the years of anarchism the threat of violence was far more realistic. In 1894, two Czech teenagers, who were members of a secret society seeking violently to overthrow the monarchy, were convicted of treason. Their indirect threat to the emperor was proven under §58a, and both traitors received harsh sentences of twelve years.³⁶ Thus, in contrast to crimes like murder or robbery, in cases of treason the intention behind a treacherous act was equivalent to actually carrying out the deed.

Although we do find cases where a jury acquitted an individual charged under §58a, serious assassins were likely to receive no mercy and would be executed. The most notorious example of this was Guglielmo Oberdan, the young Italian nationalist who in late 1882 plotted to kill Franz Joseph with a bomb during his official visit to Trieste. After his arrest and interrogation, Oberdan was tried by a military court, thereby treated as a soldier since a few years earlier he had deserted from the army to Italy. While the treason charges levelled against him were no different to those of a civilian court, the draconian military procedure amounted to summary justice.³⁷ His trial was held *in camera*, dominated wholly by the military prosecutor, and without the presence of the defendant himself. No defence counsel and no witnesses were provided: instead the conviction was based largely on Oberdan's own deposition together with vague circumstantial evidence. A unanimous guilty verdict was inevitable, and Oberdan was secretly hanged two days later.

So in this case again, the Habsburg state superficially seemed to dominate in the power struggle. Yet in contrast to Libényi thirty years earlier, the authorities lost control of the moral narrative, for Oberdan quickly became the personification of Italian martyrdom. As images in Italian newspapers vividly exposed this bloody

35 SOAP, Krajský (zemský) soud trestní Praha, Trestní spisy zn. C: karton 550, C-475/69, case of Leopold Schaller and Karel Hanzlík; and karton 551, C-576/69, case of Jindřich Kejval and Josef Hüber.

36 Ibid., karton 911, C-1267/94 – Jan Kolečko and Zdeněk Matějček.

37 Francesco Salata, *Guglielmo Oberdan. Secondo gli atti segreti del processo carteggi diplomatici e altri documenti inediti* (Bologna: Nicola Zanichelli, 1924), 153ff.

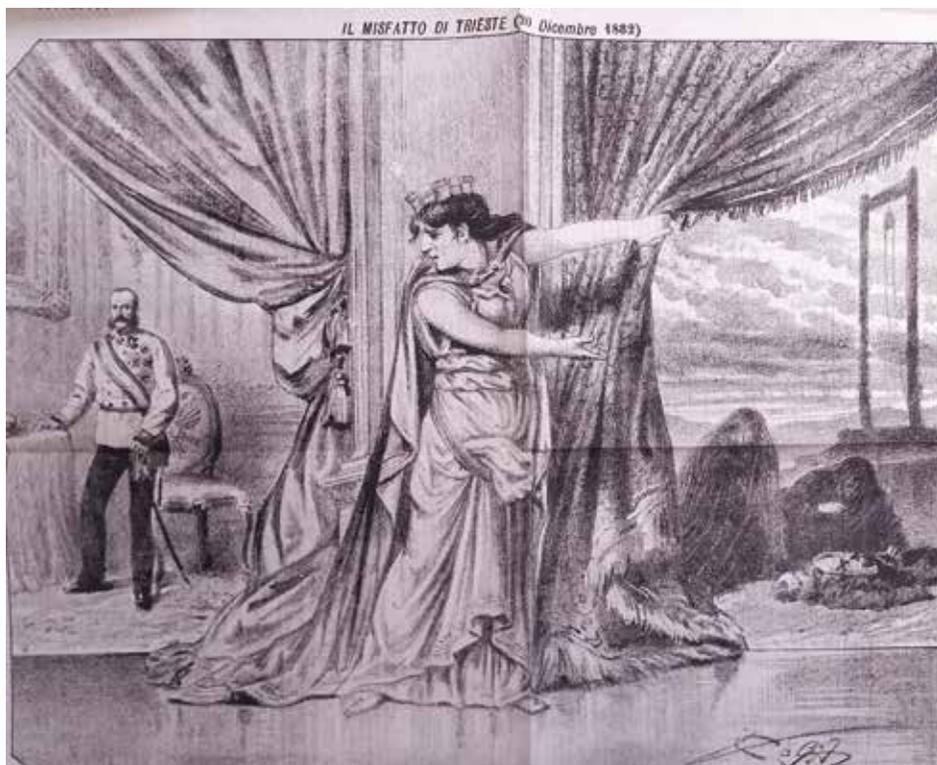


Figure 9: 'Italy' reveals to Franz Joseph the body of Oberdan: *Epoca*, 24-25 December 1882: 'Il Misfatto di Trieste' ['The Crime of Trieste'].

'crime of Trieste', details were soon circulating of his stoicism and self-sacrifice in the face of Austrian tyranny. (Figure 9) For on the scaffold he – the traitor – had supposedly taken control of the theatre, shouting out 'Eviva l'Italia!' before the hangman throttled him. Typically too, compared to Habsburg traitors of the 1850s, Oberdan's moral compass in the 1880s was nationalist and secular, not divine, for he rejected religion. The result over the next half century was a very public Oberdan cult that inspired young Italian nationalists in Austria, and undermined any state narrative of treason. While Oberdan's intent had been clearly criminal, his idealism resonated with a swathe of public opinion. It was something the Habsburg authorities could not control, although they registered its impact – as is clear from the large amount of documentation they preserved on the subject.³⁸ This did not prevent them making the mistake again: they would repeat it when executing the Italian irredentist Cesare Battisti for treason in 1915.³⁹

2. The Socialist and Anarchist

Defining a potential assassin as a traitor was therefore never as clear-cut as the Habsburg authorities suggested. Even more of a legal 'construction' was required when it came to a second type of traitor, the socialist. It were socialists or anarchists who dominated in treason prosecutions in the last third of the nineteenth century. This is clear from the rich surviving material in the Vienna and Prague archives. A survey of the inventory of 'completed trials' from the Prague criminal court for 1868-97, in the records surviving in the State Regional Archive, shows well over a hundred trials for treason. Many of them were against radical socialists or anarchists and often involved multiple perpetrators.⁴⁰

For many years the Austrian authorities viewed these as the major revolutionary threat to the social and political order, and used §58b as one way of eliminating them. This clause in the 1852 penal code categorized as a traitor anyone who was '*aiming violently to change the form of government*'. The wording had been set down in

38 See HHStA, P.A. XL/140 Interna (1882): large file on the impact of the Oberdan execution in Austria and in Italy.

39 Cornwall, 'Traitors and the Meaning of Treason', 121-2.

40 See SOAP, Krajský (zemský) soud trestní Praha, inventory for signatur C (cases 1868-1897).

1803 in the era of the French revolution, and was then copied into the 1852 code. For the 1848 revolutions had not only witnessed violent nationalist threats but also revealed social radicals or proto-socialists, especially in Vienna, who were calling for a republic or at least for democratic social-political reforms in the state. Prominent examples were Ernst Violand, who wrote a vivid memoir of his experiences, and Josef Goldmark, a Jewish doctor of medicine who in October 1848 seemed to be implicated in the murder of the War Minister, Count Latour. Both were prosecuted for treason in 1856 and found guilty *in absentia* (both had fled to the USA); Goldmark was still petitioning twenty years later to have his conviction overturned.⁴¹

Later in the century, §58b was normally used against anarchists or socialists, the terms often interchangeable in defining anyone trying to upset the social order through plots and propaganda. Some cases seemed fairly clear-cut. In 1886 for example, an eighteen-year-old Viennese ‘bronze-worker’ Julius Ehinger was convicted under §58b.⁴² According to *Die Presse*, he appeared in the dock as a ‘slender youth, dressed in a dark brown suit, with pleasant features and thick dark blond hair’. But it was a misleading image. The façade – typical of a ‘devious traitor’ – concealed a man whom police considered one of Vienna’s ‘boldest and rashest anarchists’, somebody who was well-connected with Vienna’s ‘revolutionary workers’ party’. Ehinger had been assiduously printing and spreading small leaflets around the city that proclaimed, ‘Down with the Church, State and Capitalism’.⁴³ (Figure 10) In terms of method, it was a foretaste of the subversive methods used by some ordinary resisters in wartime Nazi Germany, as pictured so graphically in the novel of Hans Fallada.⁴⁴ On searching Ehinger’s flat, police not only discovered printing equipment but also two revolvers and some chemicals he had stolen from work in order to make a bomb. Ehinger was sentenced to three years in prison due to his youth and the fact that his actions so far had done minimal damage; he was then pardoned on the emperor’s birthday in 1888.

41 See Ernst Violand, *Die soziale Geschichte der Revolution in Österreich 1848*, ed. Wolfgang Häusler (Vienna: Österreichischer Bundesverlag, 1984); Hermann Knepler, *Der Prozeß Goldmark* (Vienna: Herzfeld & Bauer, 1868). The trial papers are in Wiener Stadt- und Landarchiv, Vienna [WStLA], Landesgericht für Strafsachen, karton A11-10, 1264/1856.

42 Ibid., karton A11-87, 2212/1886: case of Josef Ehinger. The verdict on 28 December 1886 is document 42.

43 *Die Presse*, 29 December 1886, 12

44 See Hans Fallada, *Alone in Berlin* (Penguin, 2009), based on the case of Elise and Otto Hampl from 1942-3 in Berlin.

This case might suggest a commitment to due legal process by the Austrian *Rechtsstaat*, with a surprising degree of leniency over the crime of treason. Yet a focus on one notorious socialist trial reveals how treason law could as easily be manipulated when the regime wanted to crush its domestic enemies. Even more than §58a, the vagueness of §58b left it wide open to ‘construction’; most notable was the intended treasonable act, for the perpetrator simply had to pursue an action that *might lead to a violent result* such as revolution. In July 1870 there took place at the Vienna regional court or Landesgericht the first great political trial of Austria’s new constitutional era.⁴⁵ The context was the power struggle that had erupted from 1867 between the new Liberal regime and a suddenly expanding workers movement. Austria’s Liberal government had conceded a restricted right of assembly and tolerated workers associations as long as they had no political agenda. In 1869 however, Austria’s socialist leaders adopted the radical Eisenach programme of Germany’s new Social Democratic Party. This, with its call for energetically creating a ‘free people’s state [*Volksstaat*]’, was immediately deemed ‘staatsgefährlich’ by the Austrian government. The minister of interior, Carl Giskra, ordered the security forces to act against any political socialism that was ‘incompatible with the institutions of the Austrian Kaiserstaat’.⁴⁶

The trigger for a real show-down was a great demonstration of 20,000 people which the socialists organized in central Vienna in December 1869. Although it was peaceful, and the Austrian prime minister even accepted a workers’ petition calling for universal suffrage, many in the establishment interpreted the rally as a threatening and violent display which should not be tolerated. Ten days later in the middle of the night, the police arrested some key socialist leaders. The left-Liberal press described this activity in detail, noting how the arrests were a ‘sad Christmas present’ for Vienna’s workers, and how one leader, Hermann Hartung, had ingeniously managed to outwit the police and escape detention.

45 ‘Hochverrath und öffentliche Gewaltthätigkeit’, *Wiener Sonn- und Montags-Zeitung*, 25 July 1870, 1.

46 Heinrich Scheu, *Erinnerungen. Ein Beitrag zur Geschichte der österreichischen Arbeiterbewegung*, in *Der Wiener Hochverratsprozeß* (Vienna: ‘Vorwärts’, 1911), 165. And Herbert Steiner, *Die Arbeiterbewegung Österreichs 1867-1889. Beiträge zu ihrer Geschichte von der Gründung des Wiener Arbeiterbildungsvereines bis zum Einigungsparteitag in Hainfeld* (Vienna: Europa-Verlag, 1964), 19ff.



Figure 10: Leaflets distributed by Julius Ehinger [source: WStLA, karton A11-87, 2212/1886].



Figure 11: Main courtroom of the Landesgericht, Vienna [author's photograph].

While such papers vigorously denied that the workers movement was directed against the existing state order, preparations began for a major treason trial which the regime hoped would destroy or at least paralyse the socialist threat.⁴⁷ (Figure 11)

It is not clear who decided that treason had been committed or that treason law should be used against the socialists. Although the decision ultimately fell to Vienna's public prosecutor, Karl Julius Schmeidel, the left-Liberal press at the time speculated that Schmeidel was not independent, that the Justice Ministry had put pressure on him to act and make speedy arrests.⁴⁸ Over the next six months, the police investigation could turn up little concrete evidence of treason. But in the words of Heinrich Scheu, editor of Vienna's socialist newspaper, 'if [the prosecutor] can find no crime, then he will construct one'.⁴⁹ The indictment which Schmeidel put together charged fourteen socialists – including Scheu's own brother Andreas - with treason or the lesser crime of public violence. Schmeidel's main argument was that they were seeking to implement the Eisenach programme of a *Volksstaat* - in other words, a republic - which would overthrow the existing order. Their goal was only achievable through violence, and the mass rally of December was supposedly the proof of that intended end-result.

When the case eventually came to trial in July 1870, state power was fully on display. The Landesgericht was heavily guarded; the defendants and public were given limited space in an arena dominated by five judges and other officials in order to assert the power of the courtroom. Even so, the defendants according to eye-witnesses were uncowed. Despite their long imprisonment, they appeared confident with their bright eyes and long hair an outward sign of defiant idealism.⁵⁰ Schmeidel, with his grey moustache and hair offsetting his green uniform, now set out his case of 'constructed treason'. He speculated wildly about the treasonable intent, asserting that the traitors had even planned to attack the imperial palace, the Hofburg, and take the emperor hostage (a hint of §58a). He also relied heavily on the hearsay of Hartung's ex-girlfriend,

47 'Die Verhaftung der Arbeiterführer', *Neues Wiener Tagblatt*, 23 December, 3-4; 'Die Arbeiterfrage', *Neues Wiener Tagblatt*, 24 December 1869, 1.

48 Ibid., 23 December 1869, 3.

49 Scheu, *Erinnerungen*, 175.

50 Ibid., 186.



Figure 12: Marie Podany assures Andreas Scheu that she is a republican: cartoon from *Der Floh*, 17 July 1870.

Marie Podany, a woman whom onlookers typically mocked as ‘hysterical’ or as only attached to the workers movement for sexual purposes.⁵¹ (Figure 12) In response, the defence lawyers tried to argue that no violence had been intended, let alone a republic; but they never felt bold enough to state publicly that the whole trial was tendentious and political. To many observers, the verdict was inevitable: four of the socialists were found guilty under §58b and given what was deemed a severe sentence. This was five or six years imprisonment with hard labour. For we should note, from the 1850s the death penalty was very rarely imposed for ‘treason’ unless the crime (as with Oberdan) consciously aimed at or resulted in murder.

Yet this very public treason trial did not fulfil the regime’s objective. In fact, it back-fired badly, with the socialists emerging as the real moral victors, and treason law coming in for critical scrutiny under Austria’s constitutional system. Straight after the verdict the press attacks began. According to *Die Presse*, the socialist programme was indeed illegal and violent, guaranteed to return people to ‘a state of brutality and barbarism’; however, this respectable paper also noted, the government had made a major mistake in launching the trial, revealing its own weakness while lending undue moral worth to socialist demands.⁵² Other papers were even more damning, asserting that ‘we are stuck deep in the mud of absolutist traditions’, worthy of the pre-1848 Metternich era. The trial had laid bare how divorced Austria’s criminal code was from the new constitutional era; in short, the antiquated law on *Hochverrat* must be reformed.⁵³

Partly due to this barrage of press criticism, the trial verdict became untenable. For later in the year, the editor Heinrich Scheu was prosecuted for attacking the verdict in his socialist newspaper. He was found not guilty in a press trial where juries (unlike in treason trials) were now obligatory in order to balance the adjudication. This paved the way for the convicted socialists to be released through an imperial pardon in early 1871.⁵⁴ In terms of regime tactics this was not in fact something radical or transformative; rather, it was a

51 *Ibid.*, 181, 191; *Der Floh*, 17 July 1870, 2. Andreas Scheu here comments on Podany’s professed commitment to republicanism: ‘Certainly Fräulein Podany,

I know you will never leave the barricades so long as there’s still a man there.’

52 ‘Der Sozialisten-Prozeß’, *Die Presse*, 20 July 1870, 2.

53 ‘Hochverrath und öffentliche Gewaltthätigkeit’, *Wiener Sonn-und Montags-Zeitung*, 25 July 1870, 1; ‘Der Schluß des Arbeiter-Prozeß’, *Morgen-Post*, 20 July 1870, 2.

54 Scheu, *Erinnerungen*, 244-53.

traditional Habsburg response. Since 1850 it had been quite common to punish or sentence traitors harshly, then to amnesty them a few years later at the time of dynastic births, birthdays or marriages. The authorities in Austria had now learnt not to resort to large-scale socialist show-trials, yet the broader lessons about invoking treason law had really not been learnt. For in this era of international unrest – notably the 1870 Paris Commune - the revolutionary threat seemed very real; thus in Hungary in 1872, a treason trial of several socialist leaders also took place, with a similar outcome.⁵⁵ Above all, despite the criticisms levelled in 1870, Austria's criminal code would never thereafter be revised. Paragraph §58, which had its origins in the reactionary aftermath of the 1848 revolutions, remained in force, and the Austrian regime went on using it to target not just individuals but also whole groups who were deemed dangerous to the empire. Only with the socialist movement, the large-scale trials were over since, with moderate socialists rejecting violence as a route to revolution, socialist politics slowly became integrated into Austria's political system. By 1907, socialists would be a formidable force in the Austrian parliament.

3. The Nationalist

A final category of traitor to consider is the nationalist, and specifically the irredentist. As a form of treason this introduces us to the foreign security threats of the empire, even if the socialist danger often had international dimensions too in the security mindset. By nationalist traitors I mean those idealists who were stirring unrest domestically with the aim, supposedly, of breaking off their nation from the Habsburg empire. This type of treason would especially be prosecuted by the authorities in the Monarchy's final years – for example, the Italian Battisti in 1915, the Czech Karel Kramář in 1916, or the notorious Zagreb treason trial against Serbs in 1909.⁵⁶ But there was already a long history of what we can term this *Landesverrat* – betrayal of the state, often in collusion with a foreign power.

⁵⁵ See *Magyarország története 1848-1890*, ed. László Katus, 2 vols (Budapest: Akadémiai kiadó, 1979), I, 891-2.

⁵⁶ See Mark Cornwall, 'Loyalty and Treason in Late Habsburg Croatia: A Violent Political Discourse before the First World War', in Jana Osterkamp and Martin Schulze Wessel (eds), *Exploring Loyalty* (Göttingen: Vandenhoeck & Ruprecht, 2017), 97-120.

In the eighteenth century it had been singled out as a crime in the law codes of both Maria Theresa and Joseph II.⁵⁷ It then gained concrete substance due to the 1848 revolutions, when the empire was almost fatally threatened by a secession of Hungarian and Italian territory. Thus in the 1852 Austrian penal code, the law academic Anton von Hye added a special new clause to the crime of treason. Paragraph 58c criminalized anyone '*aiming to break-off a part of the unitary state or lands of the Austrian Empire*', as well as anyone fomenting civil war, or whose activity endangered the empire's foreign security.

Although the Monarchy's Hungarian and Italian questions never went away, by the 1870s they were diminishing as security threats, thanks to Franz Joseph's 1867 Compromise with Hungary and the loss of most of his Italian territory. Instead, the most likely centres of secessionist treason moved to the empire's eastern and Balkan frontiers: exactly where Vienna had the worst security fears in the decades before the First World War. As with the prosecution of socialist traitors, treason under §58c could be constructed in many ways, sometimes arbitrarily but often reflecting direct political interference in the *Rechtsstaat*. Thus in 1882 a minor incident in eastern Galicia, when some Ruthene villagers wished to convert to the Orthodox faith, was blown up out of all proportion by the Galician authorities. They suspected that some well-known agitators were at work with a pro-Russian agenda, most notably the vehemently anti-Catholic priest Ioann Naumovych. The result was that a dozen so-called Russophile activists including Naumovych were prosecuted for high treason in Lviv, accused of a Pan-Slav plot to convert the peasantry *en masse* to Russian Orthodoxy. A jury court then acquitted all of them in the summer of 1882 since the charges were so far-fetched, but Naumovych thereafter would remain a marked man for the Habsburg security services.⁵⁸

Five years later in Zagreb, the Croatian poet August Harambašić also fell foul of the treason law. (*Figure 13*) Croatia was not only

⁵⁷ Anton Hye, *Das österreichische Strafgesetz über Verbrechen, Vergehen und Uebertretungen, und die Preßordnung vom 27. Mai 1852*, vol. 1 (Vienna: Friedrich Manz, 1855), 676.

⁵⁸ John-Paul Himka, *Religion and Nationality in Western Ukraine: The Greek Catholic Church and the Ruthenian National Movement in Galicia 1867-1900* (Montreal: McGill-Queens University Press, 1999), 73-8. For further surveillance of Naumovych [Naumowicz], see the reports from 1885 in HHSTA, Informationsbüro des Min. d. Äußern, karton 204.

closest to the unstable Balkan peninsula in terms of the old regions of the Monarchy, but a territory where politics was always in flux and treason law was regularly invoked – one newspaper in 1887 called it ‘the centre of treason’.⁵⁹ Harambašić in the journal *Balkan* had written a prose poem which seemed to criticize the Habsburg army; it was interpreted by the Zagreb authorities as a call to Croats to revolt against Habsburg oppression. At the trial in February 1887 Harambašić denied this interpretation, stressing that in his article he was showing ‘devout emotion’ rather than any hatred or contempt. His distinguished lawyer, Marijan Derenčin agreed⁶⁰, noting that the prosecutor was trying to politicize the incident with reference to recent Balkan instability, and that §58c anyway required evidence of intended violence in order to qualify as treason; Harambašić, aged twenty-five, had simply displayed youthful enthusiasm rather than any treasonable intent.⁶¹ In the end the judges – for there was no jury – accepted this reasoning. After all, if anything, the treason lay in printed words rather than any clearly intended physical act. Harambašić was therefore found guilty of disturbing public order rather than treason; his sentence was fifteen months with hard labour, but he was released after six months.⁶²

In both these cases Austria’s §58c was invoked, for the Austrian penal code ran in Croatia as well as in the Austrian half of the Monarchy (even though Croatia was officially part of Hungary, the Austrian criminal code there was never replaced). A twisted construction of the treason paragraph was necessary in order to suggest that the defendants’ end-goal was to break off their national territory from the empire. It is clear that in the 1880s the regional authorities were as much exercised by Pan-Slav activists, working supposedly in cahoots with foreign Slav states like Russia and Serbia, as with the more immediate threat of anarchism. They reached rashly for the treason paragraph, thereby suggesting anxiety about social stability in their region. There was also clear evidence of political

59 ‘Von Denunciaten und anderem Gesichter’, *Agramer Tagblatt*, 20 February 1887, 1.

60 Derenčin (1836-1908) had been head of the judicial department in the Croatian government from 1876 to 1883 and had done much to modernize criminal proceedings.

61 ‘Iz sudnice. Glavna razprava’, *Obzor* [prilog], 19 February 1887, 3-4; *ibid.*, *Obzor*, 21 February 1887, 3-4.

62 August Harambašić, *Ukupna djela August Harambašića*, ed. Julije Benešić (Zagreb: Izdanje Hrvatskog izdavačkog bibliografskog zavoda, 1943), III: *Lirika*, 417-9. For the prose poem, ‘Tri Molitve’: 41-3.

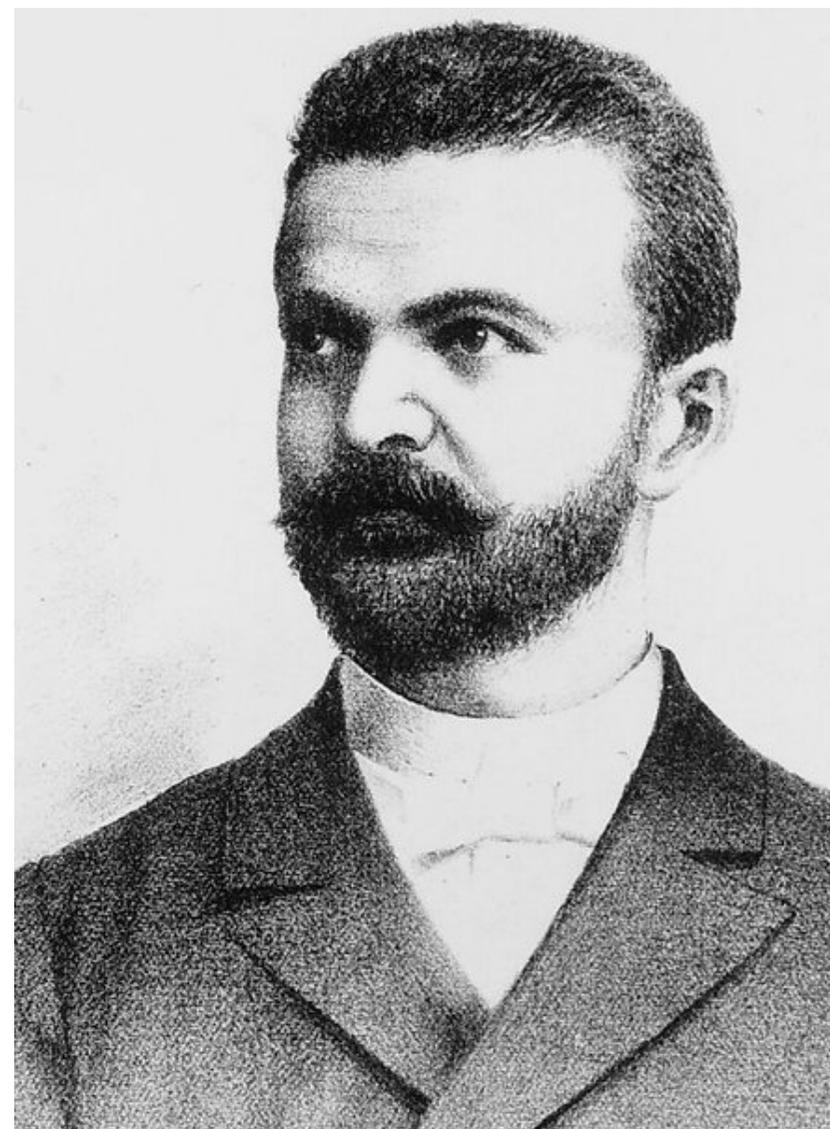


Figure 13: August Harambašić (1861-1911).

interference, but often the charge of treason could not be proved and the conviction was downgraded to a lesser crime.

I want to focus finally on one case which reveals more about the triggers behind prosecutions for 'irredentist treason'. It also alerts us to extra peculiarities about the Hungarian half of the empire where treason law only became more defined when a new criminal code was introduced in 1878. Svetozar Miletić in the 1870s was the leader of the Serbs of southern Hungary (the Vojvodina). In 1876, aged fifty, he was a charismatic veteran of the revolution of 1848 when he had come to prominence in agitating for a large Serb autonomous region within Hungary. Thereafter, his constant goal was a Serb-controlled Vojvodina, but more radically he hoped that under neighbouring Serbia's auspices a united Serb nation might emerge one day in the Balkans. By 1875 that dream began to seem more realistic, for mass rebellion erupted in the Turkish province of Herzegovina, and Serbia finally seemed ready to exploit this by starting a war with the Ottoman Empire.⁶³

It was in this complex environment that the Hungarian authorities began seriously to investigate Miletić's activities, intercepting his coded letters, and confirming that he had a network of contacts across the southern border into Serbia. Through his own organ, *Zastava* based in Novi Sad, Miletić was regularly calling for a Serbian war on Turkey and urging local Serbs to send volunteers and money to help the rebels in Herzegovina. He stigmatized any Serb who refused to do so as 'a devil and traitor' to the nation.⁶⁴

But was Miletić the real traitor? The Hungarian authorities soon came to that conclusion. In late June 1876 Serbia declared war on Turkey. A few days later, the Hungarian state prosecutor presented to the government in Budapest the evidence he had collected so far. According to this, Miletić was chiefly responsible for the unrest among Hungary's Serb population; his agitation was not only threatening international relations in the Balkans but undermining domestic peace at home. In short, Hungary was being put in danger by his foreign collusion and if it was not halted, others would be

63 For context, see Ian D. Armour, *Apple of Discord: The 'Hungarian Factor' in Austro-Serbian Relations, 1867-1881* (West Lafayette IND: Purdue University Press, 2014).

64 Nikola Petrović, *Svetozar Miletić (1826-1901)* (Belgrade: Polit, 1958), 211.

inspired to copy him.⁶⁵ Early the next morning at four o'clock, on the direct orders of the Hungarian prime minister Kálmán Tisza, Miletić was arrested in Novi Sad on a charge of treason. In view of the potential local storm this would cause, it was hoped his departure from the town could be *incognito*; in fact a crowd of thirty people saw him off, transported up the river under armed guard but supposedly with a calm demeanour. Once in Budapest he was handed over to the police and then placed in the court investigative jail. It would be a long period of confinement.⁶⁶ (*Figure 14*)

In the broadest sense we might agree that Miletić's behaviour was treasonous: he was stirring up his fellow Serbs, and was known to have a long-term goal of uniting Vojvodina to Serbia. One Hungarian newspaper noted that the whole country welcomed his arrest, as it would 'intimidate and disarm our secret and open enemies'.⁶⁷ Yet Miletić's prosecution for high treason – for the Hungarian crime of *felségsértés* - was still a deeply flawed process in law, not least due to the overt political interference. For a start, he was a deputy to the Hungarian parliament and as such, ought to be covered by parliamentary immunity; it required a parliamentary committee to remove this immunity retrospectively and approve the order for his arrest. Kálmán Tisza then proceeded to take great interest in the case, interfering constantly in the legal process. Nevertheless, the authorities also made sure that the trial did not take place for eighteen months, as long as Serbian-Ottoman hostilities were unsettled. While Miletić was left to deteriorate in a dark prison cell, the impact in Vojvodina was undoubtedly to paralyse any national agitation at a critical time.

Lastly, when it came to the treason charge utilized against Miletić, the state prosecutor had to rely on Hungary's historic laws. This was not quite a sign of Hungary asserting its own legal tradition for there was none other available at this point: the new criminal code would only be implemented later in 1878. The prosecutor turned naturally to Hungary's Law VII of 1715. This ancient law fashioned by the Habsburgs set out the procedures for dealing with *felségsértés* without

65 Monika Kozári, *Tisza Kálmán és kormányzati rendszere* (Budapest: Napvilág kiadó, 2003), 383-5.

66 Nikola Petrović, *Svetozar Miletić i Narodna Stranka. Gradja 1860-1885. Knjiga III, 1876-1885* (Novi Sad: Matica Srpska, 1985), 54-5. See also, *Abendblatt des Pester Lloyd*, 6 July 1876, 1.

67 'Miletics elfogatása', *Ellenőr*, 6 July 1876, 1.



Figure 14: Svetozar Miletić (1826-1901).

defining the crime at all precisely; and ironically its real focus was on betrayal of the Hungarian (Habsburg) king. In the nineteenth century, however, *felségsértés* was starting to be redefined in Hungarian law as constituting a revolutionary act which was aimed at destroying the fundamentals of the state (not just the monarch). In the Miletić case this ongoing vagueness was useful, while at the same time the charge of treason rang in everyone's ears as a warning to anybody showing disloyalty to the Hungarian kingdom.⁶⁸

When Miletić's trial took place in January 1878, he entered the courtroom much changed. His formal black suit was a contrast to his very long hair and a grey beard down to his waist; he had lost his former corpulence and was in poor health.⁶⁹ The prosecution case dominated, resting on the word of just one crown witness. The key evidence was a speech Miletić had allegedly given in a Belgrade tavern in Serbia in May 1876. He had explained preparations for a major rebellion in Vojvodina, through which 'Mongols [Magyars] and Serb-eaters' would be expelled and the territory would be annexed by Serbia. Although there were many witnesses who denied that Miletić spoke these words, the court concluded that he was guilty. He had, according to the verdict, encouraged his fellow Serbs to 'seek their national centre of gravity in another state'; even worse, he had done this as a parliamentary deputy whose first duty was to uphold Hungary's constitution and integrity.⁷⁰ (Figure 15)

This trial and the sentence of five years imprisonment with hard labour effectively broke Svetozar Miletić; when released he would never recover his authority in southern Hungary or return to politics. Thus for the Hungarian authorities – unlike the Austrian in the Oberdan case – the treason trial was arguably a tactical success since it broke a burgeoning local nationalist movement at a critical time. More questionable was the long-term moral impact of manipulating the *Rechtsstaat* in this way. Despite what some newspapers proclaimed at the time, there had been direct political interference in the legal process. The evidence for a charge had also not been clear at the start,

⁶⁸ See *Narodne Novine*, 21 August 1876, 1. For gradual shifts in the Hungarian meaning of treason, for example in the draft Hungarian law code of 1843, see Barna, *Az állam elleni bűncselekmények szabályozása*, 146-51.

⁶⁹ Petrović, *Svetozar Miletić*, 220-1.

⁷⁰ 'Parnica proti dru. Svetozaru Miletiću', *Narodne Novine*, 10 January 1878, 3; 'Das Urheil im Hochverratsprozess Miletics', *Abendblatt des Pester Lloyd*, 18 January 1878, 2-3.

forcing the investigating magistrate to gather material for over a year while the defendant remained in custody.⁷¹ As one Viennese satirical paper put it, ‘In principle Miletić had to be considered a threat to state security [*staatsgefährlich*], but in practice, tendentious treason trials usually end in disrepute’.⁷² In the eyes of many Serbs in future generations, this ‘traitor’ became a martyr to their national cause. In 1939 an enormous bronze statue of Miletić by the Yugoslav sculptor Ivan Meštrović would be erected in the centre of Novi Sad; it still stands there today.

Nationalist traitors had been a key target of the Habsburg security services since the 1850s when Hungarians were the main focus. From that time a shift occurred towards vigilance over alleged irredentists near the eastern and Balkan frontiers. The many trials were something of a touchstone for which regions were considered most insecure, or at least where the authorities felt particularly nervous about the evolving political scene. Indeed, §58c gradually became the most utilized treason clause in Austria and Croatia, even if it was often combined with §58b as well – for example in the Omladina trial of young Czech nationalists in 1894.⁷³ And it was in Austria and Croatia that the crime of treason seemed particularly prevalent. In Hungary, although the official statistics suggest a steady trickle of treason investigations and prosecutions through the years, they were never as many as in Croatia.⁷⁴ Possibly it was evidence of a more confident or at least ingenious state authority, that many nationalist activists in Hungary were convicted not under treason laws but under lesser laws of public disorder or sedition. This was the case with the notorious Romanian Memorandum trial of 1894, for the charge of treason could be harder to prove and other legal weapons were increasingly available to tackle serious unrest and silence opponents.

71 Petrović, *Svetozar Miletić*, 218; and *Abendblatt des Pester Lloyd*, 6 July 1876, 1, which maintained there was a lack of political interference.

72 *Figaro. Humoristisches Wochenblatt*, 19 January 1878, 1.

73 See SOAP, Krajský (zemský) soud trestní Praha, Trestní spisy zn. C: karton 913-916, C-1400/94, Omladina trial.

74 See the statistics in *Közgazdasági és statisztikai évkönyv újabb első évfolyam. 1887*, eds. József Jekelfalussy and Gyula Vargha (Budapest: Statisztikai hivatal, 1887), and subsequent yearbooks.

Das Urtheil im Hochverrathsprozeß Miletics

wurde heute Vormittags um 9 Uhr im VerhandlungsSaale publizirt. Nachdem der Gerichtshof, bestehend aus dem Vorsitzenden Gerichtshofs-Vizepräsidenten Igl. Rath L. v. Bogitsch, Referenten Dr. S a h y, dem Volanten Gerichts Rath Stefan Frenreih, dem Ersatzrichter C s e r y und Protokollführer Dr. G e r v a y sowie Staatsanwalt Dr. D ö d l im Saale erschienen war, ließ der Präsident den Angeklagten vorführen. Dr. Miletics, welcher soeben mit seinem Verteidiger Dr. P o l i t eine Besprechung hatte, erschien gleichzeitig mit diesem im Gerichtssaale.

Der Präsident erhob sich, ihm folgte der Gerichtshof und das gesammte Auditorium. Der Präsident verkündete nun das Urtheil, dessen Eingangs-Formel stehend angehört wurde. Dasselbe lautet:

Im Prozesse Svetozar Miletics hat der Budapester königliche Gerichtshof heute Vormittags 9 Uhr folgendes Urtheil publizirt:

Im Namen Sr. Majestät des Königs! Die Strafabtheilung des Budapester königlichen Gerichtshofes hat in der Strafsache des wegen Hochverraths angeklagten Dr. Svetozar Miletics auf Grund der am 8., 9., 10., 11., 12. und 14. Jänner l. J. abgehaltenen öffentlichen Schlussverhandlung nach den Vorträgen der Anklage und der Verteidigung folgendes Urtheil gefällt:

Der inhaftirte Dr. Svetozar Miletics, gebürtig aus Mosorin, 52jährig, griechisch-nichtunirt, verheirathet, Vater zweier Kinder, Reichstags-Abgeordneter, Advokat und Zeitungs-Redakteur, wegen Preßvergehens bereits einmal mit einjährigem Gefängnisse bestraft, wird auf Grund des Gesetzes-Artikels VII: 1715 des Verbrechens des Hochverraths schuldig erklärt. Auf Grund dessen wird derselbe zu einer von dem Tage seiner Inhaftirung, d. h.

Figure 15: The verdict on Miletić is announced: *Abendblatt des Pester Lloyd*, 18 January 1878.

Conclusion

What then have we learnt from this typology of traitors, this stroll through the landscape of treason? The vivid subject of treason illuminates the key power struggles in any state. In late nineteenth century Austria-Hungary, it takes us deep into the mindset of the authorities: their worst security fears but also how they interpreted law and justice in an evolving constitutional system. In both halves of the Monarchy, the state defined and prosecuted traitors according to a small range of treason laws. The language of these was quite vague, unlike criteria for the crimes of murder, arson or robbery, and the vagueness was exacerbated because an intended treasonable act was equivalent to carrying out the deed itself. This always made possible some legal 'construction' in the courts in order to secure a conviction. The result was that already by the 1870s contemporaries were complaining about the Austro-Hungarian treason laws, criticizing them as dating from the decade of neo-absolutism in the 1850s or even earlier; they were not fit for purpose to match the new social contract between a constitutional regime and citizens who expected more freedom of expression. Although Hungary's law was indeed updated and modernized with its criminal code of 1878 (supplying a wider range of legal instruments to handle sedition or social unrest), in Austria and Croatia §58 remained unrevised and it would be utilized repeatedly until the dissolution of the Monarchy in 1918.

Of the three types of traitor we have examined, the most generic and clear-cut in law was the assassin. The other two types – the socialist and the nationalist - were peculiar to Austria-Hungary's evolving security fears in different decades. The public prosecutors had to argue a particular construction of treason law in order to indict those subversives as violent state enemies, and this often meant overt political interference in the legal process. In other words, from early on the idea of an independent judiciary or *Rechtsstaat* was severely compromised in the eyes of citizens who were not otherwise inherently hostile to the Habsburg empire. It would increasingly make young progressive lawyers suspicious of the regime under which they worked.⁷⁵

⁷⁵ See Mark Cornwall, 'Treason in an Age of Regime Change: The Case of the Habsburg Monarchy', *Austrian History Yearbook*, 50 (2019): 124-5.

Of course treason law did prove useful when the state needed to deal with violent anarchists threatening the state community, but it was dangerous to wield this blunt instrument against whole groups or new ideologies. For in stigmatizing group leaders – whether socialist or nationalist - the treason trial could always backfire. The Habsburg regional authorities never learnt this lesson, proceeding to organize treason trials of various discontented groups well into the twentieth century. Often this was a tactic to instil obedience and discipline rather than a charge based on a solid body of evidence. Thus, for all those 'traitors' who were justly eliminated from society, many others suffered a miscarriage of justice. They might then wear their badge of 'traitor' with pride, attaining martyr status if the power struggle was unresolved, as was so often the case with nationalist agitation.

It is useful in the late Habsburg imperial context to think about which state prosecutions of 'traitors' would be supported widely by the general public. Usually it was the types who were assassins or anarchists – in other words, individuals prepared to use extreme violence which harmed the community and endangered public security. To use the language of Avishai Margalit, the 'thick relationships' existing between members of society could be betrayed by such aliens in the community who were transgressing accepted values.⁷⁶ In contrast, when the state prosecuted socialists or regional nationalists as traitors, the thick relationships which potentially united citizens across the empire began to falter. There were often too many members of society who sympathized with the values of socialism or regional nationalism for the label of 'traitor' to seem valid or justified. Thus, treason trials exposed the social and national fissures across the empire even though, ironically, many in the Habsburg regime continued to view such trials as a useful means of imposing discipline and unity upon their citizens.

The evidence suggests that Austria-Hungary, an empire beset by new domestic and foreign dangers, was more inclined than other European Powers to exploit its treason laws. Possibly this was because, unlike most other European states, much of its penal code was rooted in a reactionary era (the 1850s) and the judiciary was never as independent as it looked. While elsewhere treason laws had been updated (in France or Italy) or largely abandoned

⁷⁶ See Margalit, *On Betrayal*, chapter 3.

(Britain), in the Habsburg empire, especially in Austria and Croatia, the word *Hochverrat* survived into the modern era. In 1909 the Czech politician Tomáš Masaryk would warn the Austrian parliament that the term was an anachronistic phrase from a bygone age.⁷⁷ The fact was that in the wake of the 1848 revolutions, the Austria of Franz Joseph had executed hundreds of rebels for treason, and that reactionary spirit, that vigilance against subversives, never quite disappeared. Decades later, the authorities were still crying 'treason' against individuals who mainly wanted to radically reform or restructure the empire in the face of vested political or class interests. Some elements of this socio-political agitation were indeed contained or, in the case of socialism, subsumed quite successfully within the state system in Austria. But other dangers could not be suppressed by treason law. Rather, the wielding of that instrument left lasting grievances, which were remembered by successive generations, slowly eating away at the legitimacy of the Austro-Hungarian empire as a real community of peoples.

⁷⁷ Thomas G. Masaryk, *Der Agrar Hochverratsprozess und die Annexion von Bosnien und Herzegovina* (Vienna: Carl Konegen, 1909), 30-1: speech on 14 May 1909.



Mark Cornwall is Professor of Modern European History at the University of Southampton, and a leading authority on the late Habsburg Monarchy and modern East-Central Europe. He received his PhD from the University of Leeds (1988), and then taught at the universities of Oxford, Exeter and Dundee. His research has focused mainly on Austria-Hungary, the First World War, and nationalism in twentieth-century Czechoslovakia and Yugoslavia. Major publications include *The Undermining of Austria-Hungary* (2000); *The Devil's Wall: The Nationalist Youth Mission of Heinz Rutha* (2012; Czech trans. 2020); *Sacrifice and Rebirth: The Legacy of the Last Habsburg War* (2016); and *Sarajevo 1914: Sparking the First World War* (2020). He has been a Visiting Fellow at All Souls College, Oxford, and recently held a 3-year Leverhulme Major Research Fellowship. At Southampton he teaches a course on the history of treason, and is currently writing a book on *Treason in the Age of Franz Joseph*.

Mark Cornwall

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