

## How to break a state

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## How to Break a State: The Habsburg Monarchy's Internal War, 1914-1918

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In late spring 1915, Trieste went dark. The city, boasting a population of over 200,000 and nestled along the Adriatic Sea, was one of the Habsburg Empire's most important commercial centers. It lay perilously close to the border with Italy, which for months had threatened to abandon the Triple Alliance and invade Austria-Hungary. As war loomed, the local military commander ordered all lights in this busy port extinguished. Trieste's citizens, Italian and Slovene-speakers along with many other peoples and ethnic groups, complied with the Army's will. And yet, one building flaunted the order, questioning the military's authority. That building belonged neither to the local socialist club, nor to an Italian nationalist organization. It housed the office of the *Statthalter*, the imperial governor of Trieste and the surrounding Austrian Littoral. Personally appointed by the emperor, the *Statthalter* was the highest ranking civilian official in the province. The military commander, perturbed by the governor's defiance, ordered the night patrols to shoot them out.<sup>1</sup>

One could see this standoff as a product of local interpersonal relationships on the periphery of the Habsburg Empire. But we think it is indicative of the larger issue of military necessity and the rule of law in the twentieth century. When the local commander ordered his troops to fire on the governor's office, he opened a new front in a war raging in the Habsburg Empire since July 1914. Weapons in this war consisted of the patrols rifles, to be sure. But they also were made with arguments, mounds of paper that discussed the use and abuse of emergency

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<sup>1</sup> Austrian State Archives [hereafter OeStA] Kriegsarchiv [hereafter KA], Neue Feldakten [NFA], 5. Armee-Etappenkommando (SW Front), Vorfälle Triest, k.u.k. Stationskommando in Triest to the 5. Armee Etappenkommando, Res. Nr. 350 "Abblendung aller Lichter – Kundmachung," July 16, 1915, Karton 1092.

legislation, with military necessity on one side and the constitutionally-sanctioned rights of citizens and the rule of law on the other. This internal war pitted the Habsburg Army against Austrian and Hungarian officials and the front cut through every village and town in Habsburg central Europe. It was a war on the Habsburg *Rechtsstaat*, the state government by the rule of law—the state as it had existed since 1867.

Historians of the Habsburg Monarchy and of the Great War in general have overlooked this internal war, focusing instead on a predetermined Habsburg collapse stemming from national conflict, deep traditions of autocratic and anti-democratic governance, or a combination of the two.<sup>2</sup> These larger arguments about Habsburg decline have been exceptionally tenacious within First World War histories, even as they downplay the role of World War I in bringing about the empire's collapse.<sup>3</sup> Twenty-five years of American and Austrian historiography on late imperial Austria-Hungary has largely reversed such verdicts on the long decline of the Empire.<sup>4</sup> The new orthodoxy holds that the Habsburg state was a vibrant constitutional polity, strongly

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<sup>2</sup> See, for instance, Lewis B. Namier, "The Downfall of the Habsburg Monarchy," in *A History of the Paris Peace Conference*, ed. Harold W. V. Temperley, vol. 4, 6 vols. (London: Henry Frowde and Hodder & Stoughton, 1921), 58–119. Josef Redlich, a Professor of Political Science at the Technical University in Vienna, was a key architect of the argument that pointed towards weak parliaments and a cumbersome administrative system inclined towards autocratic solutions. This appeared as Josef Redlich, *Österreichische Regierung und Verwaltung im Weltkrieg* (Vienna: Hölder-Pichler-Tempsky, 1925); Josef Redlich, *Austrian War Government*, Economic and Social History of the World War 6 (New Haven: Yale University Press, 1929). Others stressed the problems of nationality more consistently. For classic statements of this argument, see, Oscar Jászi, *The Dissolution of the Habsburg Monarchy*, Phoenix edition (Chicago: University of Chicago Press, 1929).

<sup>3</sup> Robert Kann's statement that "What happened within a few war years is in essence only an abstract of a long-drawn out process of decline" exemplifies this approach to the war. See, Robert A. Kann, *A History of the Habsburg Empire, 1526-1918* (Berkeley and Los Angeles: University of California Press, 1974), 468. More recent treatments have echoed this approach and this mindset: Geoffrey Wawro, *A Mad Catastrophe: The Outbreak of World War I and the Collapse of the Habsburg Empire* (New York: Basic Books, 2014); Prit Buttar, *Collision of Empires: The War on the Eastern Front in 1914* (Oxford: Osprey Publishing, 2014).

<sup>4</sup> Gary B. Cohen, "Neither Absolutism nor Anarchy: New Narratives on Society and Government in Late Imperial Austria," *Austrian History Yearbook* 29, no. 1 (1998): 37–61. The most prominent works along these lines are: Gerald Stourzh, *Die Gleichberechtigung der Nationalitäten in der Verfassung und Verwaltung Österreichs, 1848-1918* (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1985); Pieter M. Judson, *Guardians of the Nation: Activists on the Language Frontiers of Imperial Austria* (Cambridge, Mass.: Harvard University Press, 2006); Jeremy King, *Budweisers into Czechs and Germans: A Local History of Bohemian Politics, 1848-1948* (Princeton, N.J.: Princeton University Press, 2002); Tara Zahra, *Kidnapped Souls: National Indifference and the Battle for Children in the Bohemian Lands, 1900-1948* (Ithaca: Cornell University Press, 2008).

committed to rule of law, and able to command the loyalty and the political imaginations of its subjects.<sup>5</sup> This historiography has focused on “those features of the Imperial political system which contributed to its stability and functionality, however marginal,” as John W. Boyer called for in his study of Christian Socialism.<sup>6</sup> The fact that the Monarchy functioned as a great power,<sup>7</sup> that its parliaments passed budgets,<sup>8</sup> expanded social welfare for its citizens,<sup>9</sup> and created the basis for expanding economic development in years before 1914,<sup>10</sup> means that we need a history

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<sup>5</sup> Daniel L. Unowsky, *The Pomp and Politics of Patriotism: Imperial Celebrations in Habsburg Austria, 1848-1916*, Central European Studies (Purdue University Press, 2005); Laurence Cole and Daniel L. Unowsky, eds., *The Limits of Loyalty: Imperial Symbolism, Popular Allegiances, and State Patriotism in the Late Habsburg Monarchy* (New York: Berghahn Books, 2007).

<sup>6</sup> John W. Boyer, *Political Radicalism in Late Imperial Vienna: Origins of the Christian Social Movement, 1848-1897* (Chicago: University of Chicago Press, 1981), xiv.

<sup>7</sup> Diplomatic history has generally been the branch of history that is most willing to see the Habsburg Empire as a declining power. See here Solomon Wank, “Varieties of Cultural Despair: Three Exchanges between Aehrenthal and Goluchowski,” in *Intellectual and Social Developments in the Habsburg Empire from Maria Theresa to World War I: Essays Dedicated to Robert A. Kann*, ed. Stanley B. Winters and Joseph Held, East European Monographs (New York: Columbia University Press, 1975); F. R. Bridge, *The Habsburg Monarchy Among the Great Powers, 1815-1918* (New York: Berg, 1990); Hugo Hantsch, *Leopold Graf Berchtold, Grandseigneur und Staatsmann.*, 2 vols. (Graz: Verlag Styria, 1963).

<sup>8</sup> The work of Lothar Höbelt has been instrumental in revising our understanding of Austrian parliamentary politics. See, above all, Lothar Höbelt, “Parliamentary Politics in a Multinational Setting: Late Imperial Austria,” *Center for Austrian Studies, University of Minnesota Working Paper*, no. 92–96 (March 1992); Lothar Höbelt, *Kornblume und Kaiseradler: Die deutschfreiheitlichen Parteien Altösterreichs, 1882-1918* (Vienna: Verlag für Geschichte und Politik, 1993). See also the essays in Volume VII of the *Habsburgermonarchie* series on parliamentary politics in Austria and Hungary, Adam Wandruszka, Peter Urbanitsch, and Helmut Rumpler (eds.), *Die Habsburgermonarchie 1848-1918* (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1973–), vol. VII: *Verfassung und Parlamentismus*; for Hungarian politics, see especially, László Révész, “Der Ungarische Reichstag 1858 bis 1918: Rechtliche Grundlagen und praktische Umsetzung,” in *Ibid.*, vii/1: 1007–60; András Gerő, *The Hungarian Parliament, 1867-1918: A Mirage of Power*, East European Monographs 470 (Boulder, Colo., 1997).

<sup>9</sup> Margarete Grandner, “Conservative Social Politics in Austria, 1880-1890,” *Austrian History Yearbook* 27 (1996): 77–107; Kurt Ebert, *Die Anfänge der modernen Sozialpolitik in Österreich: Die Taaffesche Sozialgesetzgebung für die Arbeiter im Rahmen der Gewerbeordnungsreform (1879-1885)*, Studien zur Geschichte der Österreichisch-Ungarischen Monarchie 15 (Vienna: Verlag der österreichischen Akademie der Wissenschaften, 1975).

<sup>10</sup> Economic history was the branch of history to suggest that the Habsburg Empire may have actually had some life in it before the First World War. See the now-classic studies David F. Good, *The Economic Rise of the Habsburg Empire, 1750-1914* (Berkeley: University of California Press, 1984); Richard L. Rudolph, *Banking and Industrialization in Austria-Hungary: The Role of Banks in the Industrialization of the Czech Crownlands, 1873-1914* (Cambridge: Cambridge University Press, 1976); John Komlos, *The Habsburg Monarchy as a Customs Union: Economic Development in Austria-Hungary in the Nineteenth Century* (Princeton, N.J.: Princeton University Press, 1983).

of World War I in the Habsburg Monarchy that takes the pre-war story of a vibrant and evolving multinational empire into account.

If the Habsburg Empire should be seen as a functioning, evolving state, why was it abandoned by its peoples and why did it fall?<sup>11</sup> Many things contributed to this abandonment: deprivations of every kind, from food shortages to a lack of consumer goods; enormous war dead which touched every village and town in the empire; and the disjuncture between battlefield victories against Serbia, Romania, Italy, and Russia and privation at home.<sup>12</sup> These reasons explain growing discontent. To this we want to add what we see as a deep fundamental crisis in state legitimacy and rule of law, a crisis which arose out of extralegal emergency measures (the state of siege, or the state of exception) intended to make the Habsburg state effective in event of war.

What is striking about this state of exception and the suspension of the rule of law is how unexceptional it was. Great Britain, France, Germany, Italy all had provisions to suspend normal political activities and tighten state and / or military control of the economy, the press, and civil

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<sup>11</sup> Czechs traditionally been seen as the great traitors of the empire. But recent studies of the Czech experience of the First World War have been paradigm shifting in this regard, demonstrating that Czech politicians and everyday citizens largely supported the empire until the end of the war, much like the other national movements of the monarchy. See, Ivan Šedivý, *Češi, české zeme a velká válka, 1914-1918*, Česká historie 7 (Prague: Nakladatelství Lidové noviny, 2001); Richard Lein, *Pflichterfüllung oder Hochverrat? Die tschechischen Soldaten Österreich-Ungarns im Ersten Weltkrieg*, Europa Orientalis 9 (Vienna: LIT, 2011); Claire Morelon, "Street Fronts: War, State Legitimacy and Urban Space, Prague 1914-1920" (Ph.D. Thesis, Centre d'histoire de Science Po & University of Birmingham, 2015).

<sup>12</sup> Much of the most compelling recent work on the Empire has focused on the impact of the provisioning crisis in urban centers. In Vienna, Maureen Healy has traced the declining legitimacy of the Habsburg State in the eyes of everyday citizens as the war dragged on and the state asked for more and more sacrifices from them to sustain the war. Maureen Healy, *Vienna and the Fall of the Habsburg Empire: Total War and Everyday Life in World War I*, Studies in the Social and Cultural History of Modern Warfare 17 (Cambridge: Cambridge University Press, 2004). A similar stress on the centrality of the provisioning crisis appears in two recent works on Bohemia, see, Rudolf Kučera, *Život na příděl: válečná každodennost a politiky dělnické třídy v českých zemích 1914-1918*, Vyd. 1, Knižnice Dějin a současnosti, sv. 49 (Prague: NLN, Nakladatelství Lidové noviny, 2013). John David Robertson, "Calamitous Methods of Compulsion: Labor, War, and Revolution in a Habsburg Industrial District, 1906-1919" (Ph.D. Thesis, University of North Carolina at Chapel Hill, 2014). See also the Minister for Food Supply's memoirs, Hans Loewenfeld-Russ, *Im Kampf gegen den Hunger: Aus den Erinnerungen des Staatssekretärs für Volksernährung, 1918-1920*, ed. Isabella Ackerl, Studien und Quellen zur österreichischen Zeitgeschichte 6 (München: Oldenbourg, 1986).

rights.<sup>13</sup> These provisions often met with protest and unrest, but not the collapse of the state itself. Seen from this perspective, the Habsburg Empire's internal war over the rule of law is the loudest and most jarring note in a coda to a broader global historical era, the age of imperial revolutions from the late eighteenth and early nineteenth centuries. That coda revolves around the destruction of the age of revolutions' primary, if at times highly contingent, legacy: the practice of rule of law embedded in the nineteenth-century constitutional state.<sup>14</sup>

This war on the Habsburg *Rechtsstaat* was the hottest front of a broader assault on the nineteenth-century constitutional state and rule of law across the world. Europe under the crisis of the First World War formed the fulcrum of this conflict. It was the moment at which rule of law in its nineteenth-century sense, one that promised constitutions and political rights, appeared decisively set backward. With different local contexts, valences, and timings, Qing China, British India, large swaths of Latin America, other portions of the British Empire, and the United States were part of this crisis of the nineteenth-century constitutional state and rule of law.<sup>15</sup>

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<sup>13</sup> Recent theoretical work on the state of exception and its general unexceptionality in the twentieth century, see Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford, Calif: Stanford University Press, 1998); Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005).

<sup>14</sup> This is not to suggest that constitutional state was the inevitable outcome of this age in a teleological sense, but to maintain that a concern with constitutionalism was very prominent, whatever it might have meant in local contexts and exposed to a range of transnational influences. Moreover, concern with constitutionalism and rule of law did not exclude empires, but joined them and self-proclaimed nation states. On the centrality of constitutionalism, see, Linda Colley, "Empires of Writing: Britain, America, and Constitutions, 1776-1848," *Law and History Review* 32, Nr. 2 (May 2014): 237-266; Jeremy Adelman, "Liberalism and Constitutionalism in Latin America in the 19<sup>th</sup> Century," *History Compass* 12, nr. 6 (2014): 508-516. Jeremy Adelman refers to a "second Atlantic constitutional conjuncture" from the mid-nineteenth century forwards in Argentina. See, Jeremy Adelman, *Republic of Capital: Buenos Aires and the Legal Transformation of the Atlantic World* (Stanford, Calif: Stanford University Press, 1999), 288.

<sup>15</sup> In the case of Imperial China, earlier generations of Western scholars tended to over-instrumentalize the role of law in late-Imperial Chinese society. See, William P. Alford, "Law, Law, What Law? Why Western Scholars of China Have Not Had More to say about Its Law," in Karen G. Turner, James V. Feinerman, and R. Kent Guy, eds., *The Limits of Rule of Law in China* (Seattle: University of Washington Press, 2015), 45-64. Alford points out that the rule of law in 19<sup>th</sup> century China came under pressure as the result of tensions between the central and provincial governments that were only exacerbated by large scale rebellions such as the Taiping Rebellion. Still, many people viewed procedures in criminal cases as "having the capability of dispensing justice." See, William P. Alford, "Of Arsenic and Old Laws: Looking Anew at Criminal Justice in Late Imperial China," *California Law Review* 72, no. 6 (Dec. 1984), 1236-1238; 1242-143. On British India and the British Empire more generally,

Earlier generations of historians might have written this story as part of the crisis of liberalism, but this unnecessarily narrowed the geographic and thematic focus of this crisis to particular countries and political persuasions. Moreover, this narrative of liberalism tended to concentrate historians' focus on a particular set of political goals; whereas we believe the focus should be on the practices and frames of the nineteenth-century state. Such a focus allows us to see elements of practice even in states whose liberal revolutions failed or never even took place. The Habsburg story likewise offers us a telling commentary on the collapse of the constitutional state: namely that the constitution could come under assault directly from within the state itself and not from an external mass political movement. The Habsburg Army's internal focus in the war concentrated on the legalistic practices of Habsburg state officials and the compromises that arose from a state and civil society that were deeply inflected with one another. And it was the war, and the extrajudicial measures provided by the state of exception, that together provided an enormous wedge for the Habsburg Army to wield against the practices of that Habsburg *Rechtsstaat*.

The First World War would require belligerents to call upon their citizens to make profound sacrifices to stay in and prosecute the war. Scholarship of recent decades has made the stories of these sacrifices better known. The story we wish to tell, is the story of a different kind

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scholars have pointed to the claims for rule of law within the British colonial administration and the ways in which the practices of the administration could at the same time undermine those claims. See, Elizabeth Kolsky, *Colonial Justice in British India: White Violence and the Rule of Law* (Cambridge: Cambridge University Press, 2010). Lauren Benton makes a powerful argument for the way in which rule of law had to contend with other types of law over the course of the nineteenth century and in the colonial sphere its dominance was always questioned and uncertain. She stresses that rule of law should not be placed in a dichotomy against lawlessness. See, Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge: Cambridge University Press, 2002). For the establishment of rule of law's in Britain, see, E.P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (London: Allen Lane, 1975). Progressive era America also exhibited a range of social and state pressures with regard to rule of law that threatened at times to instrumentalize it. See, Michael Willrich, *City of Courts: Socializing Justice in Progressive Era Chicago* (Cambridge: Cambridge University Press, 2003); Elizabeth Dale, *The Role of Justice: The People of Chicago Versus Zephyr Davis* (Columbus, OH: Ohio State University Press, 2008). This is not to dismiss the power of legal procedure and rule of law. Even in the Jim Crow South, legal procedures and the rule of law could prove stubborn against entrenched and volatile popular racial prejudice. See, Suzanne Lebock, *A Murder in Virginia: Southern Justice on Trial* (New York: Norton, 2003).

of sacrifice, a sacrifice of the rule of law. When the rounds from Habsburg patrols shattered the *Statthalter's* windows in Trieste, they were part of a larger shattering of faith in the rule of law across Europe. This tragedy, set in motion by the First World War, would have global implications for the twentieth century, but no more than in Habsburg central Europe.

## I. 1914

The Great War radically shifted the relationship between state and citizen across Europe. Stalemate in the West, a ranging front without decisive, knock-out victories in the East and South East would force military elites and politicians to reach deep into the state's toolbox to coordinate economies, societies, scientists, and armies toward the goal of survival and victory. In the field of such coordination, military necessity could become the military's trump card as generals mobilized arguments for ranging outside the established boundaries of military control.<sup>16</sup>

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<sup>16</sup> The literature on the expansion of military authority within European belligerents is vast. Gerhard Ritter provides the classic statement on the German Army's expansion of institutional power within German society during the war. See, Gerhard Ritter, *The Sword and Sceptre: The Problem of Militarism in Modern Germany*, vol. 3: *The Tragedy of Statesmanship: Bethmann-Hollweg as War Chancellor (1914-1917)* and vol. 4: *The Reign of German Militarism and the Disaster of 1918*, trans. Heinz Norden (Coral Gables: University of Miami Press, 1967-1973). On Germany, see also, Gerald D. Feldman, *Army, Industry, and Labor in Germany, 1914-1918* (Princeton: Princeton University Press, 1966), Roger Chickering, *The Great War and Urban Life in Germany: Freiburg, 1914-1918* (Cambridge: Cambridge University Press, 2007). Roger Chickering provides an up to date overview in the German case in, Roger Chickering, "Imperial Germany's Peculiar War, 1914-1918," *The Journal of Modern History* 88 (December 2016), 871-877. The commander of the Italian Army, Luigi Cadorna, was convinced that the civilian government failed to appreciate the demands of the war and believed that leftist political parties were outright hostile to the war. See, John Gooch, *The Italian Army and the First World War* (Cambridge: Cambridge University Press, 2014), 107-108; 114-115. On civil-military tension in Russia, see, Michael Cherniavsky, ed., *Prologue to Revolution: Notes of A.N. Iakhontov on the Secret Meetings of the Council of Ministers* (Englewood Cliffs, N.J.: Prentice Hall, 1967), 229-230; Daniel W. Graf, "Military Rule behind the Russian Front, 1914-1917," *Jahrbücher für Geschichte Osteuropas* 52, no. 3 (1974): 388-401; Peter Gatrell, *A Whole Empire Walking: Refugees in Russia during World War I* (Bloomington, Ind.: Indiana University Press, 1999), 216-48; Eric Lohr, "The Russian Army and the Jews: Mass Deportation, Hostages, and Violence during World War," *Russian Review* 60, no. 3 (2001): 406-408. Recent debates on France in the First World War have concentrated less directly on the issue of civil-military relations per se and focused on the the concept of "war culture" in which the problematic of civil-military relations is dealt with less directly, at least in an institutional sense. See, Leonard V. Smith, "The 'Culture de guerre' and French Historiography of the Great War of 1914-1918," *History Compass* 5/6 (2007), 1967-1979; Leonard V. Smith, "France, the Great War, and the 'Return to Experience,'" *The Journal of Modern History* 88 (June 2016): 380-415.

But more than such intrusions into mobilizing citizens to work and produce for the war, and more than censorship and propaganda that would control information flows to the combatants' citizenry, Europe's militaries frequently mobilized arguments of military necessity to take control of law and juridical procedure. Such incursions into the basic constitutional guarantees that had built over the course of the nineteenth century were a phenomenon that would spread beyond Europe. They would be deadly for the Habsburg Empire, where war necessity and military incursions into governance and juridical procedure eroded the Habsburg state's claim to legitimacy based on maintaining rule of law as a sphere separate from state and society.

The declaration of a state of emergency on 25 July 1914 changed the entire legal system of the Monarchy, in both Austria and Hungary. This system was framed by three separate constitutional regimes: Austria, Hungary, and Bosnia-Herzegovina. The central framework was built with the Great Compromise of 1867, which split the Habsburg Empire into two separate domestic regimes (Austria and Hungary), each with its own constitution, parliament, prime minister, and ministerial cabinet. This system (known as dualism) provided each half of the Monarchy power over its own law, administration, and domestic policies. Foreign policy was the prerogative of the Emperor-King, Franz Joseph. Accordingly, the Habsburg Empire had a "joint cabinet" that reported directly to the emperor and consisted of a Foreign Minister, a Minister of War, a Finance Minister, and the Austrian and Hungarian Prime Ministers. Bosnia was appended to this Dualist arrangement in two stages: occupation and subsequent Austro-Hungarian administration of the province came in 1878 at the end of the Russo-Turkish War. In 1908, the Habsburg Empire surprised Russia and much of the Balkans by annexing Bosnia outright.<sup>17</sup>

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<sup>17</sup> On Habsburg imperial foreign policy before the war, see especially Christopher Clark, *The Sleepwalkers: How Europe Went to War in 1914* (London: Allen Lane, 2012), chap. 2, 5, and 6. See also Samuel R Williamson,

A varied political landscape was the rule in Austria-Hungary. If Bosnia had a provincial parliament and some autonomy, it was—crucially—administered by a high-ranking general who reported to the Joint Finance Minister in political-administrative matters. Austria was, in contrast, a constitutional monarchy with an imperial parliament (*Reichsrat*) elected by universal male suffrage. Hungary had a parliament too, but its suffrage laws gave Magyars dominance over Romanians in Transylvania, Slovaks and Ukrainians in the north, and Serbs in the south. Moreover, the Great Compromise granted Hungary numerous concessions that provided for a different relationship between Hungary and joint monarchical institutions. Most importantly, the Great Compromise stipulated that the joint army could not be used in Hungary without the government's permission.<sup>18</sup>

For military elites, this constitutional landscape and the politics that emerged from it exacerbated the forces of fragmentation, prevented a rational distribution of state resources (especially military spending), and fueled national tensions that threatened the Monarchy's existence.<sup>19</sup> The Army's ire often focused on the administration. As Isabel Hull reminds us, civil-military relations cannot be measured against an abstract and idealized notion of how they should properly function, but have to be understood within the specific governance context of a

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*Austria-Hungary and the Origins of the First World War*, The Making of the Twentieth Century (New York: St. Martin's Press, 1991); F. R. Bridge, *The Habsburg Monarchy Among the Great Powers*.

<sup>18</sup> On the Great Compromise of 1867 and the Habsburg Army, see Johann Christoph Allmayer-Beck, "Der Ausgleich von 1867 und die k. u. k. bewaffnete Macht," in *Der österreichisch-ungarische Ausgleich von 1867. Vorgeschichte und Wirkungen*, ed. Peter Berger (Vienna and Munich: Herold, 1967), 113–26. On the political system in Hungary under Dualism, see László Péter, "Die Verfassungsentwicklung in Ungarn," in *Die Habsburgermonarchie. Volume VII. Verfassung und Parlamentarismus* (Vienna: ÖAW, 2000), 239–540; József Galántai, *Der österreichisch-ungarische Dualismus 1867-1918* (Budapest: Corvina, 1990).

<sup>19</sup> Günther Kronenbitter, "*Krieg im Frieden*": *Die Führung der k.u.k. Armee und die Grossmachtpolitik Österreich-Ungarns 1906-1914*, Studien zur internationalen Geschichte 13 (Munich: Oldenbourg, 2003). For examples of the anti-political habitus of the army, see the weekly magazine, *Danzer's Armee-Zeitung*, which was published between 1899 and 1919 and was a continuation of Alfons Danzer's *Neue Armee-Zeitung*. One of the magazine's frequent contributors was no less a figure that the future general and military historian, Hugo Kerchnawe, who published numerous books which made similar arguments about Austria's loyal military and its deeply pathological political system. See, for instance, Hugo Kerchnawe, *Die Vorgeschichte von 1866 und 19??* (Vienna: C.W. Stern, 1909).

particular polity. For Hull, Imperial Germany offered an example of polity where a chaotic system of governance allowed the Imperial German Army to indulge in an increasingly narrow and blinkered approach to solving strategic problems through concentrating on operational excellence. By contrast, civil-military relations within the Habsburg Monarchy were characterized by an increasingly hostile set of oppositions between the Army, the state administration, and broad swaths of the political classes. These oppositions focused elements of the Army leadership on fending off challenges from the administration and political classes as well as the potentialities of broader *internal* state reform.

Theodor Ritter von Zeynek, who became the chief of the Quartermaster section in the AOK (Army High Command), remarked on the increasing hostility and isolation of the army vis-à-vis the rest of Habsburg society in his memoirs. Things were better during his time in school when “Ministers and provincial governors were not emissaries of some political power center, but exclusively confidants of the Kaiser himself.”<sup>20</sup> For Zeynek, officers’ increasingly distant relationship to Franz Joseph was due to what he considered emperor’s excessive regard for the administration, obsessed with legality, and the fact that this administration “sullied” itself by working with Austria-Hungary’s politicians. In everyday routines, the administration and the officer corps inhabited different worlds, according to Zeynek. Officers began the day early, finished by early afternoon, and moved on to the Gasthaus. Bureaucrats started work later, taking a break in the middle of the day and worked late into the night. The misperceptions such schedules engendered provided easy material for charges of laziness and neglect on both sides. Social interaction was minimal, as Zeynek noted during his experience with an infantry regiment

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<sup>20</sup> For examples of this narrative of corruption, see Theodor von Zeynek, *Theodor Ritter von Zeynek: Ein Offizier im Generalstabskorps erinnert sich*, ed. Peter Broucek, Veröffentlichungen der Kommission für Neuere Geschichte Österreichs 101 (Vienna: Böhlau, 2009), 109–10. All translations made by the authors unless noted otherwise.

in Galicia. A “latent state of war” between the administration and the Army prevented a “community of interest” between the two. This, he explained, “made itself felt in a very negative way during the war.”<sup>21</sup>

A key point of conflict centered on nationality politics. In Austria, the Imperial administration frequently worked with political elites from national parties to write and craft the compromises that led to smooth governmental functioning.<sup>22</sup> In a larger sense, such compromises, only possible through continued credence lent by the rule of law, were intrinsic to the broader global constitutionalist project in the nineteenth century. Yet, the national Army believed such compromises reflected the administration’s abdication of its proper role in society. For instance, in 1912 General (*Feldzeugmeister*) Oskar Potiorek lodged a complaint against the State Prosecutor’s Office in Dalmatia; he complained that it too frequently followed the letter of the law instead of fighting disloyalty, irredentism, and anti-military and anti-dynastic propaganda.<sup>23</sup> In particular, Potiorek wondered why the local governor failed to suppress a series of Italian irredentist propaganda pamphlets. The Superior State Prosecutor’s office in Zara / Zadar, Dalmatia, responded by arguing that one pamphlet that Potiorek mentioned was not confiscated because its contents cover “events from long ago, events which belong to the annals of history.” The other was harmless. The Prime Minister’s office forwarded these lines to the War Ministry without comment. But there was growing discontent in the War Ministry—and on

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<sup>21</sup> Compare Zeynek, *Ein Offizier*, 81, 86, 112, 168, 175–176; with Pavla Vošahlíková, ed., *Von Amts Wegen: K. k. Beamte Erzählen, damit es nicht verlorengelht...* 37 (Vienna: Böhlau, 1998); and Friedrich F.G. Kleinwächter, *Der fröhliche Präsidialist* (Vienna: Amandus, 1947).

<sup>22</sup> Recent research considers the state administration in Austria as usually an impartial arbiter between conflicting nationalists, trying to dampen down national conflict through various political compromises. For the Budweis Compromise and its consequences, see King, *Budweisers into Czechs and Germans*, 144–147. See also the work of Gerald Stourzh in this regard: Gerald Stourzh, “The National Compromise in the Bukovina,” in *From Vienna to Chicago and Back: Essays on Intellectual History and Political Thought in Europe and America* (Chicago: University of Chicago Press, 2007), 177–89.

<sup>23</sup> FZM Potiorek to the Kriegsministerium in Vienna (1 March 1912), Res. No. 724 in 53—2/15—5, OeStA KA Zenstralstellen Kriegsministerium Präsidium [hereafter ZSt KM Präs]. A 1474.

the general staff—with the administration’s assessments. They were too “optimistic,” as one report from 1912 noted. Franz Conrad von Hötzendorf, chief of the general staff, weighed in. He invoked Field Marshall Radetzky, writing that this mid-nineteenth-century military hero said “the civilian administration will describe everything as harmless until events would prove him right and make their own perspective null and void.”<sup>24</sup> Such exchanges demonstrated not only the conflict between the Army and administration but also their radically different levels of tolerance for dissent.

Army leaders were also focused on an intensifying European arms race which they believed left the Monarchy far behind. From recruiting contingents to artillery acquisition, the Army felt its problems received little budgetary attention.<sup>25</sup> For the Army, this was not the result of Austria-Hungary’s small industrial base. It fixated on internal political issues that it believed prevented the creation of a military force on par with that of other European powers. Part of this went back to the constitutional organization of the Monarchy. Dualism created two parliaments, an Austrian one and a Hungarian one, and a joint body called the Delegations, which meant that military budgets and troop contingents passed through multiple levels of oversight and scrutiny before approval. And approving budgets meant more political concessions. In Austria it might mean largess for nationalist political groups; in Hungary, it might mean more constitutional concessions, solidifying Hungarian exceptionalism.

The Army believed these constitutional structures provided a rotten framework that allowed politics to pervert the Habsburg state. As opposed to viewing the rule of law as an

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<sup>24</sup> Conrad von Hötzendorf, remarks to a memorandum, Präs.Nr.14.529 von 1912 “Politischer Optimismus bei den dalmat. Behörden,” 53-8/ 18-6 in OeStA KA Zst KM Präs. A 1474

<sup>25</sup> Günther Kronenbitter, “Politische Mentalität und Kriegsbereitschaft--der österreichisch-ungarische Generalstab beim Kriegsausbruch 1914,” *Bericht über den 22. Österreichischen Historikertag in Klagenfurt* 31 (2002): 46–53; Kronenbitter, *Krieg im Frieden*. See also David Stevenson, *Armaments and the Coming of War: Europe, 1904-1914* (Oxford: Clarendon Press, 1996); Allan Reed Millett and Williamson Murray, *Military Effectiveness* (Boston: Allen & Unwin, 1988).

element intrinsic to state legitimacy and sovereignty, the Army viewed it as a naïve accessory to the imperial demise abetted by a blind state administration whose commitment to the letter of the law blinded it to manifest subversion within the Empire. Moreover these political failings, whether they encouraged national separatism in Austria or political separatism in Hungary, were abetted by a state administration that exacerbated political and national tensions in the state instead of ameliorating them.<sup>26</sup> Such disquiet meant that the army leadership was on the lookout for ways to make systemic changes to the Habsburg Monarchy. In the years leading up to the First World War, one source of hope was the impending succession of Archduke Franz Ferdinand to the Habsburg throne. His death at the hands of Gavrilo Princip, paradoxically, would provide another path.

The declaration of war on 28 July 1914 gave the military the cover it needed to assault the constitutional structures and political life of the Habsburg state. Like the other states in Europe on the eve of the war, Austria-Hungary had emergency legislation in place to be activated in wartime. Emergency legislation provided a “backdoor” and allowed the suspension of constitutionally-granted rights and privileges, supposedly to provide for a smooth mobilization and to prevent sabotage by internal or external elements.

The Army's intervention into the Monarchy's constitutional system was made easier by the fact that there was not one backdoor, but three. Emergency legislation for each constitutional regime: one each for Austria, Hungary, and Bosnia-Herzegovina.<sup>27</sup> All three sets of emergency

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<sup>26</sup> Günther Kronenbitter, “‘Nur los lassen’. Österreich-Ungarn und der Wille zum Krieg,” in *Lange und kurze Wege in den Ersten Weltkrieg. Vier Augsburger Beiträge zur Kriegsursachenforschung*, Schriften der Philosophischen Fakultäten der Universität Augsburg 49 (Munich: Ernst Vögel, 1996), 159–88; Kronenbitter, *Krieg im Frieden*.

<sup>27</sup> Legislative bodies in Hungary and Bosnia sanctioned and published the emergency legislation, while in Austria emergency legislation remained shielded from the prying eyes of the public and the legislature. For Hungary, *LXIII. Törvény-Czikk a háború esetére szóló kivételes intézkedésekről* in Dezső Márkus and Gyula Térfi, eds., *Magyar törvénytár / Corpus juris hungarici* (Budapest: Franklin-Társulat, 1913), 691–710. For Bosnia, *Gesetz, betreffend die Erlassung von Ausnamsverfügungen für Bosnien und die Herzegowina* vom 23. März 1910, in

legislation authorized the suspension of constitutional rights in “instances of war, in the preliminary activities to war, as well as in cases of internal disorder which are either treasonous or threaten the constitution or personal security.”<sup>28</sup> Austrian emergency law left the specifics of a state of exception open, to be determined at a later date, while Hungary and Bosnia had the specifics of the state of exception explicitly spelled out. Emergency legislation was developed in secret by the War Ministry, the General Staff, and liaisons in the Monarchy’s administrative units. These three sets of emergency laws were then supplemented by “Orientation-Aids” (one each for Austria, Bosnia, and Hungary). These booklets, which contained everything from drafts of requisitioning and surveillance laws to telegraph codes, were released to subordinate military commanders and administrative offices, the last iteration of which appeared in 1912.<sup>29</sup> The

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*Gesetz und Verordnungsblatt für Bosnien und die Herzegowina*, (Sarajevo: Landesdruckerei, 1910). Both are available in German and published in the compendium of emergency laws and war legislation in Alexander Koller, ed., *Ausnahms-Gesetze und Verordnungen für den Kriegsfall in der oesterreichisch-ungarischen Monarchie* (Vienna: Manz’sche k. u. k. Hof-Verlagsbuchhandlung, 1914).

<sup>28</sup> Artikel 1, Gesetz vom 5. Mai 1869, R.G.Bl. Nr. 66, womit auf Grund des Artikel 20 des Staatsgrundgesetzes vom 21. December 1867, R.G.Bl. 142, die Befugnisse der verantwortlichen Regierungsgewalt zu Verfügung zeitweiliger und örtlicher Ausnahmen von den bestehenden Gesetzen bestimmt werden. Austria’s “December Constitution” of 1867, which consisted of five “founding laws,” left constitutional space open for emergency state measures in the case of war or crisis. Article 20 of a subsequent constitutional law, the “State-founding Law of 21 December 1867, Nr. 142, on the general rights of citizens,” allowed the temporary suspension of rights in all or parts of Austria, while a subsequent law of May 1869 regulated when and how that took place. On the constitutional basis of the state of emergency, see Gernot D. Hasiba, “Inter arma silent leges? Ein Beitrag über die rechtlichen Grundlagen der österreichischen Verwaltung im 1. Weltkrieg,” in *Modell einer neuen Wirtschaftsordnung. Wirtschaftsverwaltung in Österreich 1914-1918*, ed. Wilhelm Brauneder and Franz Baltzarek, Rechtshistorische Reihe 74 (Frankfurt am Main: Peter Lang, 1991), especially 17–21; on the peculiar history of Article 14, see especially Gernot D. Hasiba, *Das Notverordnungsrecht in Österreich (1848-1917): Notwendigkeit und Missbrauch eines “Staatserhaltenden Instrumentes.”* Studien zur Geschichte der Österreichisch-Ungarischen Monarchie 22 (Wien: Verlag der Österreichischen Akademie der Wissenschaften, 1985).

<sup>29</sup> The latest iteration of emergency measures had been disseminated throughout the military and government offices in 1912 as a published “orientation guide for emergency measures in the case of war”. For Austria, see *Orientierungsbehelf über Ausnahmsverfügungen für den Kriegsfall für die im Reichsrat vertretenen Königreiche und Länder*. Dritte Auflage. Wien: K.k. Hof- und Staatsdruckerei, 1912. For Bosnia: *Orientierungsbehelf über Ausnahmsverfügungen für den Kriegsfall und für den Eintritt besonderer Verhältnisse für Bosnien und die Herzegowina*. Vienna, 1914. For Hungary, *Orientierungsbehelf über Ausnahmsverfügungen für den Kriegsfall auf Grund des Gesetzartikels LXIII vom Jahre 1912 für die Länder der heiligen ungarischen Krone*. Vienna, 1913. The *Orientierungsbehelf* has been the subject of some debate because how one views it colors one’s perception of the Habsburg Monarchy in the First World War. For more on the *Orientierungsbehelf*, and the debate on it see also Redlich, *Austrian War Government*; Christoph Führ, *Das k.u.k. Armeeoberkommando*; and, most recently, Tamara Scheer, *Die Ringstraßenfront: Österreich-Ungarn, das Kriegsüberwachungsamt und der*

Orientation Aides provided legal levers that would ease the Army's intervention into the political life of Austria and Bosnia in particular.

Two days before the Habsburg Empire declared war on Serbia, 26 July 1914, the state of emergency went into effect across the Monarchy. In Bosnia, which had already seen the Army displace independent civilian authorities in 1912, an imperial order announced the transfer of authority from the civilian administration in Bosnia-Herzegovina to the military commander there, Oskar Potiorek.<sup>30</sup> Once he held both the reins of civilian and military authority, Potiorek immediately issued no less than fourteen emergency decrees, suspending civil rights and enforcing military control over border crossings, and increasing military control over post and telegraph, residence registration, supervision of the press, requisitions and things generally considered key to supporting the war.<sup>31</sup>

Bosnia was always a unique province and its proximity to the front with Serbia gave Potiorek a potent argument for special security measures. Bosnia's backdoor was the easiest to open; the second one, Austria's, was next. There the Austrian Council of Ministers met on 23 July to put in place the wartime legal order. The agenda dealt with the role of the government vis-à-vis the central parliament and the provincial legislatures, as well as the legal transition to general war administration.<sup>32</sup> They implemented the ordinances contained in the Orientation-Aide. Decrees that suspended personal freedoms guaranteed in the constitution (civil and

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*Ausnahmezustand während des Ersten Weltkrieges*, Schriftens des Heeresgeschichten Museums 15 (Wien: Republik Österreich, Bundesministerium für Landesverteidigung und Sport - BMLVS, 2010).

<sup>30</sup> Dževad Juzbašić, "Die Österreichisch-Ungarische Okkupationsverwaltung in Bosnien-Herzegowina: Einige Aspekte der Beziehungen zwischen den Militär- und Zivilbehörden...", *Prilozi*, no. 34 (2005): 81–112. For Potiorek, see Franz Weinwurm, "FZM Oskar Potiorek. Leben und Wirken als Chef der Landesregierung für Bosnien und die Herzegowina in Sarajevo 1911-1914" (Ph.D. Dissertation, University of Vienna, 1964); Rudolf Jeřábek, *Potiorek: General im Schatten von Sarajevo* (Graz: Styria, 1991).

<sup>31</sup> See Laws 52-64 in *Gesetz und Verordnungsblatt für Bosnien und die Herzegowina*, (Sarajevo: Landesdruckerei, 1914).

<sup>32</sup> Ministerratsprotokolle Nr. 30 (23 July 1914) in OeStA, Allgemeines Verwaltungsarchiv [hereafter AVA] Inneres Ministerratspräsidium, MR-Prot A 28.

property rights, right to assemble, privacy of correspondence, and freedom of the press) appeared along with penalties for “disturbance of the public peace” and interfering with mobilization. It suspended right to trial by jury and placed civilians under military legal jurisdiction for an array of offenses. Finally and tellingly, the collection of emergency measures contained a new law that regulated the “cooperation of municipal and state officials regarding the defense of the country” and provided for prosecution and punishment of civilian officials for dereliction of duty.<sup>33</sup> The law subjugated all public officials to military overwatch.

Such measures, contained in the draft of the orientation aides and which military and civilian officials drafted together, were to be temporary and accompany mobilization. Initial civilian assent to military supremacy was underscored by the Austrian Prime Minister, Count Karl von Stürgkh. In a memo sent to provincial governors on 26 July 1914, Stürgkh wrote that “the military events that stand before us” make it imperative that “all organs of the state administration unite with the fullest devotion and collective might to serve the armed forces with the utmost effort.” Stürgkh’s memo evoked patriotism, self-sacrifice, and asked imperial officials to energetically support the war as model citizens. “Considerations of administrative expediency, considerations on moods of the parties, consideration of the current or future conditions of internal politics, all this has ceased,” Stürgkh explained, “there is only one thing to keep in mind: the orientation of all forces of the state for the safe, rapid and complete achievement of the purpose of war.” The armed forces “now have been ordered to enforce the state’s will,” and the bureaucracy was expected to relinquish its autonomy and independence as a pillar of state to support victory in war.<sup>34</sup>

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<sup>33</sup> This law was listed in the *Orientierungsbehelf* as Appendix 1-h, 63-64 and appeared in law as R.G.Bl. Nr 154.

<sup>34</sup> Stürgkh’s memo was widely distributed in the offices of the bureaucracy, though it was ironically labelled as “strictly confidential.” The Minister of the Interior copied it and passed it along to his own departmental

In Hungary, the state of emergency, by contrast, gave the civilian government new powers, allowing it to mediate between military and society at large.<sup>35</sup> Thirty-three separate emergency ordinances went into effect. This included the appointment of government commissars, responsible for “the maintenance of public order and security in harmony with the military commanders, and...ordinary administrative measures...necessary in the interests of successful prosecution of the war.”<sup>36</sup> In other words, Hungary’s emergency legislation afforded new controls to the government and provided for a new civilian official to supervise emergency legislation and public order. This, *de jure* at least, was to keep the state of exception within civilian control.<sup>37</sup> But Hungary’s constitutional autonomy would likewise come under threat. Stepping into the constitutional breach, overpowering the Emperor’s extra-constitutional prerogatives and using them to their own ends, military officers sought to ignore and abrogate Hungary’s constitutional guarantees, which were far more robust. Such blatant attacks on Hungary’s guarantees quickly came to the attention of Hungarian Prime Minister István Tisza, who spent over three years tirelessly combatting military overreach and demanding that it be corrected. And yet the very difference he maintained for Hungary divided him often enough from joining forces with his beleaguered counterparts in the Austrian half of the Monarchy.

Mobilization and the declaration of war allowed the military’s anti-political habitus to find full expression. The Army could use the war to finally create the Habsburg state it sorely wanted. To do so, however, it would have to take the power of the emperor into its own hands.

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heads, who in turn circulated it among their offices. The governors did the same, circulating it to their district prefects. A copy of the letter can be found in the minutes of the Austrian Council of Ministers: AVA Inneres Ministerratspräsidium, MR-Prot A 28, Nr. 32/ 1914.

<sup>35</sup> For the Hungarian state of emergency, see, for instance, the Announcement in the Budapest Daily, *Pester Lloyd*, 26 July 1914 (evening edition), pp. 1-2.

<sup>36</sup> See *Pester Lloyd*, 26 July 1914 (evening edition), pg. 2.

<sup>37</sup> József Galántai, *Hungary in the First World War* (Budapest: Akadémiai Kiadó, 1989), 72–84.

Carl Schmitt, in his 1922 work, *Political Theology*, defined the concept of sovereignty in terms of the sovereign himself. The sovereign, he writes, “is he who decides on the state of exception.”<sup>38</sup> Austria-Hungary’s emergency legislation placed the defense of the realm in the hands of the emperor and supreme war lord. When its emergency laws were passed in the late 1860s by liberal governments, the emperor was in his prime. By 1914, the punctiliously conscientious Franz Joseph had reached elderly status. Born in 1830, he was nearly eighty-four when hostilities began. More to the point, Franz Joseph felt old. With the declaration of war and the state of emergency, Franz Joseph found it difficult to maintain the balance between the army and civil society that the Monarchy’s emergency legislation demanded.<sup>39</sup> He may have decided on the state of exception, but quickly the old emperor’s sovereignty would be overrun by a series of challenges from the military.

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How important is the rule of law? Nineteenth-century liberal political thought argued that law constituted a moral space separate from the state and society.<sup>40</sup> Such thinking undergirded the nineteenth-century state’s political architecture. The state of war could change such state architecture radically as ideas of military necessity took on a special role as a first principle of decision-making. In all cases, such a threat came out of the very constitutional legislation that

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<sup>38</sup> Carl Schmitt, *Politische Theologie. Vier Kapitel zur Lehre von der Souveränität* (München und Leipzig: Duncker & Humblot, 1922), 1.

<sup>39</sup> A member of his general staff, Albert von Margutti, wrote that Franz Joseph began to feel more alienated from his army—especially after Conrad von Hötzendorf was reappointed to the chief of the general staff in 1912. The elderly Kaiser, Margutti reported, “no longer felt himself to be the sole supreme commander of his soldiers, who now followed new trends which were no longer familiar to him and which, given his old age, he no longer had the strength and ability to learn.” Albert Freiherr von Margutti, *Kaiser Franz Joseph. Persönliche Erinnerungen* (Wien & Leipzig: Manz, 1924), 276.

<sup>40</sup> Paul Kahn, *The Cultural Study of Law: Reconstructing Legal Scholarship* (Chicago: University of Chicago Press, 1999). For a theoretical justification for seeing the constitutional state as the protector of human liberty, see Blandine Kriegel, *The State and the Rule of Law*, trans. Marc A. LePain and Jeffrey C. Cohen, New French Thought (Princeton, N.J.: Princeton University Press, 1995).

secured the rights of citizens in the first place. The French law on the state of siege of 3 April 1878 allowed the military to take over the police and court jurisdiction for certain crimes against the safety of the republic or the constitution.<sup>41</sup> These were capacious powers indeed, but even so, the limits of the law were quickly exceeded at the start of the First World War. The state of siege allowed for a limited declaration for specific communes, districts, or departments which were caught up by the imminent danger of war or insurrection. The period of siege was supposed to be fixed by a law, approved by parliament within two days, and set to expire at a certain time. Though in 1914, President Raymond Poincaré declared a state of siege for all of France that had no expiration date.<sup>42</sup> Immediately, then emergency trumped the letter and limits of the law. Germany, too, allowed for a capacious definition of military authority in the state of war.<sup>43</sup> The declaration of war there followed the exercise of article 68 of the German Constitution and placed local civilian government under the control of the military district commander.<sup>44</sup>

Coupled with such legislation, the military articulated ideas of objectivity through a discourse of military professionalism.<sup>45</sup> Such claims of objectivity positioned the military to see

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<sup>41</sup> For contemporary discussions of France's state of siege, see Paul Romain, *L'état de siège politique (Histoire, Déclaration, Effets, Levée)* (Albi: Imprimerie des orphelins-apprentis, 1918), 143–150 and the entirety of part 2.

<sup>42</sup> William Feldman, "Theories of Emergency Powers: A Comparative Analysis of American Martial Law and the French State of Siege," *Cornell International Law Journal* 38, no. 3 (2005): 1026–27; Clinton Rossiter, *Constitutional Dictatorship*, 91–103.

<sup>43</sup> Günter Frankenberg, *Political Technology and the Erosion of the Rule of Law: Normalising the State of Exception*, Elgar Monographs in Constitutional and Administrative Law (Cheltenham: Edward Elgar, 2014), 68–71; See the appendix of various German state of siege laws before the First World War: Hans Boldt, *Rechtsstaat und Ausnahmezustand. Eine Studie über den Belagerungszustand als Ausnahmezustand des bürgerlichen Rechtsstaates im 19. Jahrhundert*, Schriften zur Verfassungsgeschichte (Berlin: Duncker & Humboldt, 1967), 258–62.

<sup>44</sup> Martin H. Geyer, "Grenzüberschreitungen: Vom Belagerungszustand zum Ausnahmezustand," in *Erster Weltkrieg: Kulturwissenschaftliches Handbuch* (Stuttgart and Weimar: J. B. Metzler, 2014), 347–48; Ernst Rudolf Huber, *Deutsche Verfassungsgeschichte seit 1789*, 5 vols. (Stuttgart: W. Kohlhammer, 1957–1978), v, 39–49.

<sup>45</sup> On military professionalism, see, Michael Geyer, "The Past as Future: The German Officer Corps as Profession," in Geoffrey Cocks and Konrad Jarausch, eds., *The German Professions: 1800–1950* (Oxford: Oxford University Press, 1990), 182–212. The classic statement of military professionalism and neutrality, in this case as transposed to the United States early in the Cold War, is: Samuel Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (Cambridge, Mass.: Belknap / Harvard University Press, 1957).

itself as a neutral arbiter in the political arena, able to occupy an apolitical, moral position from which they could evaluate, assess, and condemn. It also presented a latent potential for military encroachment—through claims of necessity or emergency—into the civilian sphere, whether in the sphere of legislation, governance, justice, and economic management. As the First World War became drawn out, militaries increasingly used arguments of war necessity, and the need to respond to an atmosphere of crisis, to make policy that had been reserved for the civilian sphere.<sup>46</sup> Such thinking is commonplace now, in the world of terrorism and military interventions in Turkey, Egypt, and Thailand. The crisis of the nineteenth-century constitutional state in the First World War made a game plan for how constitutional and military regimes would interact in periods of crisis.

Thus, when the Habsburg Empire's military apparatus launched an assault against the constitutional state that emerged over the course of the nineteenth century, it was but one of several constitutional states that came under threat. What differentiated Austria-Hungary from other states in Europe during World War I, and what makes it particularly interesting to study, was the immediate occupation of political-judicial authority by the army at the outset of the war. Coupled with this was a particularly charged environment when it came to civil-military relations. This context made Habsburg Army interventions into imperial society during World War I so destructive. The Empire's deep attachment to rule of law, within a relatively well-functioning political system built upon compromise, made the Habsburg state unprepared for the

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<sup>46</sup> Creeping military power was certainly observable in Germany and France, where historians have written about a gradual evolution of a military dictatorship by 1917. François Cochet, "Les débuts de la Grande Guerre en France : « dictature » imposée du militaire ou retrait du politique?," *Revue historique des armées*, no. 248 (September 15, 2007): 60–70. Huber, *Deutsche Verfassungsgeschichte seit 1789*, v, 49–62.

wantonness of the Army's assault just as it made the military incursions into political and civilian life so destructive.<sup>47</sup>

On the verge of the war, it seemed that the Army was being brought into the fold of the Habsburg *Rechtsstaat* as demonstrated by the successful and long sought after reform of the Habsburg Army's system of military justice.<sup>48</sup> The Habsburg Army, however, identified the Habsburg constitutional and rule of law state as an existential threat to the Empire from within. The close intersection of politics and administration, the legal framework that developed around this intersection, and the compromises it produced were the Army's targets. The Army stepped off its assault from what it considered the corruption of "rule of law" in the Empire, coming up with its own alternatives to the positive application of law and directing these alternatives against civilian politicians and administrators.

But because Austria-Hungary began the war with such a stark regime change, without the effects of a creeping power, the contrast between civilian authority and war administration evoked a violent juxtaposition. Signs of a new regime stretched across Austria-Hungary at the start of the war. Further the military administration would be less predictable and more arbitrary in dealing with the Monarchy's citizens than what they had come to expect from their respective governments in nearly five decades of constitutional rule before July 1914. Moreover, the civil-military context of the Habsburg Empire meant that the Army held an affective disposition to

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<sup>47</sup> For the Habsburg Empire and the importance of the rule of law, see Pieter M. Judson, *The Habsburg Empire: A New History* (Cambridge, Massachusetts: Belknap / Harvard University Press, 2016), 106–7.

<sup>48</sup> The most comprehensive treatment of military law was by Ferdinand Schmid, who campaigned against what he understood as the deficiencies of the Army's legal system as viewed from the perspective of the *Rechtsstaat*. See, Ferdinand Schmid, *Der Heeresrecht der österreichisch-ungarischen Monarchie* (Wien: Tempsky, 1903). The reform of military trial procedure was agreed upon in 1912 and scheduled to go into effect on July 1, 1914. For a legal officer's perspective on this reform and an introduction to it for other legal officers, see, Albin Schager, *Einführung in die neue Militärstrafprozeßordnung* (Wien: Manz, 1913). Because of their proximity to the war and ways in which a state of belligerency allowed the new trial procedure to be subverted, Oswald Überegger argues that the effect of these changes were, in practice, quite limited. See, Oswald Überegger, *Der anderer Krieg: Tiroler Militärgerichtsbarkeit im Ersten Weltkrieg* (Innsbruck: Wagner, 2002).

read potential military setbacks through a lens of administrative and political failures prior to the war, only emboldening it in its aggressiveness vis-à-vis the Habsburg state. Unlike the German case, the fissures at home opened up immediately with the start of the war. The emperor's weakness played into the Army's hands. Emergency legislation provided a road-map for a military invasion, not just of Serbia or Russia, but of the Habsburg state itself. While legal scholars from Carl Schmitt onwards have argued that rule of law and the state of exception were deeply connected, recent scholars writing in this vein have argued that in spite of emergency laws, the limits of the state of exception were incredibly difficult to contain and delineate. For the Habsburg Army, this state of exception was more than a requirement for successful military mobilization in the first months of the war. It was an opportunity to clear away the problems of Austria's political system, with its dense web of connections between the administration and local political elites. But just as emergency legislation closed Austria's parliamentary bodies, it wiped away nearly fifty years of constitutional evolution—the evolution of political praxis in both halves of the monarchy.<sup>49</sup> This rupture made the state a less familiar entity to its citizens and no longer the plodding, but inherently calm and predictable polis it once was. If, particularly, the Austrian state functioned through dealings and compromises forged between the central administration in Vienna and the Polish, Czech, Croatian, Slovene, and Italian political elites in the corners of the empire, by shuttering parliamentary bodies the bureaucracy lost its contact with the populace that gave the state its legitimacy among its various peoples.<sup>50</sup> Moreover, the

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<sup>49</sup> See John Deak, *Forging a Multinational State: State Making in Imperial Austria from the Enlightenment to the First World War*, Stanford Studies on Central and Eastern Europe (Stanford, Calif.: Stanford University Press, 2015), chap. 5 and 6.

<sup>50</sup> Petronilla Ehrenpreis, *Kriegs- und Friedensziele im Diskurs: Regierung und deutschsprachige Öffentlichkeit Österreich-Ungarns während des Ersten Weltkriegs*, Wiener Studien zur Geschichte der Neuzeit 3 (Innsbruck: Studien Verlag, 2005). Harald Binder, *Galizien in Wien: Parteien, Wahlen, Fraktionen und Abgeordnete im Übergang zur Massenpolitik*, Studien zur Geschichte der Österreichisch-Ungarischen Monarchie 29 (Wien: Verlag der Österreichischen Akademie der Wissenschaften, 2005).

Austrian state was no longer ruled by set norms, adjudicated in court cases of administrative law. Justice, procedures, precedents, and decisions became more emotive, haphazard, and arbitrary.<sup>51</sup>

This arbitrariness was in evidence as Army authorities sought to implement their form of justice, a justice unhinged from the framework of the rule of law, in the Monarchy's heartland, Styria. There the local Slovenian population was exposed to the brunt of military authority due to simple coincidence. The town of Maria-Rast / Ruše in Slovene-speaking South Styria held a Sokol festival on 28 June, the very day that Franz Ferdinand and Duchess Sophie were murdered in Sarajevo. This celebration of a Slavic cultural festival combined with a Catholic feast day became cause for arbitrary arrest and persecution. The declaration of martial law (and thus the placing of justice under the military) in the Monarchy's south Slavic regions gave occasion for what Martin Moll called the "blind rage of the domestic security forces and military justice."<sup>52</sup> Gendarmes arrested and the military court in Graz prosecuted almost everyone in Maria-Rast / Ruše who participated in the festival. They were charged with enemy activity against the state and "Serbophile machinations."<sup>53</sup> As the Army began to direct the efforts of the local gendarmes against Slovenian politicians and activists in Styria, they increasingly brought anyone who participated in these national festivals into their nets.

From the beginning some civilian authorities attempted to cooperate with the Army.

Alfred Fries-Skene, the governor of Carinthia, oversaw the internment of nearly 100 Slovene

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<sup>51</sup> For instance, emergency measures erected a War Surveillance Office overnight in Vienna in late July—without any law or announcement calling attention to it. For the planning and establishment of the War Surveillance Office [KÜA] see the recent publication Tamara Scheer, *Ringstraßenfront*, 12-28.

<sup>52</sup> Martin Moll, "Hochverrat und 'serbophile' Umtriebe: Der Kriminalfall Maria-Rast als Beispiel der Verfolgung slowenischer Steirer zu Beginn des Ersten Weltkrieges," *Blätter für Heimatkunde* 74, no. 1-2 (2000): 40.

<sup>53</sup> The participants were charged with a variety of crimes, though most fell under "suspicion of treason," article 58 of Austrian Criminal law (StG § 58). See Moll, "Hochverrat und 'serbophile' Umtriebe," 40-41 and 56-57. Given the timing of the events, Moll tells us that the Military applied civilian law but tried to force the local military law courts in Graz to handle the prosecution. The result was a jurisdictional conflict with the local state prosecutor's office.

priests in Carinthia. The military, with Fries-Skene's cooperation, directed local police to arrest anyone remotely suspicious. By early August, reports arrived in the Interior Ministry that priests in Slovene-speaking areas were being arrested, thrown in prison, and charged with a variety of crimes, including "unpatriotic behavior," "disturbing the peace," *lèse majesté*, even espionage.<sup>54</sup> Many Slovene priests—like Father Johann Schneditz in Viktring / Vetrinj—were arrested for pre-war behavior, not for crimes committed after the war began.<sup>55</sup> Schneditz was a well-known Slovene-ophile and had ruffled the feathers of local German nationalists, who took the increased vigilance of the war as an opportunity for payback. The district prefect of Klagenfurt, in a report to the Governor, maintained that war made the arrest of Schneditz necessary. "The agitation of the populace and the past [activities] of Father Schneditz were of such a nature, that his provisional internment in police custody may...have been justified, lest all the rest of the population fall into misfortune on account of this rabble-rouser."<sup>56</sup> Schneditz's arrest ignored the law, norms, and procedures that governed the administration of justice in the Habsburg Empire. As the military interacted with civilian authorities in Styria, it instrumentalized law to root out dissent, national politics, imprison nationally-minded priests, and establish far-reaching political control over the populace.

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<sup>54</sup> For a discussion of the various crimes see, above all, Martin Moll, *Kein Burgfrieden: Studien zum deutsch-slowenischen Nationalkonflikt in der Steiermark vor dem und im Ersten Weltkrieg* (Graz: Studien Verlag, 2002), 198–207; Martin Moll, "Erster Weltkrieg und politische Justiz in Österreich-Ungarn: Empirische Befunde aus der slowenischen und deutschsprachigen Steiermark," in *Zbornik Janka Pleterškega* (Ljubljana: Založba ZRC, 2003), 253–83.

<sup>55</sup> Moll notices similar cases in neighboring Styria. Moll, *Kein Burgfrieden*, chap. IV; Martin Moll, "Österreichische Militärgerichtsbarkeit im Ersten Weltkrieg--'Schwert des Regimes'? Überlegungen am Beispiel des Landwehrdivisionsgerichtes Graz im Jahre 1914," *Mitteilungen des Steiermärkischen Landesarchivs* 50 (2001): 301–55.

<sup>56</sup> Letter from the k.k. Bezirkshauptmann in Klagenfurt to the k.k. Landesregierung in Klagenfurt (29 October 1914) in AVA Inneres MdI Präsidium A 2120, Z. 15565/ M.I. See also the documentation on Schneditz republished in Janko Pleterški, ed., *Politično preganjanje slovencev v avstriji 1914-1917. Poročili vojaške in vladne komisije [Political persecution of Slovenes in Austria, 1914-1917. Reports of the military and governmental commissions]* (Ljubljana: Arhivsko društvo slovenije, 1980), i, 51–52.

While Fries-Skene in Carinthia worked with military authorities, the Governor in neighboring Styria, Count Manfred Clary-Aldringen, fought what he called the “eagerness” of the Styrian Gendarmerie and “mistakes” and “missteps” by the Army.<sup>57</sup> Clary-Aldringen actively intervened in the Styrian press to keep reports of the arrests from stirring national antagonism and implored the Interior Ministry to investigate such arrests.<sup>58</sup> For Clary-Aldringen, the problem was that news of Army persecution of Slovenes was blamed on the political administration. He drew Vienna’s attention to the matter. After an investigation uncovered—through internal spying—an order from the provincial military command to seek out and arrest Serbophile elements, Stürgkh began to realize the extent of the Army’s judicial takeover. He characterized the Styrian Gendarmerie as “reckless” and their methods as “deliberately ignoring the civilian authorities in the arrest of so-called suspicious persons.”<sup>59</sup> By September it was clear to everyone from Clary to Prime Minister Stürgkh, even the emperor himself, that an “overzealous” Army arrest and prosecution campaign was veering out of control.<sup>60</sup>

Despite the Army's more limited remit in Hungary given its emergency laws, Prime Minister István Tisza was dealing with a similar situation. An earlier order by Franz Joseph to restrain the Army after complaints from Tisza in late July 1914 was released and then undercut

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<sup>57</sup> See the Correspondence between the Ministry of the Interior and Manfred Clary-Aldringen (August-October 1914) in Z. 13255, OeStA AVA Inneres Mdl Präsidium A 2137. Quotes are from Präs. Z. 1929/4, letter from Clary-Andringen to the Ministry of the Interior (22 September 1914), in the same file.

<sup>58</sup> Letter from Clary-Aldringen to Ministry of Interior (22 September 1914, org. Z. 1929/4), in Pr.Nr. 13255/MI, AVA Inneres Mdl Präs. A. 2137. See also the Justice Ministry’s internal report on Clary-Aldringen’s early handling of the crisis, in OeStA AVA Justiz JM Präs. A 72, Z. 554 Präs.

<sup>59</sup> *Streng vertraulich* letter from Prime Minister Stürgkh to the Minister of Interior (27 October 1914) in Z. 15585, OeStA AVA Inneres Mdl Präsidium A 2137. See also Martin Moll’s account of the arrests in Styria in Martin Moll, “Erster Weltkrieg und Ausnahmezustand, Zivilverwaltung und Armee. Eine Fallstudie zum innerstaatlichen Machtkampf 1914-1918 im steirischen Kontext,” in *Focus Austria. Vom Vielvölkerreich zum EU-Staat. Festschrift für Alfred Ableitinger zum 65. Geburtstag*, ed. S. Beer et al., vol. 15, Schriftenreihe des Instituts für Geschichte (Graz: Selbstverlag des Instituts für Geschichte der Karl-Franzens-Universität Graz, 2003), 389–99.

<sup>60</sup> See the Ministry of Interior’s internal report on the arrest campaign, Pr. Nr. 13255/MI, in OeStA AVA Inneres Mdl Präs A 2137.

two days later by Archduke Friedrich, the leader of the Army High Command (*Armeeoberkommando*), who maintained that the war meant one should not “take too much account of internal political considerations” when it came to internal subversion.<sup>61</sup> General Alexander Krobatin, the War Minister, admitted later that “The arrests result almost solely at the instigation or through the order of military command and military authorities.” He further noted that the Hungarian Prime Minister had intervened numerous times with little effect: “on the contrary, there have resulted numerous, highly unpleasant misunderstandings and conflicts between the civilian and military authorities” there.<sup>62</sup> Tisza wrote to the emperor only a few days before to complain about “unauthorized abuses” committed by military authorities in Hungary. These mirrored the events in Styria. Tisza reported that “several hundred so-called suspicious persons were arrested on the basis of various denunciations, including retired Field Marshall Lieutenant Nikolaus Cenna [sic]....” Tisza added that spurious denunciations spurred arrests of loyal Serbian politicians in Slavonia, including parliamentary deputies and a mayor. In Zombor / Sombor and Szabadka in the Banat region, “where there has not been a trace of treasonous activity to be found” the military took hostages. In a final case, a military parade through Zombor / Sombor quickly fell apart as soldiers broke ranks to attack shops with Cyrillic signage. When one shopkeeper, a man by the name of Szamko Radoszavlyevics, cursed at the soldiers, they threw rocks at his shop, breaking the windows. Radoszavlyevics fired a shot from a revolver, hitting no one. He was arrested. The state prosecutor wanted to prosecute him under

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<sup>61</sup> See, OeStA KA, KM - Präs. 28/7 - 32/6, 1914, MKSM to the KM, Nr. 2121, 28 - 14 / 2, July 28, 1914, Karton 1579 and OeStA KA, KM - Präs. 28/7 - 32/6, 1914, AOK (Friedrich), “Bemerkung zu Präs. Nr. 10358 von 1914,” Op. Nr. 74, Präs. 28 - 14/3, July 30, 1914, Karton 1579.

<sup>62</sup> War Minister Krobatin to the Imperial Military Chancellery [MKSM] (16 September 1914), Nr. 2776 (original Nr. 13.021), in OeStA KA MKSM, HR A 1141, 69-11/2, 1914.

civilian law, but before he could, the military commander tried and executed Radoszavlyvics in an Army court under military *Standrecht*. Tisza tried to intervene but was too late.<sup>63</sup>

In response to his prime ministers' pressure, Franz Joseph released a Supreme Order on 17 September which demanded the arrests of innocent persons cease: "I do not want that through unjustified arrests, loyal elements are driven to opposition against the state."<sup>64</sup> As that order was prepared, the War Ministry in Vienna sounded conciliation but vigorously defended its policies. The mass arrests had been necessary to prevent sabotage and smooth mobilization. That had largely happened. But now, "seven weeks after mobilization," War Minister Krobatin opined in a letter to the emperor's military chancellery, the recent spate of arrests "are not entirely clear to me, since all those persons who exposed themselves as having an attitude hostile to the state were rounded up at the beginning."<sup>65</sup> The military's lukewarm response was met by a quickening of the civilian judicial organs in Slovenian areas. The Higher State Prosecutor's office in Graz, which was responsible for overseeing the case against the citizens in Maria-Rast, eventually dropped the case for evidentiary reasons. Cases against some Slovenian priests and intellectuals were thrown out by regional judges after examining spurious denunciations and observing paltry evidence. It was an example of the old, predictable Habsburg state winning a battle against the new, unpredictable one.<sup>66</sup> But this case and countless others set the stage for a vast front of

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<sup>63</sup> István Tisza to Kaiser Franz Joseph (15 September 1914) in István Tisza, *Gróf Tisza István Összes munkái [The Collected Works of Count Stephen Tisza]* (Budapest: Franklin-társulat, 1923), ii, nr. 262. For the case of Nikolaus Cena, see Irina Marin, "World War I and Internal Repression: The Case of Major General Nikolaus Cena," *Austrian History Yearbook* 44 (2013): 195–208, doi:10.1017/S006723781300012X.

<sup>64</sup> Ah. Befehlschreiben (17 September 1914) in OeStA KA AhOB MKSM HR A 1141, 69—11/2, Nr. 2776.

<sup>65</sup> War Minister Krobatin to the Imperial Military Chancellery (16 September 1914), Nr. 2776 (original Nr. 13.021), in OeStA KA MKSM, HR A 1141, 69-11/2, 1914.

<sup>66</sup> Martin Moll, "Hochverrat und 'serbophile' Umtriebe", 63–64. See many of the court reports in Arhiv Republike Slovenije [ARS], AS 1091, C. Kr. Ministrstvo za Pravosodje Dunaj Splošni spisi.

internal conflicts between civilian authorities and the military over the management of the Habsburg state.

War and the military's interventions created a system of distrust that permeated society and government: not only between the military and the "Habsburg-loyal" Slovenes, but between civilian authorities and their military counterparts. A war for the soul of the state began. And once emergency measures of 1914 were implemented, they were not withdrawn. On paper, they were to ensure a smooth initial mobilization, but in the Habsburg Empire mobilization never ceased. Any plan to lift emergency legislation was abandoned as elites scrambled to deal with the repercussions of the Russian Army's incursion into the Empire. With Italy's declaration of war in May 1915, the Habsburg Monarchy had completely transformed into a state of exception and paranoia.

## II.

### *Military Law, Military Statecraft, and the Crisis of 1915*

The first nine months witnessed a series of military disasters for the Monarchy. It failed to take Serbia after several invasion attempts, the last ending with a chaotic retreat from Belgrade in December 1914. Russia occupied Galicia and Bukovina. The Army had sustained nearly one million casualties.<sup>67</sup> Nonetheless, the Army commenced a winter offensive against Russia in the Carpathian Mountains. Intended to relieve several hundred thousand soldiers encircled in Przemyśl and brush Romania and Italy back from war, it failed spectacularly and Przemyśl fell

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<sup>67</sup> Helmut Rumpler and Anatol Schmied-Kowarzik, eds., *Die Habsburgermonarchie, 1848-1918*, Vol. 11: *Die Habsburgermonarchie und der Erste Weltkrieg*, pt. 2: *Weltkriegsstatistik Österreich-Ungarn, 1914-1918: Bevölkerungsbewegung, Kriegstote, Kriegswirtschaft* (Wien: Verlag der Österreichischen Akademie der Wissenschaften, 2014), 162. Under such destruction, its internal structure loosened and officer shortages made the force looser and less disciplined. Discontent appeared as older reservists were called up. For an example of that friction, see, k.u.k. Ersatzbattalionkommando Nr. 21 to the Militärstationskommando - Leitmeritz, "Anstände beim Transport M/VI," Res. Nr. 190, Präz. 53 - 10/1, January 30, 1915, Karton 1739.

on March 23. The Army took nearly 350,000 additional casualties in the first three months of 1915.<sup>68</sup> Austria-Hungary's enormous losses and failures created a sense of foreboding and crisis and led Italy, thinking the time was right, to strike. When it did in May 1915, the sense of crisis and the new geography of the front provided impetus for a continued expansion of emergency measures.

As the military flashpoints of the external war shifted, new flashpoints arose in the internal war. They were most intense in the Southwest Front, responsible for the war against Italy. The command was cobbled out of portions of commands from Tyrol, the Austrian Littoral, including Trieste and the Slovene-speaking hinterland, and the Balkan fronts. The Southwest Front was led by Archduke Eugen, the brother of Archduke Friedrich and cousin to Franz Joseph. Eugen was resolute, dedicated, politically interested, and militarily competent.<sup>69</sup> Under his leadership, the officers of the Southwest front exploited the powers that emergency measures bestowed on the Army vis-à-vis the Habsburg state. The Army assumed the prerogatives of the administration across Austria by mid-1915, including Tyrol. Now only the provinces of Lower and Upper Austria, Vienna, and Bohemia were outside the Army's grasp when it came to usurping the imperial administration's power. The command explicitly stated that its "mission...is not limited to the defeat of the Italian Army and the defense of the fatherland. It goes further." It had to defeat the enemy "that had fixed itself within our territory" and this meant extending into the realm of statecraft within the Empire.<sup>70</sup> Interestingly, several military

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<sup>68</sup> Rumpler and Schmied-Kowarzik, eds., *Die Habsburgermonarchie*, 164. On the Carpathian offensive, see, Graydon Tunstall, *Blood on the Snow: The Carpathian Winter War of 1915* (Lawrence, Kan.: University of Kansas Press, 2012). The military events are well-covered in a book that deals with the first year of the war, see, Wawro, *A Mad Catastrophe*.

<sup>69</sup> Lothar Höbelt, "Der Oberkommandant als Mediator. Zur Ehrenrettung Erzherzog Friedrichs," in Dieter Stein, ed., *Ein Leben für Deutschland. Gedenkschrift für Wolfgang Venohr* (Berlin, 2005): 245-259.

<sup>70</sup> This expansive sense of mission appears in an exchange with the War Ministry less than half a year since the Southwest Front was brought into existence. See, KA, ZSt, Kriegsministerium-Präsidial, k.u.k Kommando der

lawyers with expansive visions of the future constitution of the Habsburg state filled the command's ranks. Most notable among these was Major Dr. Albin Schager who was heavily involved in the pre-war reform of military trial procedure.

In this internal war, the Southwest Front Command turned to a favorite Army tool: application of military justice against civilians. It forced through an expansion of *Standrecht*, a system of emergency law only to be invoked to secure the public order against the gravest threats. Trials run under *Standrecht* left only the possibility of acquittal or death, but *Standrecht* could only be declared for 48 hours. But the Army bristled against such limitations in their application of the law. Now, however, military courts could conduct investigations over an indefinite period and convene a trial under *Standrecht* once they assembled enough evidence.<sup>71</sup> It underscored the difficulty of limiting the reach of radically coercive legal structures which were to be sharply confined to a particular set of circumstances or limited in terms of time. In this sense, the ever expanding Habsburg state of emergency had parallels with similarly expanding states of emergency in the extra-European colonial context.<sup>72</sup> Yet within Europe, where civil-military relations were situated much more closely to the heart of imperial power, the British Army exhibited a greater sensitivity for the importance of procedural legality and for the legal limits of its power vis-à-vis the state in a state of emergency than the Habsburg Army.<sup>73</sup>

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SW Front to the Kriegsministerium, 53-2/18, "Abwehrmaßnahmen gegen den Irredentismus," November 20, 1915, Karton 1789.

<sup>71</sup> Oswald Überegger, *Der andere Krieg: Die Tiroler Militärgerichtsbarkeit im Ersten Weltkrieg* (Innsbruck: Wagner, 2003), 96-97.

<sup>72</sup> On martial law, the state of emergency, and the difficulty of containing its logic in the British colonial context, see Nassar Hussain's explanation of the controversy around Armrtsar massacre in 1919 in, Nassar Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: University of Michigan Press, 2003), 99-132.

<sup>73</sup> Charles Townshend, "Martial Law: Legal and Administrative Problems of Civil Emergency in Britain and the Empire, 1800-1940," *The Historical Journal* 25, no. 1 (1982): 167-95; Charles Townshend, "Military Force and Civil Authority in the United Kingdom, 1914-1921," *Journal of British Studies* 28, no. 3 (1989): 262-92.

As Oswald Überegger has shown, military law's expansion shocked Tyrol because large portions of the province had been considered loyal to the Monarchy. But it was the haphazard, random, and potentially deadly nature of military law under the Southwest Front that was most problematic. Moreover, courts were encouraged to take the broader political atmosphere into account when deciding on cases. As Ludovica Tait, the owner of a Gasthaus in South Tyrol discovered, merely displaying a damaged picture of Franz Joseph could land one in front of a court convened under *Standrecht*. Sentenced to 5 years in prison with a day of fasting every 3 months, Tait probably considered herself lucky. Though the court found no evidence she intentionally damaged the picture or harbored anti-Monarchy sympathies, she had originally been sentenced to death because the "political atmosphere in the region" demanded that any "disrespect shown the Kaiser...be harshly confronted."<sup>74</sup>

Tait faced a trial, but many found themselves locked in holding pens waiting endlessly in a legal no man's land. The Army was always short of lawyers to handle the application of military law to civilians. The demands of the war and an enormous operational army already stretched, but when one added civilians to the mix, the system became completely unmanageable. In one instance, a military field court (*Feldgericht*) had 3 lawyers handling 429 cases. In Trient / Trento, in South Tyrol, 13 military lawyers were responsible for 1003 cases with a backlog of 6670 cases.<sup>75</sup> And here again the practice of wartime military law cut against

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<sup>74</sup> OeStA KA, NFA, k.k. Landwehrgericht des k.u.k. Rayonskommandos von Südtirol to the Südwest Front, December 29, 1915, 4-1/308, Karton 418.

<sup>75</sup> KA, NFA, 11. Armee (L.V.K. Tirol), 1915, Res. Nr. 5-604 v. 21.5 - 1.6, Gericht des k.u.k. Militärkommandos in Innsbruck to the k.u.k. Kommando der SW Front, "Personalien des Gerichtes," Res.E.Nr. 28, June 14, 1915, Karton 67; KA, NFA, Südwest Front I, k.u.k. Heeresgruppenkommando Erzherzog Eugen, "Ausweise über die Tätigkeit der Feldgerichte im Bereiche der SW. Front (May 1916)," 4-70 / 8, June 6, 1916, Karton 425. Reports from the same set of files for all of 1916, reveal a backlog of cases throughout the year. See, KA, NFA, Südwest Front I, k.u.k. Heeresgruppenkommando Erzherzog Eugen, "Ausweise über die Tätigkeit der Feldgerichte im Bereiche der SW. Front," Reports Filed Monthly, 4-70 / 1 - 8, Karton 425. For more on personnel shortages in the military legal system, see also, KA, KM, Abt. 4/II, 1915, 1 - 2/2/260, k.u.k. Generalmilitäranwalt, "Einsichtsbemerkung zum Akte des k.u.k. Kriegsministeriums Abt. 4/II, Nr. 214/15," May 8, 1915, Karton 303; KA,

pre-war legal practice. No longer was this the ordered Habsburg *Rechtsstaat*. Attention to procedure and regularity disappeared in an overambitious, chronically understaffed system. The guiding principle of military justice was rooting out dissent and opposition within a system of military discipline.<sup>76</sup> The bureaucracy saw differences of opinion and opposition as part of a working civil society. The Army saw treason. For officers, justice was not an end, but a means to put the vicissitudes and disunity of Austrian public life to rest.<sup>77</sup> For the Army, the rule of law was a weapon to be wielded against society. The rule of law's symbolic neutrality made it accessible to being hijacked by an Army officer corps that put forth its own claims of neutral expertise. While the expert neutrality embodied in such its professional ethos could encourage retreat from society and governance, it also opened up avenues of approach for the military against society, especially when it came to positioning itself against the messy compromises intrinsic to the nineteenth-century constitutionalist project.<sup>78</sup>

As such, the Army attempted to instrumentalize the rule of law in the Empire to its own political ends, moving into a space where a symbolic distance from state and society had been maintained by courts and the administration of justice. Baron Johann von Eichhoff, a civil

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NFA, Südwest Front I, 1916, Gericht des k.u.k. 11. Armeekommando, Res. Nr. 7, "Personalvermehrung," 4 - 103, May 5, 1916, Karton 427.

<sup>76</sup> On the different purpose of military justice in Austria-Hungary, see, Ernst Franz Weisl, "Zur Reform des Militärstrafprozeß," *Streuffleurs Militärische Zeitschrift* vol. 51, nr. 1 (1910): 351-373.

<sup>77</sup> Recent work on the Austrian military and military culture has started to bring to light how army officers conceived of their role in society. It is useful to compare it to recent work on the imperial civil service. For the military, see Laurence Cole, *Military Culture and Popular Patriotism in Late Imperial Austria* (Oxford: Oxford University Press, 2014); Kronenbitter, "Politische Mentalität"; Günther Kronenbitter, "Kakanischer Militarismus," in *Im Prisma. Bertha von Suttner "Die Waffen nieder!,"* ed. Johann Georg Lughofer (Vienna: Editionartschance, 2010), 115–34. For the imperial bureaucracy's view of multinational Austrian society, see Waltraud Heindl, "Bureaucracy, Officials, and the State in the Austrian Monarchy: Stages of Change since the Eighteenth Century," *Austrian History Yearbook* 37 (2006): 35–57; Waltraud Heindl, *Josephinische Mandarine: Bürokratie und Beamte in Österreich. Bd. 2, 1848-1914* (Vienna: Böhlau, 2013); Ernst Hanisch, *1890-1990: Der Lange Schatten des Staates: Österreichische Gesellschaftsgeschichte im 20. Jahrhundert*, Österreichische Geschichte (Vienna: Ueberreuter, 1994), 221–230.

<sup>78</sup> The Prussian officer corps was the innovator when it came to claims of scientific expertise and their claims were adopted by virtually every officer corps in Europe. See, Michael Geyer, "The Past as Future: The German Officer Corps as Profession," 197.

servant in the Interior Ministry, was the government liaison to the AOK. Hardly a progressive bureaucrat, the Army's attitude toward civilians and justice shocked him. He recounts an exchange between a jurist and a corps commander about ten treason cases. The jurist responded that two merited investigation, but the other eight should be dismissed for evidentiary reasons. "The Corps Commandant then called for his aide-de-camp: 'Here is a list of ten persons guilty of treason. X and Y are to be taken over by Herr Lieutenant-Colonel [the jurist]. The others are to be shot immediately without trial. This is my decision. [Turning to the military jurist] As you can see, I'm not making any problems for you lawyers.'"<sup>79</sup> Even in cases that adhered to military legal procedures, defendants were highly vulnerable. Leading Army legal officers reviewed wartime legal procedures in 1917 and noted that military courts often lacked the requisite legal expertise. Usually only one of five officers on legal panels had judicial training. Moreover, line officers poorly understood legal arguments and often dismissed them. Representation for defendants was ineffectual and courts hard-wired to produce convictions.<sup>80</sup>

But military courts were only the front end of a wedge which the Southwest Front and the Army used to punish perceived disloyalty and shut out the state administration. Beyond military law, officers in the Southwest Front's headquarters envisioned even more dramatic state transformation. Schager, the legal officer, gave concrete form to these visions in four extensive memoranda published as pamphlets and no doubt circulated among officers in the Southwest Front headquarters. The war, a confident Schager argued, could be won militarily, but this meant nothing without addressing the internal rot perverting Austrian political life and state

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<sup>79</sup> Nachlass Eichhoff, in OeStA, KA, NL 874/B.

<sup>80</sup> On these problems and others, see, for example, KA, Kriegsministerium, Präsidial-Büro, Sonderreihe, k.u.k. Divisionsgericht in Graz, "Formelles Militärstrafrecht, undated, Karton 14; KA, Kriegsministerium, Präsidial-Büro, Sonderreihe, k.u.k. Generalmilitäranwalt, Stellv. - Generalauditor Alois Sithoff, September 27, 1917, Karton 14; KA, Kriegsministerium, Präsidial-Büro, Sonderreihe, k.u.k. Militäranwalt des k.u.k. Militärkommandanten in Krakau, "Referat ad Erl.K.M.Abt.4g, Nr. 981 von 1917," undated, Karton 14.

administration. The “influence” of political parties on the administration was to cease. The municipalities (*Gemeinden*) stripped of autonomy and re-subordinated to the central state. The state administration in border regions required complete “cleansing.” Frequent rotations of state administrators would prevent the development of cozy relationships between politicians and bureaucrats. The size of the state administration would be slashed. These measures would overturn the entire political organization of the Empire since the 1867 *Ausgleich*, with its delicate balances between the central state and local autonomy. Schager also wanted military legal jurisdiction over civilians to continue into peacetime for numerous offenses, including the elastic charge of “crimes against the war making power of the state.” Anyone interned during the war, which included a considerable number of state officials and politicians, would lose all “political rights” in the post-war era.<sup>81</sup> These texts foresaw a breathtaking transformation of the state and its relationship to society. Through the war, the Army would brutally and quickly break the bureaucracy’s mediating role in Austrian society. Without the bureaucracy performing a mediating role, according to Schager, the usual ways for national political groups to win concessions from the state would disappear.

The difficulty involved in controlling this ever expanding state of emergency as it insisted on re-establishing what was believed to be a general condition of order was not something unique to Habsburg context. Martin Geyer’s examination of the transition from the legal state of “state of siege” to a “state of emergency” in Imperial Germany during World War I

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<sup>81</sup> OeStA KA, NFA, Kdo.d.SW.Front I, Eigenes Amt produziert vier in der eigener politische Gruppe verfasste Schriften über politische Programme, 4 – 190: Österreichs Glück oder Ende? Ein ernstes Wort in entscheidender Stunde, Innerpolitisches Programm, Innerpolitische Neuordnung Österreichs mit oder ohne Mitwirkung des Parlaments, Die politische Ziele slowenischer Intelligenz, December 12, 1916, Karton 430. Ideas like Schager’s had clearly been circulating throughout officer circles within the Southwest Front and its constituent commands. Two memorandum presage Schager’s in particular and contain very similar ideas. See, OeStA KA, NFA, 5-Armee Etappenkommando (SW Front), Politische Gruppe, K.u.k Kommando der Südwest-Front, “Abwehrmaßnahmen gegen den Irridentismus in Südtirol,” February 1916, Karton 1283; KA, ZSt, Kriegsministerium, Präsidium, 53-2/18, “Bekämpfung des Irredentismus,” November 20, 1915, Karton 1739.

argues that architects of the “state of siege,” who envisioned it as way to control left-wing political dissent, were taken aback by the extent to which they quickly lost control over the state of emergency. While Isabel Hull maintains that the system of governance in Imperial Germany provided an uncertain and fragile and uncertain context for civil-military relations prior to 1914, Geyer posits that the state of emergency combined with high levels of everyday mobilization undermined conservative anticipation of increased order. Geyer argues that the state of emergency in Germany encouraged “a latent condition of anarchy and a Hobbesian struggle of all against all.”<sup>82</sup> The conditions that Geyer describes in Imperial Germany did not mirror those of the Habsburg Empire, but in one essential element they were similar and that rested on the difficulty of controlling the state of emergency.

While “reformers” like Schager wanted to use the state of exception to reorganize and reorder the Habsburg state, such changes would have required the complete capitulation of the state administration from the top down, from Stürgkh and Tisza to the local county and district administrators in Austria and Hungary. And as their resistance to the Army showed, this was not going to happen.<sup>83</sup> Yet, the animating ideas behind such reform plans inspired hundreds of Army micro-moves against the state administration and political class and this conflict was waged often by local commanders and without the knowledge of their superiors. The Southwest Front and its constituent commands excelled at this, as they wedged their way into governance, attacking and denouncing the administration. Even as late as fall 1916, Archduke Eugen routinely asserted his right to issue orders to the political administration and investigate officials suspected of disloyalty. But even Eugen found it difficult to control the behavior of lower level

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<sup>82</sup> Martin Geyer, “Grenzüberschreitungen,” 53-58; Isabel Hull, *Absolute Destruction*, 107-109.

<sup>83</sup> Stürgkh was able to stop AOK demands for a military Statthalter (governor) in Bohemia, but not in the case of Galicia. Christoph Führ, *Das K.U.K. Armeoberkommando*.

commanders; he asked them to cease interfering with the administration and refer such cases to his command first.<sup>84</sup> The behavior of commanders on the Southwest Front, only tethered to their Army inflected sense of right and justice, destroyed the regularity of the Austrian state administration, one of its most appealing elements, and made the state itself appear dangerously unpredictable.<sup>85</sup>

In the Habsburg case, an increasingly unpredictable state under the sway of the state of exception became the norm. Here the examples of Alfred von Fries-Skene, who became the Statthalter (governor) in Trieste and the Adriatic coast (Küstenland), and Christian Social politicians in Tyrol, are instructive. In both cases, the Southwest Front's leadership was not arrayed against the usual nationalist suspects. Fries-Skene and the Christian Social Party were fiercely loyal to the Monarchy, but did not share the Army's dim view of the Monarchy's political practices and wished to maintain boundaries of the constitutional state. Because he had pursued a hard line against nationalists in the province of Carinthia, Fries-Skene was dispatched to Trieste in February 1915 because of impending war with Italy. While Fries-Skene found favor, at least initially, with the AOK, he quickly came under fire from the local leadership of the Southwest Front.<sup>86</sup> They complained that he was weak, that his supposedly hard line against

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<sup>84</sup> OeStA KA, NFA, Kdo.d.SW.Front I, K.u.k. Heeresgruppenkommando GO Erzherzog Eugen, "Ausübung der Rechte des Höchstkommmandierenden," Res. 49659, November 1, 1916, Karton 425. The efforts of the 5<sup>th</sup> Army, Quartermaster Section concerning several local officials in Görz provide a good example in this regard. See, OeStA KA, NFA, Kdo.d.SW.Front I, k.u.k. 5. Armeekommando (Qu.Abt.) to K.u.k. Heeresgruppenkommando GO Erzherzog Eugen, "Görzner Landesbeamte, politische Unverlässlichkeit," September 15, 1916, Karton 425. See also, OeStA KA, NFA, Kdo.d.SW.Front I, k.u.k. Landesverteidigungskommando in Tirol to the k.k. Statthalterei-Präsidium, "Dr. Tullius Baroni, Imst," July 14, 1916, Karton 425.

<sup>85</sup> On the state administration and its objectivity and predictability, see Heindl, "Bureaucracy, Officials and the State." On the damages done to the relationship between citizens and the state after a military intervention, see Moll, *Kein Burgfrieden*, 290–296; 301–361; Moll, "Hochverrat und 'serbophile' Umtriebe."

<sup>86</sup> The AOK praised Fries-Skene's initial attempts to diminish nationalist influence in the bureaucracy, proposing new uniforms for state officials' uniforms so they did not resemble Italian ones. The AOK found that such a hard line could be a model elsewhere in the Monarchy. OeStA KA, ZSt, KM - Präsidium, Präs. 53-2/14, AOK, "Massnahmen des Statthalters in Triest," July 17, 1915, Karton 1739.

Slovenian and Italian nationalists was not hard enough, and that, instead of using the new radical opportunities to cleanse the administration and political life that the war brought, he was reluctant to embrace “order and change.”<sup>87</sup> When anonymous denunciations of Fries-Skene’s administration reached the Southwest Front leadership, it demanded he answer them.<sup>88</sup> Fries-Skene reminded the Southwest Front that change “cannot come overnight” and “repressive measures” were ineffective.<sup>89</sup> Archduke Eugen likewise sought to intervene in civilian personnel decisions and insisted that officials be removed from Fries-Skene’s administration because they were “slavophile sympathetic.” This surprised Fries-Skene, who explained that these officials, though nationally inclined, had performed admirably in understaffed offices.<sup>90</sup> Yet, it was these officials’ connections as conduits between the bureaucracy and political parties that was the real problem. Any such connection had to be sheared according to Eugen and his fellow officers. Such interventions in the very fabric of compromise and cooperation made the state administration’s management of political parties almost impossible.<sup>91</sup>

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<sup>87</sup> OeStA KA, Nachlässe, Nachlaß Pietreich, B/54, Nr. 2: Mapped 1, Diary Entries for June 28, 1915 and February 11, 1916.

<sup>88</sup> OeStA KA, ZS, KM - Präsidium, Präs. 53-7/8, Statthalter in Triest to the Interior Minister, "Staatsfeindliche Propaganda im Bereiche des kuk Militärkommandos Graz, July 5, 1915, Karton 1739.

<sup>89</sup> OeStA KA, NFA, 5. Armee-Etappenkommando (SW Front), 1916-1917, Politische Gruppe, K.k Statthalter in Trieste und im Küstenland to k.u.k Kommando der SW Front, "Bekämpfung des Irredentismus," May 18, 1916, Karton 1283.

<sup>90</sup> OeStA KA, NFA, Südwest Front I, Fries-Skene to Heeresgruppenkommando Erzherzog Eugen, "Baltič Wilhelm Dr. Statthaltereisekretär, und Znidarčič Josef Bezirkskommissär, polit. Gesinnung," Zl. 1655/1-16, July 29, 1916, Karton 427. Unconvinced, the Army still ordered that one of the officials continue to be watched for any signs of disloyalty. See, KA, NFA, Südwest Front, Heeregruppenkommando Erzherzog Eugen to 5. Armeekommando, August 5, 1916, Karton 427. For an earlier example of Fries-Skene trying to explain that he had made sure that he removed unreliable people from the bureaucracy, see, OeStA KA, NFA, Südwest Front I, Fries-Skene to k.u.k. 5.Armeekommando, "Finanzbeamten, Advokaten und Notare des Küstenlandes, politische Betätigung," ZL. Pr. 1390, 4 - 160 / 74 - 2, May 30, 1916, Karton 429.

<sup>91</sup> In 1916, the army waged a particularly vehement campaign against the Chief of the State Prosecutor’s Office in the Austrian Littoral, August Jacopig, demanding that the Justice Ministry force him into retirement. Jacopig’s sin was not to send a list of names of politically-unreliable judges and officials under his command to the AOK. After the Justice Ministry began to drag its feet, the AOK began to assemble a case against Jacopig’s own politically suspect behavior, accusing him of awarding the Order of an Iron Crown to a freemason and ignoring the politics of his underlings. While Jacopig was eventually able to keep his job, his and his underlings’ connections to

Even those with “German” perspectives, which often could stand for a broader, imperial outlook, found themselves caught in the Army’s crosshairs. In Tyrol, the Southwest Front demanded two Christian Social politicians stop travelling near the front without Army authorization. The politicians wanted to meet their constituents, but the local commander, General Viktor Dankl, would have none of this. He threatened both with trials under *Standrecht* if caught near the front again. The Southwest Front later banned one Christian Social deputy, Karl Niedrist, from Tyrol for the duration of the war. Niedrist, complained Eugen, incited the local population against the military. He made fun of the War Minister and encouraged local farmers to hide their livestock from the Army. The *Statthalter* in Innsbruck responded that Niedrist and other deputies were not anti-military and only represented their constituents vis-à-vis the state in line with pre-war practice. In response, Eugen called these travels “agitation trips” that interfered with “political and military administration” and refused to lift the ban.<sup>92</sup>

By 1917, the Army failed in its bid to take over the state, but its efforts had unraveled the Austrian state that had evolved over the past five decades. In the process, the Army created a rickety and dangerous half-state which undermined functioning relationships and networks from peacetime. Rule of law was no longer a neutral space separate from state and society as the Army increasingly arrogated this space to itself. The Army directed an overburdened, potentially fearsome, unpredictable, and ever expanding system of military law against imperial civil society, undermining a cornerstone of Habsburg sovereignty.

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local political life increasingly fell under the military’s watchful eye. See the assembled files Z. 301, 310, 315, 328, 350, 351 in OeStA AVA Justiz, JM, Präsidium A 74 (1916) and NFA, 5. Armee-Etappenkommando (SW Front), 1916-1917, Politische Gruppe, Karton 1283, "Irredentismus - Bekämpfung," May 23, 1916.

<sup>92</sup> Erzherzog Eugen to the Nachrichtenabteilung - AOK, „Abgeordnete, Einfluss auf der Verwaltung,“ February 2, 1916; Statthalter Toggenberg to the Southwest Front, Statt-Präs. 844/6 - XII 76 E, February 26, 1916 in Oswald Überegger, ed., *Heimatfronten: Dokumente zur Geschichte der Tiroler Kriegsgesellschaft im Ersten Weltkrieg*, (Innsbruck: Wagner, 2006), pp. 60-65.

The extent to which the Army had wrecked the state only became fully apparent as the Army was compelled to loosen its grips. In the fall of 1916 Stürgkh's assassination, Franz Joseph's death, and a new Emperor, Karl, sparked a series of changes. Karl dismissed the aggressive Conrad as chief of the AOK and in May 1917 he recalled the *Reichsrat* (Parliament) in Austria that had been out of session since February 1914. The first half year of Karl's reign was marked by tumult within the highest reaches of the imperial government. Karl initially toyed with the idea, cooked in the pots of conservative politicians and German nationalists from Bohemia, that he would reform the monarchy by decree, or *Octroi*. This included proclaiming German as the official language of administration and enacting constitutional and administrative changes to restructure the *Reichsrat*, limiting political parties' capacity for obstructionism. Karl wisely chose not to serve the dish.<sup>93</sup> And yet the radical elements of the scheme also revealed how the preceding years of Army interventions into the state dramatically widened the sense of what was possible.<sup>94</sup> Whereas the political space of pre-war reform plans was bounded by delicate balances and complex tradeoffs among political parties and the administration—otherwise known as cooperation and compromise--the wartime political space the Army left behind was dominated by radical solutions to perceived “problems.”

Karl hoped reconvening the *Reichsrat* would stabilize the state in Austria. Yet, what Karl could not resurrect were pre-1914 political practices. Not only did the *Reichsrat* prove a disaster

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<sup>93</sup> Lothar Höbelt, “*Stehen oder Fallen?*”: *Österreichische Politik im Ersten Weltkrieg* (Wien: Böhlau, 2015), 156-172; Christopher Brennan, “Reforming Austria-Hungary: Beyond His Control or Beyond His Capacity? The Domestic Policies of Emperor Karl I, November 1916 - May 1917” (Ph.D., London School of Economics and Political Science, 2012), 106-158; Elisabeth Kovács, *Untergang oder Rettung der Donaumonarchie?*, vol. 1, nr. 100, Veröffentlichungen der Kommission für neuere Geschichte Österreichs (Wien: Böhlau, 2004).

<sup>94</sup> Historians have often concentrated on the various schemes for an *Octroi* and with it an extensive constitutional reform throughout the Empire. For more recent treatments see Alexander Watson, *Ring of Steel: Germany and Austria-Hungary at War, 1914-1918*. (London: Allen Lane, 2014), 454–455; John W. Boyer, *Culture and Political Crisis in Vienna: Christian Socialism in Power, 1897-1918* (Chicago: University of Chicago Press, 1995), 387–401; Jan Křen, *Die Konfliktgemeinschaft: Tschechen und Deutsche 1780-1918*, Veröffentlichungen des Collegium Carolinum 71 (Munich: R. Oldenbourg, 1996), 325–30.

after a few weeks, but many deputies fused the Army and the state administration together into a single entity of repression. The state administration's failure to deter the Army's interventions became something more sinister in these portrayals. It was now an enabler of the Army's war on Habsburg civil society. Thus Austria's internal war and the military-bureaucratic conflict that comprised it, shredded the state's legitimacy and destroyed pre-war political practices. The quasi-democratic management of the *Reichsrat* or the projection of the *Reichsrat's* authority into the state, made possible through the cozy relationship between political parties and the state administration prior to 1914, was impossible. That was apparent from the moment the *Reichsrat* reconvened. Many of the returning delegates, especially those from areas that had felt the heavy hand of the Army, undermined the government's efforts to manage and moderate the opening statements of various parliamentary factions. František Staněk threatened the Army and state administration, promising that the *Reichsrat* would investigate both for "rapes, when it came to Slavic nationalities." Even Prime Minister Heinrich Clam-Martinic's statement honoring the war dead became an avenue of attack. A leading Slovenian deputy, Anton Korošec, stated "we mourn them...but that hundreds and hundreds had to waste away in prison at the beginning of the war as the result of national hate, that many innocents were condemned, some even to death, that, Gentlemen, we will never forget, that will burn like a deeply painful wound." This did not mean a break from the Monarchy, but Korošec claimed that everyone wanted the bureaucrats and officers behind such persecution dealt with. Another speaker condemned the Army, describing its soldiers as a "Soldatska," invoking memories of the out of control soldiery from the Thirty Years War.<sup>95</sup> Lothar Höbelt argues the *Reichsrat* of 1917 and 1918 could finally "practice

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<sup>95</sup> *Stenographisches Protokoll. Haus der Abgeordneten. XXII Session.* Statements by František Staněk, Anton Korošec, Adolf Stránský, pp. 60, 126, 142.

normal parliamentary politics” by avoiding obstruction and encouraging coalitions.<sup>96</sup> But the *Reichsrat* made little effort to look forward. Rather than mobilizing support for the imperial state, a reopened *Reichsrat* became a mobilizing point against it.<sup>97</sup>

One can view the opening of parliament as the last in a long line of difficult reform projects, most begun well before the war and all underlined by the state’s refusal to recognize the need for national autonomy across the Empire. But such a view reduces the war and the Army’s interventions in the first 2 1/2 years to events that only exacerbated problems already present in the Monarchy. We argue that war made its own unique crises, crises that destroyed the rule of law and the predictability and solidity of the Habsburg state. These crises were not a product of a long term imperial flaw, but of the Army’s emasculation of the state administration and the internecine conflict between the Army and state since the war’s start.

## Conclusion

After the war ended, an Austrian commission investigated the Army’s wartime misdeeds. One investigation focused on Major General (*Feldmarschalleutnant*) Alois Pokorny. Soldiers under Pokorny’s command were sent to Lipice in Galicia on August 14, 1914 to investigate flashes of light coming from the village. As a prank, though ill-advised, the mentally disabled Johann Grecko entertained villagers by blowing gasoline into a lighted match, creating intense

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<sup>96</sup> See Lothar Höbelt, “Parteien und Fraktionen im Cisleithanischen Reichsrat,” in *Die Habsburgermonarchie 1848-1918. Volume VII/1. Verfassung und Parlamentarismus*, ed. Helmut Rumpler and Peter Urbanitsch (Vienna: Österreichische Akademie der Wissenschaften, 2000), 996–1006; Lothar Höbelt, “Late Imperial Paradoxes: Old Austria’s Last Parliament, 1917-18,” *Parliaments, Estates & Representation* 16, no. 1 (1996): 207–16.

<sup>97</sup> Older histories, which have focused on the national disintegration of the Habsburg Monarchy, focus on the Slavic Parties’ national reform programs and ignore the fury of the deputies against the government and the military. See Z. A. B. Zeman, *The Break-up of the Habsburg Empire, 1914-1918*. (London: Oxford University Press, 1961), 122–130; Leo Valiani, *The End of Austria-Hungary* (New York: Knopf, 1973), 178–79. For a corrective see the introduction (with a helpful list of Slovenian interpellations in 1917-18 which addressed the political persecution of Slovenes early in the war): Pleterski, *Politično*, i, 5-29.

flashes of light. Pokorny's overzealous soldiers believed Grecko signaled Russian units and arrested him for treason. With Russian units 12 to 13 kilometers away and Lipice in a valley, it was an inauspicious spot for signaling. The military court's preliminary investigations cast doubt on the charges. Pokorny believed this reflected insufficient appreciation for the security situation in Galicia and ordered a summary court to retry Grecko. "When we don't ruthlessly proceed against this scum," Pokorny exclaimed, "they are going to overwhelm us." The court sentenced Grecko to ten years in prison, a lighter sentence because doubts about Grecko's age ruled out the death penalty. This case, according to the Austrian post-war commission, exemplified extra-legal wartime practices. "The war," the Commission explained, "was a destroyer of moral values, in particular it also gravely undermined the legal order." It undercut "sympathy for legality among the populace" within post-war Austria and, one might add, in the other Habsburg successor states.<sup>98</sup>

We have argued that, in many ways, the Habsburg Empire was no outlier among belligerents in the First World War. Like the other states, it suspended constitutional government through a state of emergency to help prosecute a war and manage the home front as the stakes of winning and losing became higher and higher. And, increasingly, its administration and political elites fought a battle against an Army that used the war and the state of exception to attempt a transformation of the state and larger society. Unlike France or Germany, the Habsburg Empire, after more than four years and three months of war, collapsed utterly and vanished from the map. The question of why the Habsburg Empire collapsed is a complex one to be sure. Hunger and the continuing sacrifices that war enacted on the populace were great, as were the attempts of the Entente to entice its nationalities away from supporting the Empire. But we believe at the most

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<sup>98</sup> AVA, Justiz JM, Signatur VI/1, Pflichtverletzungen im Kriege, Deutsch-österr. Staatsamt für Justiz, Z 1282/8, May 16, 1920, Karton 3451.

fundamental level the state of exception and the instrumentalization of law irreparably changed the Habsburg Empire and destroyed the basis of its legitimacy. For the modern Habsburg Empire was built, since the days of Maria Theresa, by the Habsburgs and its bureaucracy on the principle of standardization and centralization and the idea that the law could be a neutral space, accessible to varying peoples and groups. As Pieter Judson admirably tells us in his recent magnum opus, this standardization push of Enlightened Absolutism resulted in an administration and a populace alike that was “extremely sensitive to issues of formal legality.”<sup>99</sup> This role for rule of law, in idea if not always in practice, existed not only in purportedly democratic Western states, but also in European states such as Tsarist Russia or beyond to Qing China or British India as David Gilmartin and Jonathan Ocko have argued.<sup>100</sup> Prior to the war, the rule of law helped ease Habsburg society’s acceptance of the state’s political projects and compromises. Moreover, nationalist politicians and movements depended on the rule of law to protect them from majority rule and to regulate their relationship to each other. The type of infrastructural power that undergirded these projects and compromises, as Michael Mann argues, was simultaneously constructed against assertions of despotic power by particularistic societal elites.<sup>101</sup> But war

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<sup>99</sup> Pieter M. Judson, *The Habsburg Empire*, quote on 107.

<sup>100</sup> Jonathan K. Ocko and David Gilmartin, “State, Sovereignty, and the People: A Comparison of the ‘Rule of Law’ in China and India,” *Journal of Asian Studies* 68, no. 1 (Feb. 2009): 55-100. On late imperial Russia, even the peasantry, often viewed a group not inclined to legality, availed itself of the procedural legality of the Tsarist state when seeking redress for disputes. See, Jane Burbank, *Russian Peasants Go to Court: Legal Culture in the Countryside, 1905-1917* (Bloomington, Ind.: Indiana University Press, 2004), 247-250; Tatiana Borisova, “The Digest of Laws of the Russian Empire: The Phenomenon of Autocratic Legality,” *Law and History Review* 30, no. 3 (August 2012), 925.

<sup>101</sup> Michael Mann, “The Autonomous Power of the State: Its Origins, Mechanisms and Results,” in *States, War and Capitalism: Studies in Political Sociology* (Oxford: Basil Blackwell, 1988), 1–32; Michael Mann, “Infrastructural Power Revisited,” *Studies in Comparative International Development* 43, no. 3–4 (December 2008): 355–65. If we follow Mann’s line of argument and apply it to the Habsburg Empire, the range of comparison for the Empire in terms of how its state operated and the type of power it wielded expands beyond its usual circle of comparison (Germany, Tsarist Russia, and the Ottoman Empire). The work of William Novak on the American state in the nineteenth century offers potential lines of comparison with the nineteenth century Habsburg state. See, William Novak, “The Myth of the ‘Weak’ American State,” *American Historical Review* 113, no 3 (June 2008): 752-772.

changed the way law functioned in the Empire and in Europe. The Army's antipolitical habitus, through its claims to being apolitical and neutral, gave it easy access to the similar space occupied by rule of law. Law even gave form if not content to the Army's interventions as demonstrated by its preference for the expansion of military law within the Empire as a coercive tool. The Army, however, instrumentalized the space occupied by rule of law on behalf of its vision of a radically reworked Habsburg state and society. And it was this instrumentalization that the nineteenth-century constitutional state had such difficulty handling in the Habsburg case.

Like the proverbial canary in the mine, the Habsburg Empire, given the centrality of rule of law to its legitimacy, was more sensitive than most to the poison gases that the First World War unleashed.<sup>102</sup> As the world descended into the twentieth century, the Habsburg canary died. That subsequent historiography has blamed the Habsburg state, as anachronistic, or unfit to live, is yet another legacy of the twentieth century and the violence and devastation that the abandonment of the *Rechtsstaat* wrought.

The First World War claimed the *Rechtsstaat* as one of its silent casualties. Eastern Europe experienced the afterlives of rule of law's collapse and law's instrumentalization most directly, weakening legal structures across the region in spite of post-war efforts to create constitutional states with international oversight through the League of Nations when it came to

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<sup>102</sup> From Black and Tans in British Ireland to the Alien, Espionage, and Sedition Acts in the United States, legal exceptionalism and repressive violence partially clothed in the mantle of the law could replace pre-war law and judicial procedures. David Leeson, *The Black and Tans: British Police and Auxiliaries in the Irish War of Independence, 1920-1921* (Oxford: Oxford University Press, 2011); Peter Judson Richards, *Extraordinary Justice: Military Tribunals in Historical and International Context* (New York: New York University Press, 2007); David M. Kennedy, *Over Here: The First World War and American Society*, 25th anniversary ed. (Oxford: Oxford University Press, 2004), 79-81.

minorities.<sup>103</sup> Whether one examines interwar Austria, Poland after Piłsudski's coup d'état in 1926, or Yugoslavia after the imposition of a military dictatorship by King Alexander, just to name a few, extra-legal solutions were no rarity in Eastern Europe. World War II accelerated the weakness of legal structures in Eastern Europe, as Jan Gross argued.<sup>104</sup> Fixing the collapse of rule of law in the first half of the twentieth century in Eastern Europe in the Habsburg Army's actions during World War I creates a historical point of origin around political decisions as opposed to placing the collapse within an essentialized pathology of the region characterized by excessive nationalism, developmental deficits, or dependence on external actors.<sup>105</sup>

The instrumentalization of legality during the war resonated beyond post-war Habsburg Eastern Europe. Problems emerging out of the nexus that straddled rule of law and civil-military relations cropped up again and again over the twentieth century. Could the vestiges of the nineteenth-century constitutional state maintain the rule of law as a neutral space separate from state and society amidst wartime crisis and fraught civil-military relations? The First World War expanded the reach of emergency laws, once considered separate from the rule of law, and they became increasingly permanent conditions, warping and discrediting the constitutional state and its claims. It is no accident that intellectual genealogies of the state of emergency that assert that it is constitutive of the rule of law, such as that argued for by Carl Schmitt, are themselves

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<sup>103</sup> Carole Fink, *Defending the Rights of Others: The Great Powers, the Jews, and International Minority Protection, 1878-1938* (Cambridge: Cambridge University Press, 2004). See also the recent work Robert Gerwarth, *The Vanquished: Why the First World War Failed to End* (New York: Farrar, Straus and Giroux, 2016).

<sup>104</sup> Jan T. Gross, "Social Consequences of War: Preliminaries to the Study of Imposition of Communist Regimes in East Central Europe," *East European Politics & Societies* 3, no. 2 (March 1989): 198–214.

<sup>105</sup> Jörg Baberowski and Dietrich Beyrau, *Moderne Zeiten?: Krieg, Revolution und Gewalt im 20. Jahrhundert* (Göttingen: Vandenhoeck & Ruprecht, 2006); Jörg Baberowski and Gabriele Metzler, *Gewalträume: Soziale Ordnungen im Ausnahmezustand*, vol. 20, *Eigene und Fremde Welten* (Frankfurt: Campus Verlag, 2012); Jörg Baberowski, David Feest, and Christoph Gumb, *Imperiale Herrschaft in der Provinz: Repräsentationen Politischer Macht im Späten Zarenreich*, vol. 11, *Eigene und fremde Welten* (Frankfurt: Campus, 2008); Timothy Snyder, *Bloodlands: Europe between Hitler and Stalin* (New York: Basic Books, 2010); Ivan T. Behrend, *The Crisis Zone of Europe: An Interpretation of East-Central European History in the First Half of the Twentieth Century*, trans. Adrienne Makkay-Chambers (Cambridge: Cambridge University Press, 1986), 49-71.

products of the First World War era.<sup>106</sup> Whether in Latin America at moments from the 1950s through the 1980s, the United States of the late 1940s, or the United States in the midst of the war on terror and the invasion of Iraq, those states that maintained a deep constitutional and legal heritage from the nineteenth century found themselves facing similar crises, though they availed themselves of a range of solutions to these crises.<sup>107</sup> As these crises brought forth an increasing instrumentalization of law we can ask if the twentieth century's history could be written in terms of the erratic and contingent destruction of the constitutional state and not as a narrative of the rise of extremist modernizing ideologies like communism or fascism. Such a narrative as we are

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<sup>106</sup> On the relationship between the First World War and Schmitt's thought, see, Michael Dylan Rogers, "The Development of Carl Schmitt's Political Thought during the First World War," *Modern Intellectual History* 13, no. 1 (April 2016): 123-149. See also Agamben, *State of Exception*, ch. 1.

<sup>107</sup> Particular Latin American militaries had remarkably similar rhetoric to that of the Habsburg Army on the corruption of the constitutional state. In Argentina, for example, the banning of political parties and attacks on machine politics were hallmarks of the period of military dictatorship from 1955 to 1983. See, David Rock, "Argentina: A Hundred and Fifty Years of Democratic Praxis," *Latin American Research Review* 40, no. 2 (2005), 223-224. While the strength of the claim for separation from state and society for rule of law might not have been as strong as in the Habsburg case, the instrumentalization of the legal sphere was present during periods in which the Argentine military usurped power in that country, for example. On the Army's use of emergency laws during the General Jose Uriburu's coup against the populist government of Hipolito Yrigoyen, see, Robert A. Potash, *The Army and Politics in Argentina, 1928-1945* (Stanford: Stanford University Press, 1969), 60-65. Like the Habsburg Army, Latin American authoritarian regimes closely tied to the military often still aspired to the appearance of procedural legality, though they seemed much more prepared to dominate the judiciary as opposed to dismantling it. See, Matthew M. Taylor, "Beyond Judicial Reform: Courts as Political Actors in Latin America," *Latin American Research Review* 41, no. 2 (2006), 270-271. The First World War also transformed the way in which the Argentine Army viewed itself and it, like the Habsburg Army, began to see itself as the impartial savior of the country, though with a clear nationalist inflection. See, David Rock, *Authoritarian Argentina: The Nationalist Movement, Its History, and Its Impact* (Berkeley: University of California Press, 1993), 66-67. In the case of the United States, military elites were more hesitant about asserting their authority against civilian authority. But moments when the national security state expanded often raised heated discussions of the proper place of the military within the architecture of the US government. The bundle of laws created with the advent of the Cold War, especially the National Security Act of 1947 and the reintroduction of peacetime conscription, were a moment of such controversy. See, Michael J. Hogan, *A Cross of Iron: Harry S. Truman and the Origins of the National Security State, 1945-1954* (Cambridge: Cambridge University Press, 2007); Douglas T. Stuart, *Creating the National Security State: A History of the Law that Transformed America* (Princeton, N.J.: Princeton University Press, 2008). General Creighton Abrams, the chief of staff of the U.S. Army in the early 1970's, shaped the integration of the standing army and the reserve forces in a way that would, he believed, force political leaders to call up reserves even when a small amount of the army was committed to conflict. This was an attempt to use the structure of the Army to restrict political leaders freedom when it came to decisions about war and peace. See, Andrew J. Bacevich, *The New American Militarism: How Americans Are Seduced by War* (Oxford: Oxford University Press, 2005), 34-41. The civil-military contests over legal constraints in the constitutional state was not always a story of unidimensional pressure from the military on these constraints. The case of the United States in the War on Terror reveals how portions of the military, especially the Army, pushed back against attempts to loosen the constraints around "enhanced interrogation" of captured suspected terrorists. The Army, especially Judge Advocate General or legal officers, objected to the watering down of the international conventions that such methods required.

suggesting helps to link the twentieth century with a previous Age of Revolutions from the late eighteenth and early nineteenth centuries that pushed for constitutionalist states along with an emphasis on the rule of law.<sup>108</sup> Moreover, it has the potential to link elements of the crisis surrounding the First World War and rule of law in the early twentieth century, with its charges of a plodding, slow moving Habsburg state built on tedious, legalistic compromises forward to the contemporary crisis of the European Union where the same charges fill the atmosphere. A narrative of the twentieth century that focuses on the fall of that nineteenth-century state and the legal architecture surrounding it, would be well advised to consider the experience of the Habsburg Empire not as an aberration but as an instructive and intensified example of what was to come.

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<sup>108</sup> We follow the compelling arguments of Jeremy Adelman with regard to the transnational elements at the heart of the Age of Revolutions as well as the persistence of constitutionalist legal projects within Latin America, even in a period that has long been considered authoritarian. See, Jeremy Adelman, "The Age of Imperial Revolutions," *The American Historical Review* 113, no. 2 (April 2008): 319- 340; and Jeremy Adelman, "Liberalism and Constitutionalism in Latin America," 508-516. In historians' emphasis on authoritarianism over constitutionalist and rule of law projects, there are similarities between the Latin American and Habsburg cases. On the broader push for constitutionalism and the ubiquity of such projects into the nineteenth century, see, Linda Colley, "Empires of Writing."