

## Transactions of the Royal Historical Society

Date of delivery:

Journal and vol/article ref: **RHT** **1500005**

Number of pages (not including this page): 22

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# TRAITORS AND THE MEANING OF TREASON IN AUSTRIA-HUNGARY'S GREAT WAR

By Mark Cornwall

READ 26 SEPTEMBER 2014

ABSTRACT. Treason is a ubiquitous historical phenomenon, one particularly associated with regime instability or wartime loyalties. This paper explores the practice and prosecution of treason in the last decades of the Habsburg monarchy with a special focus on some notorious wartime treason trials. It first sets the rhetoric and law of treason in a comparative historical context before assessing the legal framework supplied by the Austrian penal code of 1852. Although the treason law was exploited quite arbitrarily after 1914, the state authorities in the pre-war decade were already targeting irredentist suspects due to major anxiety about domestic and foreign security. In the Great War, the military were then given extensive powers to prosecute all political crimes including treason, causing a string of show-trials of Bosnian Serbs and some leading Czech politicians. By 1917–18, however, this onslaught on disloyalty was backfiring in the wake of an imperial amnesty: as loyalties shifted away from the Habsburg regime, the former criminals themselves proudly began to assume the title of 'traitor'. The paper is a case-study of how regimes in crisis have used treason as a powerful moral instrument for managing allegiance. It also offers a new basis for understanding instability in the late Habsburg monarchy.

In early 1919, a few months after Czechoslovakia declared independence from the Austro-Hungarian empire, a former Habsburg military judge travelled by train from Prague to Vienna. During the war, Jaroslav Kunz had headed one of Vienna's military courts, but he was now in Czechoslovak service and keen to assert his new patriotism. He was visiting the Austrian capital to collect his mother and sister and repatriate them but he was also there on a special mission. The Czechoslovak prime minister, Karel Kramář, and others in the government had asked him to locate the archive of the notorious Czech treason trials of 1914–17 and to claim it as Czechoslovak property. When Kunz finally tracked down the records to the court house where he himself had worked, he was horrified at what he found. Not only were thousands of court documents – protocols, letters and photographs – strewn all over the floor. They were being fed by soldiers into a stove in order to heat the building. 'It was a true picture of Austrian disintegration', wrote Kunz later: 'So ended the infamous work of Austrian military justice!'<sup>1</sup> He finally found fragments

<sup>1</sup> Jaroslav Kunz, *Náš odboj v zrcadle rakouské vojenské justice* (Prague, 1930), 6–10.

37 of Czech treason material, had them packed in boxes and sent back to  
 38 Prague. Over the next decade, he would reproduce them in colourful  
 39 reminiscences, peering behind the black and yellow Habsburg curtain so  
 40 that, as he said, ‘we do not forget the cage in which we lived’.<sup>2</sup>

41 Many documents from the wartime trials in Vienna had been  
 42 destroyed, or – in the case of the most famous Russophile trial<sup>3</sup> – never  
 43 seem to have undergone archival repatriation. In the Czech case, since  
 44 1919, most have remained unsorted in Prague and ignored by historians.  
 45 In part, this document-diaspora explains why the history of high treason  
 46 (*Hochverrat*) in wartime Austria-Hungary has been so neglected. Usually  
 47 in the past century, those writing about the subject have had a national-  
 48 political agenda – on behalf of the ‘national traitors’ – to demonstrate  
 49 their righteous struggle under the Habsburg yoke. This was especially  
 50 true in the mass of Czech memoirs that surfaced in the interwar period,  
 51 recalling Czech martyrdom in Vienna’s so-called ‘Prison of Death’. From  
 52 that ‘Viennese bastille’ the traitors had survived *en masse* to tell their  
 53 story, to bolster a new Czech national narrative, while the voices of their  
 54 accusers were silent since the Habsburg regime had lost its legitimacy. In  
 55 contrast, in the new state of Yugoslavia after the Great War, there was  
 56 a much fainter echo of the court trials conducted against Bosnian Serb  
 57 traitors.<sup>4</sup> In fact it was not until the late 1980s, when Serbian nationalism  
 58 was suddenly resurgent in Yugoslavia, that some popular and academic  
 59 interest was aroused in the mass treason trials of Bosnian Serbs.<sup>5</sup> Some  
 60 Serbian historians then rekindled the subject to meet a contemporary  
 61 agenda, showing how the myth of the traitor has often been cyclically  
 62 exploited in nationalist narratives.

63 To paraphrase the German journalist Margret Boveri, let us take a  
 64 walk in this Austro-Hungarian ‘landscape of treason’, for it is a very  
 65 instructive ramble for any historian.<sup>6</sup> Treason, of course, is historically  
 66 ubiquitous and the ultimate political crime. It always involves some kind  
 67 of power struggle, a perceived challenge to existing authority, or a threat to  
 68 an established political community that may endanger state security. The  
 69 cry of ‘treason’ or ‘traitor’ has consistently been invoked over the centuries  
 70 as a linguistic device with which to disarm a political opponent, a way  
 71 of publicly branding some disloyalty to a cause or community. But more

<sup>2</sup> Jaroslav Kunz, *Ža černožlutou oponou. Ž Videňských vzpomínek* (Prague, 1921), 5.

<sup>3</sup> That of the Ruthene politician Dimitrij Markov in the summer of 1915.

<sup>4</sup> For example, Vladimir Čorović, *Crna knjiga. Patnje Srba Bosne i Hercegovine za vreme svetskog rata 1914–1918* (Belgrade and Sarajevo, 1920).

<sup>5</sup> See the useful proceedings of a Bosnian conference from 1986, collected in *Veleizdajnički proces u Banjaluci. Žbornik radova*, ed. Galib Šljivo (Banjaluka, 1987); and the more popular nationalist work by Djordje Beatović and Dragoljub Milanović, *Veleizdajnički procesi Srbima u Austro-Ugarskoj* (Belgrade, 1989).

<sup>6</sup> Margret Boveri, *Der Verrat im 20. Jahrhundert* (Reinbek bei Hamburg, 1976), 7.

concretely, the concept of treason was and is embedded in most states' criminal codes, constituting there 'the heaviest and most cumbersome weapon in the fight for political power'.<sup>7</sup>

Whether rhetorically or judicially, treason has always been pronounced as the most abominable act. Just as the thirteenth century English jurist Henry de Bracton advised that it exceeded all other crimes, so Edward Coke when condemning the Gunpowder plotters in 1606 piled up his metaphors to describe the insidious, covert world of the traitor: 'For Treason is like a tree whose root is full of poison, and lyeth secret and hid within the earth'; it required the severest punishment imaginable (hanging, drawing and quartering).<sup>8</sup> Three centuries later, at the trial of Roger Casement in 1916, another attorney general F. E. Smith opened his prosecution by stressing treason as 'the most heinous crime', while the judge later directed the jury: it was 'the gravest known to the law' and (in wartime) 'almost too grave for expression'.<sup>9</sup> An Austrian jurist around the same time defined *Hochverrat* as a peculiar crime which, because of its special dangers and unforeseeable consequences, deserved the harshest penalty.<sup>10</sup>

The treason trial well into the twentieth century was the ultimate theatre for a public power struggle, where regimes would don a mask of legality in order to eliminate those identified as traitors. In this process, the traitor was always demonised, for in all cases of treason the struggle for power is interpreted in moral terms: allegedly, the moral universe of the community, the collective, has been violated by one of their own who has become a traitor.<sup>11</sup> In the sixteenth century, the traitor might still be interpreted as Satan's agent working against God's anointed.<sup>12</sup> By the twentieth, he was more likely, as in the case of Casement's 'homosexual depravity', to be simply stigmatised or pathologised for his base character traits. The violent language deployed for this purpose crossed all borders and cultures. It could be extreme when the final contest was actually a show-trial with minimal defence and no redress. Thus, in Hungary in 1950, the traitors in one Stalinist show-trial were described as the 'scum

<sup>7</sup> Otto Kirchheimer, *Political Justice: The Use of Legal Procedure for Political Ends* (Princeton, 1961), 76.

<sup>8</sup> Coke's words, in *A True and Perfect Relation of the Whole Proceedings against the Most Barbarous Traitors* (1606), D4; J. G. Bellamy, *The Law of Treason in England in the Late Middle Ages* (Cambridge, 1970), 7.

<sup>9</sup> *Trial of Roger Casement*, ed. H. Montgomery Hyde (1960), 7, 179. See similarly: *The Trial of William Joyce*, ed. C. E. Bechhofer Roberts (1946), 30.

<sup>10</sup> *Das Strafgesetz über Verbrechen, Vergehen und Uebertretungen: nebst den hiezu efflossenen Nachtragsgesetzen*, Oesterreichische Gesetzkunde, II, ed. Ludwig Altmann (Vienna, 1913), 62.

<sup>11</sup> Nachman Ben-Yehuda, *Betrayals and Treason: Violations of Trust and Loyalty* (Boulder, CO, and Oxford, 2001), 125.

<sup>12</sup> Lacey Baldwin Smith, *Treason in Tudor England. Politics and Paranoia* (1986), 129–38.

104 of society' who had turned to treason 'because of their cowardly and  
 105 vacillating characters'.<sup>13</sup> In 2013, the uncle of North Korea's dictator was  
 106 executed because he was 'despicable human scum, worse than a dog  
 107 [who had] perpetrated thrice-cursed acts of treachery'; history would  
 108 never forget his 'shuddering crimes'.<sup>14</sup>

109 In all these cases, though the treason was socially constructed and  
 110 peculiar to its era, the regime usually defined the crime in universal  
 111 terms, emphasising a timeless morality which the traitor had transgressed.  
 112 Sometimes – rarely – the power struggle ended with the traitor's victory.  
 113 More often, the moral construction of treason was turned on its head by  
 114 the accused. The traitors – whether the earl of Strafford in 1641, Casement  
 115 in 1916 or the Norwegian fascist Vidkun Quisling in 1945 – might at their  
 116 trial take a final stand for posterity, publicly appealing to history or some  
 117 higher power in order to challenge the court's moral superiority and foster  
 118 some posthumous legacy of their own.<sup>15</sup> Many traitors, if given a voice,  
 119 pointed the finger of treason at their accusers, identifying them as the real  
 120 traitors to the wider community.

## I

121  
 122 In the late Habsburg monarchy, we can find many features of this  
 123 generic landscape of treason. Those put on trial were usually stigmatised  
 124 as 'depraved' and misguided individuals who had no moral compass.  
 125 Not only had they cunningly plotted for years to undermine the natural  
 126 order, but the entangled roots of their treason finally flourished in some  
 127 monstrous enterprise. Thus, in 1916, the prosecutor at the trial of Karel  
 128 Kramář would claim that the seeds of his 'ignominious treason' had  
 129 effectively caused the First World War.<sup>16</sup> The fact that such treason trials  
 130 were so prolific in Austria-Hungary's final decade requires an explanation.  
 131 It fully matches a pattern where traitors are usually sought and found  
 132 during periods of regime instability or in wartime, when loyalty to the  
 133 state has to be publicly displayed, and an example made of any prominent  
 134 individuals who seem to be disloyal.

135 A deeper consideration is where we should place the late Habsburg  
 136 monarchy in the broader landscape of treason (where the historiography

<sup>13</sup> The concluding speech of the prosecutor Gyula Alapi, in *László Rájk and his Accomplices before the People's Court* (Budapest, 1949), 272–3: 'The only defence against mad dogs is to beat them to death.'

<sup>14</sup> *Guardian*, 14 Dec. 2013, 3.

<sup>15</sup> See for example Strafford's defence in J. P. Kenyon, *The Stuart Constitution. Documents and Commentary* (Cambridge, 1966), 194–5; Casement, ed. Montgomery Hyde, 200–4; Oddvar Hoidal, *Quisling: A Study in Treason* (Oslo, 1989), 754, 764.

<sup>16</sup> Archiv Ústavu TGM (AÚTGM: Archive of the T.G. Masaryk Institute, Prague), Fond Maffie, karton 39, XIII: Markus Preminger's concluding speech at the Kramář trial, 3845–6.

is singularly weak for the modern era).<sup>17</sup> Austria-Hungary in the early twentieth century sat on the edge of two worlds, with treason still mainly signifying disloyalty to the Habsburg monarch and his empire. In contrast, treason for the rest of the twentieth century was increasingly interpreted ideologically, as a question of allegiance to a political system, whether communist, fascist or democratic-capitalist. By the twentieth-first century, with Edward Snowden labelled alternatively as a traitor or a 'whistle-blower', it has become far more problematic to find the meaning of treason or to pinpoint where individuals owe their loyalty in a global world. In short, as Britain has recently found with young jihadists, treason has become far harder for states to police.

The charge of *Hochverrat* in wartime Austria-Hungary gained its power because, alongside a strong rhetoric about treason from July 1914, the accusation lay within a firm legal framework. This matched the idea of the Austro-Hungarian monarchy after 1867 as a *Rechtsstaat*, a state where its citizens had equal protection under the law. The major penal code remained the Austrian code of 1852, completed during the decade of dynastic neo-absolutism. Hungary issued its own criminal code in 1878, relying heavily on German and French models, but it was the Austrian that remained valid for most treason trials of the First World War.<sup>18</sup>

Under this code, the relevant paragraph was §58. Like all treason laws on the European continent, §58 incorporated major threats to both internal and external state security, and especially matched imperial Russia's definition of the crime.<sup>19</sup> Treason under §58 had three key objects. The first clause (§58a) protected the monarch's physical safety, defining it as treason to injure or endanger the person of the emperor. Unlike in England or Italy, this did not cover other members of the imperial family, so the assassination of Archduke Franz Ferdinand at Sarajevo in 1914 was not in itself a treasonable act. Nor did simple abuse or disrespect towards the monarch constitute treason: since the 1780s, *Majestätsbeleidigung*, which

<sup>17</sup> There have been few attempts to conceptualise the modern history of treason, but see Ben-Yehuda, *Betrayals and Treason*, and Thomas Noetzel, *Die Faszination des Verrats. Eine Studie zur Dekadenz im Ost-West-Konflikt* (Hamburg, 1989). Cf. the plentiful studies for early modern England, such as John Bellamy, *The Tudor Law of Treason: An Introduction* (1979), and Lisa Steffen, *Defining a British State: Treason and National Identity, 1608–1820* (Basingstoke, 2001).

<sup>18</sup> Josef Prušák, *Rakousko právo trestní* (Prague, 1912), 14. The territory of Croatia-Slavonia (autonomous under Hungary) retained the Austrian 1852 code with some Croatian amendments. The code was also introduced in Bosnia-Herzegovina after its occupation in 1878.

<sup>19</sup> For the following, see the comparative discussion by Franz van Calcker, 'Hochverrat und Landesverrat', in *Vergleichende Darstellung des deutschen und ausländischen Strafrechts. Vorarbeiten zur deutschen Strafrechtsreform*, ed. Karl Birkmeyer, Fritz van Calcker, Reinhard Frank *et al.*, Besonderer Teil, I (Berlin, 1906), 2–71. Also, *Das Strafgesetz*, ed. Altmann, 60–5, and Wolfgang Pfeifer, 'Der Hochverrat im österreichischen Strafrecht vom 18. Jahrhundert bis zur Gegenwart' (Ph.Diss, Graz, 2008), 120–30.

167 might include refusing to shake the emperor's hand as well as more  
 168 open hostility in word or deed, had been down-graded and codified  
 169 separately.<sup>20</sup> The second clause (§58b) made it treason to instigate a  
 170 violent change of government; most famously it was employed in 1870  
 171 against Austrian socialists who had demonstrated in the streets of Vienna  
 172 and were deemed to have a violent revolutionary purpose.<sup>21</sup> Both of  
 173 these clauses had existed since the Austrian criminal code of 1803. Both  
 174 conceived treason as the attempted as well as the completed act, so there  
 175 was no such thing as 'attempted treason'.

176 But it was the third clause (§58c) which the Habsburg authorities would  
 177 wield most persistently during the Great War since it tied the empire's  
 178 existence to an external threat. All the major wartime trials were based  
 179 on this rubric of territorial treason (*Gebietshochverrat*) which had originated  
 180 in the mid-nineteenth century in the unstable aftermath of the 1848  
 181 revolutions. Under §58c, treason was defined vaguely not only as causing  
 182 a danger to the external security of the state (as in the 1803 code), but as  
 183 fomenting civil war at home or – most significantly – as working to detach  
 184 a part of the imperial territory.<sup>22</sup> The attempted act was again akin to  
 185 the act itself; the crime might be committed in speech, word or deed,  
 186 with or without violence. So there was ample scope in §58c for clever  
 187 lawyers to twist treason to match the state's political objectives. Even if  
 188 many of these clauses had exact parallels in other European penal codes  
 189 (Russian or Italian for example), Austrian law was still one of the severest  
 190 in Europe, prescribing execution by hanging for all forms of treason.  
 191 Traitors in the Magyar half of the empire were luckier since Hungarian  
 192 law, though similar, was more precise and only a physical attack on the  
 193 king required the death penalty.<sup>23</sup>

194 It was therefore §58 which was the major legal basis for *Hochverrat*  
 195 and, as with the English Treason Act of 1351, its vagueness or potential  
 196 for politicised 'construction' laid it open to abuse. Indeed, in the decade  
 197 before the Great War, several Austrian jurists had pointed out the dangers  
 198 inherent in §58 and argued for a complete overhaul of a penal code much  
 199 of which was over a century old. In 1913, the Austrian minister of justice

<sup>20</sup> Philip Czech, *Der Kaiser ist ein Lump und Spitzbube. Majestätsbeleidigung unter Kaiser Franz Joseph* (Vienna, Cologne and Weimar, 2010), 66–80.

<sup>21</sup> Herbert Steiner, 'Der Wiener Hochverratsprozess 1870', in *Sozialistenprozesse: Politische Justiz in Österreich 1870–1936*, ed. Karl R. Stadler (Vienna, 1986), 13–30.

<sup>22</sup> Pfeifer, *Der Hochverrat im österreichischen Strafrecht*, 120–1, 128–9. Contemporary legal commentaries noted that Austrian law, unlike German, French or Italian, had no specific conception of *Landesverrat* (betraying state security), but partly subsumed it into *Hochverrat* in §58c: see Calker, *Hochverrat und Landesverrat*, 11, 63.

<sup>23</sup> See the Hungarian Criminal Code of 1878 (§126–38). §126–7 covered almost exactly the same fields as the Austrian §58 but were more detailed with special protection for Hungarian territory. For a German translation: *Das ungarische Strafgesetzbuch über Verbrechen und Vergehen*, tr. Gustav Steinbach (Budapest, 1878), 30–3. My thanks to Attila Barna for this source.



had told the Upper House of the Austrian Reichsrat that the law failed to reflect the major transformation that had occurred in the past century in relations between citizens and the state.<sup>24</sup>

Yet apart from §58, the Austrian penal code supplied other ways to prosecute acts which some might term 'treason' as a threat to state security. These included the vague political crime of 'disturbing public order' (equivalent to English 'sedition') through refusing to obey state law or inciting hatred of the regime. But most sinister was §67, the so-called 'crimes against the war power of the state'. This covered a range of precise acts such as espionage, but also any behaviour designed to benefit the enemy in time of war.<sup>25</sup> In short, it was a licence for arbitrary justice against civilians when the wartime state was anxious about disloyalty. We can glimpse this extended treason early in Jaroslav Hašek's novel *Good Soldier Švejk*, when Švejk is suddenly arrested for 'high treason' by the wily detective Bretschneider. Švejk had hardly violated §58 but a vigilant security officer might well interpret his mad pronouncements as falling within a constructed definition. In contrast, the words Švejk uttered later in a casual conversation with a fellow-soldier over coffee were more clearly treacherous: 'A monarchy as idiotic as this ought not to exist at all.'<sup>26</sup>

## II

Hašek's main target for satire – the vigilant Habsburg policeman or army officer – appears quite accurate. For with the outbreak of war in 1914, the Habsburg state, armed with new emergency powers to curb dissent, was paranoid about any outsiders to the patriotic community. A statistic for Vienna alone suggests that cases of political crime including treason, normally eighteen per year, rose twelve-fold in 1914.<sup>27</sup> The reality was not that more *Hochverrat* was being committed, but that the army from July 1914 was overwhelmingly responsible for interpreting and prosecuting this crime. The military always claimed that they were impartial because they were supposedly non-political in their exercise of justice.<sup>28</sup> But

<sup>24</sup> AÚTGM, Fond Maffie, karton 39, XIII: Eduard Körner concluding speech at the Kramář trial, 4230–2.

<sup>25</sup> *Das Strafgesetz*, ed. Altmann, 65–6. The 'Verbrechen wider die **Kriegsmacht** des Staates' (§67) found greater exposition in the military penal code of 1855, §304–31. See *Das Militär-Strafgesetz über Verbrechen und Vergehen vom 15. Jänner 1855 samt den einschlägigen und ergänzenden Gesetzen und Verordnungen*, ed. Alexander Koller (2nd edn, Vienna, 1901), 229–40.

<sup>26</sup> Jaroslav Hašek, *The Good Soldier Švejk* (Harmondsworth, 1974), 13, 207–8. Bretschneider (p. 50) had vainly tried to inveigle Švejk into admitting that the empire was doomed to extinction.

<sup>27</sup> Franz Exner, *Krieg und Kriminalität in Österreich* (Vienna, 1927), 26.

<sup>28</sup> See Jonathan Gumz, *The Resurrection and Collapse of Empire in Habsburg Serbia, 1914–1918* (Cambridge, 2009), 117–18, 126ff.

230 their behaviour matched an obsessive wartime agenda of safeguarding  
 231 efficiency at the expense of civilian freedom, as well as a very entrenched  
 232 set of pre-war national prejudices. For most of the war, at least until the  
 233 summer of 1917, they could control the machinery of treason due to the  
 234 powers they suddenly acquired.

235 With the empire now split into ‘war-zone’ and ‘hinterland’, it was in  
 236 the former that the military authorities assumed quasi-dictatorial powers.  
 237 This eventually meant a huge swathe of territory, excluding only greater  
 238 Hungary and four of the Austrian crownlands but including those regions  
 239 closest to the enemy. It is true that martial law was not absolute in the war  
 240 zone: the military authorities were still supposed to work with the civilian,  
 241 and concepts of the *Rechtsstaat* were never wholly abandoned.<sup>29</sup> Even so,  
 242 the powers transferred by imperial decree in July 1914 placed all civilians  
 243 under military jurisdiction for all political crimes, including treason,  
 244 espionage, ‘disturbing public order’ and even *Majestätsbeleidigung*.<sup>30</sup> The  
 245 result was an arbitrary interpretation of these crimes with devastating  
 246 results for any civilians who obstructed the army machinery. In the first  
 247 months of the war, the Army High Command (*Armeeoberkommando*: AOK)  
 248 simply abandoned the military judicial rulebook introduced in 1912; it  
 249 returned to an inquisitorial form of trial and widespread use of the court-  
 250 martial or ‘summary justice’ (*Standrecht*). The court-martial required no  
 251 preliminary investigation of the case, the advantage was wholly with the  
 252 prosecution; the only sentence for a guilty verdict was the death penalty  
 253 which had to be carried out within two hours.

254 This draconian procedure was now applied to all those officially  
 255 charged with political crimes in the war zone. One calculation, based  
 256 on the cases registered by the War Ministry in Vienna, suggests about  
 257 1,900 court-martial deaths, of which 60 per cent were civilian. About 88  
 258 people were executed for *Hochverrat*, but 351 for the much vaguer ‘crime  
 259 against the army at war’.<sup>31</sup> Some would die for the most minor forms of  
 260 disloyalty. Thus, a man from Ljubljana, who in June 1915 publicly praised  
 261 Italy and called the Germans pigs, was found guilty under §65 (‘disturbing  
 262 public order’); he was executed despite pleading intoxication at the time.<sup>32</sup>  
 263 These summary trials fell mainly in 1915–16. We can compare them with  
 264 a far more alarming figure for those civilians who, in the first months  
 265 of hostilities, were called traitors and executed without trial. It is now  
 266 accepted that as the front initially wavered against the Serbian and

<sup>29</sup>See Christoph Führ, *Das k.u.k. Armeeoberkommando und die Innenpolitik in Österreich 1914–1917* (Graz and Vienna, 1968), 21 (n. 49), 88, 181; and Gumz, *Resurrection*, 140.

<sup>30</sup>Joseph Redlich, *Austrian War Government* (New Haven, 1929), 81–2.

<sup>31</sup>Karl Platzer, *Standrechtliche Todesurteile im Ersten Weltkrieg* (Berlin and Stuttgart, 2004), 71–8.

<sup>32</sup>*Ibid.*, 160.

Russian armies, the Habsburg forces committed mass atrocities against Serb and Ruthene (Ukrainian) civilians who seemed to be in collusion with the enemy. It seems hard to believe a staggering figure of 30,000 Ruthene executions, even if in September 1914 the chief of the general staff himself declared Ruthene territory to be an enemy land. But in the south, the empire's Serbs were certainly stereotyped as constituting a 'mass mobilization of high treason'; as Habsburg troops advanced and retreated, over 3,000 Serb civilians near the frontline were summarily executed in a few weeks.<sup>33</sup> Only later did this chaos give way to the legal device of the summary court-martial.

For the military, the ultimate traitors were those who colluded with the enemy and especially dangerous were those suspected of an openly irredentist ideology. Here, the most notorious traitor to suffer summary justice was the Italian Cesare Battisti. His case reveals well the regime's dilemma of how best to manage prominent displays of treason.<sup>34</sup> Battisti's story was mythologised at the time and since because of the post-war division of Austrian Tyrol in Italy's favour. For Italians, and Mussolini's fascist state, the treason could be celebrated as national martyrdom. For German-Austrians, Battisti personified 'perfidious Italy', the ally that had betrayed Austria-Hungary by changing sides in May 1915; in their eyes, he had been legally tried and deserved his fate. Battisti was certainly unusual as a well-known irredentist who met his end on the scaffold. At the start of the war, like some other outspoken parliamentary deputies – the Croat Frano Supilo or the Czech Tomáš Masaryk – he had crossed the imperial frontier, feeling like them that Austria-Hungary was doomed; it could not be reformed and the solution was national liberation at the side of the western Allies. For all these public traitors, Austrian military intelligence began to amass files of incriminating evidence, and an indictment of *Hochverrat* under §58c was slowly pieced together. Only in Battisti's case was the effort rewarded, for on 11 July 1916 he was captured fighting for Italy on Monte Corno and immediately taken to Trento to be court-martialled.

Subsequent events showed how gingerly the regime needed to tread when processing state betrayal. For if the public arraignment of a treacherous leader might act as a deterrent, as the military insisted, it could also produce a martyr.<sup>35</sup> In Battisti's case, the authorities typically had tried to discredit him beforehand, leaking tales of embezzlement

<sup>33</sup>For an exaggerated claim of up to 30,000 Ruthene **persecution**: Alexander Watson, *Ring of Steel: Germany and Austria-Hungary at War 1914–1918* (2014), 155. For Serb persecution: Gumz, *Resurrection*, 34–58.

<sup>34</sup>For the following, see Oswald Überegger, *Der andere Krieg. Die Tiroler Militärgerichtsbarkeit im Ersten Weltkrieg* (Innsbruck, 2002), 366–86.

<sup>35</sup>See Kirchheimer, *Political Justice*, 7–8.

304 although in fact it was a cast-iron case of treason under §58 (with the  
 305 added sin that Battisti had deserted to Italy when liable for conscription  
 306 at home). The verdict after the brief court-martial on 12 July therefore  
 307 spoke of the ‘worst and most ignominious treason to the fatherland’. It was  
 308 the dénouement that then backfired, for Battisti was publicly humiliated  
 309 when alive and dead. Led out to execution only two hours after the  
 310 verdict, he was surrounded by troops who shouted abuse, scoffing and  
 311 jeering when the condemned man cried out that he died as an Italian  
 312 not as an Austrian. While the news of this scene soon leaked out to the  
 313 public, even more damning were the postcards that circulated displaying  
 314 Battisti’s corpse alongside grinning faces. The Austrian satirist Karl Kraus  
 315 condemned this grisly display of ‘self-satisfied cosiness (*Gemütlichkeit*)’. But  
 316 the Austrian military welcomed the postcards as a useful propaganda tool,  
 317 to justify very starkly why the empire had gone to war with Italy.<sup>36</sup> The  
 318 picture’s mixed reception showed that by 1916 it was impossible to bridge  
 319 the divide in how treason was being interpreted across Austro-Hungarian  
 320 society.

321 While the military prosecuted treason in the war zone quite arbitrarily,  
 322 albeit with a legal veneer, in the Austrian ‘hinterland’ – the four Bohemian  
 323 and Austrian crownlands – they had no such special powers and had to  
 324 act more cautiously. Repeatedly in the first year of the war, the AOK  
 325 pressed Count Stürgkh, the Austrian prime minister, to extend martial  
 326 law into the hinterland in order to deal with treacherous civilian elements.  
 327 Czech traitors in Bohemia should just be court-martialled with no right  
 328 of appeal.<sup>37</sup> Although this campaign was always rebuffed, it is not true  
 329 that the AOK lacked any power outside the war zone.<sup>38</sup> Since all political  
 330 crimes now fell under military jurisdiction, in the hinterland too those  
 331 crimes had to be tried in military courts. The result was substantial  
 332 military control even if the civilian judiciary could try to temper the  
 333 proceedings; from 1914 to 1916, the number of cases tried by military  
 334 courts in the hinterland rose from 2,000 to 23,000.<sup>39</sup>

335

### III

336 How this affected the prosecution of traitors is clear from the large-  
 337 scale treason trials to which we now turn. Those organised in Bosnia, in  
 338 the war zone, had a foregone conclusion. In the hinterland, in Vienna or  
 339 Zagreb, the military authorities had to work harder to secure a conviction  
 340 but still had overriding legal control. In particular, through the wartime

<sup>36</sup>Überegger, *Der andere Krieg*, 384–6.

<sup>37</sup>See Führ, *Armeeoberkommando*, 34ff, 91–7.

<sup>38</sup>Cf. *ibid.*, 22.

<sup>39</sup>Manfried Rauchensteiner, *Der Erste Weltkrieg und das Ende der Habsburgermonarchie* (Vienna, 2013), 452.

341 emergency laws, they found ways to intervene and preemptively arrest  
 342 suspected traitors. This occurred usually with Czech suspects, like the  
 343 Czech National Socialist leader Václav Klobfáč, who was arrested in  
 344 September 1914 and incarcerated without trial for almost three years.  
 345 By 1917, he was being earmarked for a monster treason trial that never  
 346 took place.<sup>40</sup>

347 The essence of the treason trial, like all political trials, was not just  
 348 about enforcing the law, but about incriminating domestic enemies so that  
 349 they could be eliminated. Under §58, this was terminal since the death  
 350 penalty always applied. By convicting key public figures from either the  
 351 Czech or Serb communities, the regime also aimed to deter, to sound a  
 352 warning-shot, to assert a normative Habsburg patriotism at the expense  
 353 of any other competing allegiances. It might be argued that under the  
 354 law many of those indicted were indeed traitors (for instance Klobfáč),  
 355 but even so – as in the trials of Casement in England or Joseph Caillaux  
 356 in France – there was considerable ‘construction’ of the law to secure  
 357 a conviction. And some of the Habsburg prosecutors went even further.  
 358 Determined to convict, they stretched the evidence and sometimes in  
 359 the courtroom manufactured an ‘alternative reality’ to explain traitors’  
 360 behaviour. This foreshadowed the techniques of totalitarian show-trials  
 361 later in the century. The difference in Austro-Hungarian treason trials  
 362 was that a defence lawyer was permitted, so there was some slight chance  
 363 of acquittal.<sup>41</sup>

364 Yet the monarchy’s political trials were not a wartime novelty nor a  
 365 purely military instrument. In peacetime before 1914, several high-profile  
 366 treason trials had been staged, notably against Serbs and Ruthenes. They  
 367 suggest an empire already in crisis, which needed publicly to arraign  
 368 the ‘disloyal’ in order to shore up its security. They also showed the real  
 369 difficulty of defining treason, an uncertainty which could work to the  
 370 advantage of both protagonists. In the notorious Zagreb treason trial of  
 371 1909, which lasted 150 days, 53 Serbs from Croatia were charged with  
 372 treason under §58c and 31 were eventually found guilty.<sup>42</sup> The prosecutor’s  
 373 remit was to stigmatise a broad swathe of Croatia’s Serbs and he twisted  
 374 the evidence accordingly. Among the observers was R. W. Seton-Watson  
 375 (a later president of the Royal Historical Society) who sat in the courtroom  
 376 for three weeks. Calling it ‘one of the grossest travesties of justice in  
 377 modern times’, on a par with the Dreyfus scandal, he found it hard to

<sup>40</sup> *Obžalovací spis proti Václavu Klobfáčovi a Rudolfu Güniovi pro zločin [velezrády] dle §58c tr. z.*, ed. Zdeněk V. Tobolka (Prague, 1919), viii–x.

<sup>41</sup> Kirchheimer, *Political Justice*, 46–8.

<sup>42</sup> For context, especially on the rhetoric of treason, see Mark Cornwall, ‘Loyalty and Treason in Late Habsburg Croatia: A Violent Political Discourse before the First World War’, in *Semantiken und Praktiken von Loyalitäten*, ed. Martin Schulze-Wessel and Jana Osterkamp (Munich, 2015).

378 believe that high treason in Austria-Hungary had ‘not yet been consigned  
379 to the lumber-room of medieval phrases’.<sup>43</sup> The Czech Tomáš Masaryk  
380 agreed, warning the Austrian parliament in May 1909 about the danger  
381 of using the term *Hochverrat*, an anachronistic phrase from a bygone age.<sup>44</sup>

382 In fact, many statesmen and army officers in the Habsburg regime  
383 did see treason as a very present danger. In early 1914, two major trials  
384 were held of radical ‘old Ruthenes’, Russophile Ukrainians from the  
385 empire’s eastern provinces. They were all accused of plotting with pan-  
386 Slavists from Russia to detach Austro-Hungarian territory. Although the  
387 evidence pointed strongly towards a guilty verdict, a conviction depended  
388 on whether simply spreading propaganda was equivalent to treason.<sup>45</sup> At  
389 the second trial held in Lwow (Lemberg) in Galicia, the prosecutor argued  
390 that the cultural-humanitarian work of the ‘traitors’ (using Russian funds)  
391 had simply been a cover for a political plot. Typically, the Austrian press  
392 described the accused as outsiders: one as a character from a Dostoevsky  
393 novel, another as ‘a shabby little man’ whose eyes one would never  
394 forget.<sup>46</sup> In the end, however, the jury composed of Poles proceeded  
395 to acquit these ‘traitors’. It was a set-back for the civilian authorities, a  
396 sign that wielding the treason law was a risky business. Vienna’s leading  
397 newspaper advised ‘that political trials generally do not tend to achieve  
398 their aims’; intensive education in Galician villages was the real solution.<sup>47</sup>  
399 But it was a warning from peacetime not heeded when the war began.  
400 Military courts then could envisage more success, for no juries would be  
401 involved in the proceedings.

402 Of the main wartime treason trials, those against Serb and Czech  
403 civilians gained most notoriety and have left the most evidence. The  
404 charge of §58c, where the domestic traitor was conspiring with an external  
405 danger, now had real resonance as Austria-Hungary was facing attack on  
406 three military fronts. As the military authorities gathered evidence and  
407 made new paranoid connections, the phenomenon of treason snowballed.  
408 By 1917, they imagined it as one monstrous enterprise spanning the  
409 empire, a tree with deep pre-war roots whose poisonous buds were only  
410 just blossoming. In the vivid simile of Edward Coke, these buds needed

<sup>43</sup>R. W. Seton-Watson, *The Southern Slav Question* (1911), 184, 208.

<sup>44</sup>Thomas G. Masaryk, *Der Agrarer Hochverratsprozess und die Annexion von Bosnien und Herzegovina* (Vienna, 1909), 30–1; speech to the Reichsrat on 14 May 1909.

<sup>45</sup>For context, see Z. A. B. Zeman, *The Break-up of the Habsburg Empire 1914–1918: A Study in National and Social Revolution* (London, New York and Toronto, 1961), 3–11.

<sup>46</sup>Russophile Agitatoren vor den Lemberger Geschworen’, *Neue Freie Presse* (Abendblatt), 3 June 1914, 4; Berthold Merwin, ‘Bilder vom Lemberger Hochverratsprozess’, *ibid.* (Abendblatt), 9 June 1914, 3.

<sup>47</sup>Freispruch der Angeklagten im Lemberger Hochverratsprozeß’, *ibid.* (Morgenblatt), 7 June 1914, 2.

411 'blasting and nipping' before they ripened and brought 'utter destruction  
412 and desolation upon the whole State'.<sup>48</sup>

413 It was in Sarajevo in October 1914 that the first of the political  
414 confrontations was staged. On trial were Gavrilo Princip, Nedeljko  
415 Čabrinović and twenty-three other men associated with the assassination  
416 of Archduke Franz Ferdinand and his wife. The charge, however, was not  
417 one of murder, but *Hochverrat* under §111 (the Bosnian equivalent of §58)  
418 as this would carry the death penalty for those who had both planned  
419 and executed the treacherous deed.<sup>49</sup> In this setting, the broader political  
420 objective was clear. The accused were brought to the courtroom in chains  
421 and surrounded by soldiers with bayonets at the ready; in the distance  
422 the echo of gunfire from the front was a constant reminder that this  
423 treason had led to war.<sup>50</sup> For the prosecution, it was vital to show that  
424 the assassins were not lone fanatics but pawns in a vast plot organised by  
425 the Serbian enemy to detach Bosnia from the Habsburg monarchy. Their  
426 conviction would not just be a matter of justice: it would publicly justify  
427 Austria-Hungary's war against that international traitor, Serbia. It was  
428 with this aim that behind the scenes the Habsburg foreign minister, Count  
429 Berchtold, wanted pressure put on the court so that it was mindful of the  
430 current clash with Serbia.<sup>51</sup> The prosecutor duly argued that the assassins  
431 were revolutionaries committed to violence, unfortunate wretches who  
432 resembled an ulcer in a healthy body. But above all, they were tools of a  
433 huge Serbian plot, which had operated for years in Bosnia-Herzegovina  
434 via a range of allegedly 'cultural societies' like *Narodna Odbrana* or the  
435 Sokol (gymnastics) association. The prosecution equated membership of  
436 one of these societies with the preparation of treason. In short, 'Great  
437 Serb propaganda [was] in itself treason'.<sup>52</sup>

438 In this atmosphere, the defence lawyers had an impossible task, for a  
439 guilty verdict seemed inevitable. The presiding judge even rebuked one  
440 lawyer for being too solicitous of criminals 'who by tomorrow would  
441 be condemned to death for treason'.<sup>53</sup> Nor did the young assassins help  
442 themselves for most were determined to confess their guilt. Typically, they  
443 inverted the label of 'traitor' by claiming to have acted in response to the  
444 treachery of Habsburg rule; due to that tyranny in Bosnia, they wanted  
445 to destroy the empire and achieve South Slav unification. Their case was

<sup>48</sup>A *True and Perfect Relation of the Whole Proceedings*, D4.

<sup>49</sup>The most accurate trial transcript is in *Sarajevski atentat. Stenogram Glavne rasprave protiv Gavrila Principa i drugova*, ed. Vojislav Bogičević (Sarajevo, 1954). Some historians have used unreliable transcripts: e.g. Christopher Clark, *The Sleepwalkers: How Europe Went to War in 1914* (2012), 51–5.

<sup>50</sup>Rudolf Zistler, *Kako sam branio Principa i drugove 1914 godine* (Ljubljana, 1937), 4, 17.

<sup>51</sup>Vladimir Dedijer, *The Road to Sarajevo* (1966), 336.

<sup>52</sup>Speech of prosecutor Franjo Švara: *Sarajevski atentat*, 332–42.

<sup>53</sup>Zistler, *Kako sam branio Principa*, 4.

446 also not aided by many of their own defence lawyers. One, who was a  
 447 Croat, spent a long time lambasting the Serbs, regretting that he had  
 448 to represent men who had dug the grave not only of Franz Ferdinand  
 449 but of the Croatian nation.<sup>54</sup> A general defence argument, however, was  
 450 to question the defendants' actual intentions. It had not been proven  
 451 that the assassins, let alone their accomplices, had intended to commit  
 452 *Gebietshochverrat* when murdering the heir-apparent. As silly teenagers,  
 453 with heads in the clouds, they did not really know what they were doing.

454 On the defence team, it was the lawyer Rudolf Zistler who tried most  
 455 diligently to challenge the prosecution case. He too focused on the issue  
 456 of intent, arguing that under Austrian law treason required an overt act to  
 457 be committed; instead, the prosecutor was 'constructing' treason through  
 458 mere association with Serb propaganda or Yugoslav dreams. As Zistler  
 459 vividly noted, 'If you say you are a supporter of Plato's ideal state or  
 460 the utopia of Thomas More – that does not make you a traitor.'<sup>55</sup> The  
 461 act of killing Franz Ferdinand in fact could only be defined as 'political  
 462 murder', not 'treason', for despite what Princip and others were now  
 463 claiming, there was no clear proof that they expected the murders to  
 464 result in the secession of Bosnia from the state.

465 Zistler, however, then probed even more deeply, challenging the  
 466 indictment's whole political and legal framework. First, he urged the  
 467 court to see the trial in the context of recent national developments, for  
 468 'in our monarchy unfortunately treason trials recur in a steady periodic  
 469 cycle, like a chronic illness'.<sup>56</sup> He then delivered his legal *coup de grâce*.  
 470 Although Bosnia had been annexed by Austria-Hungary in 1908, the  
 471 union had never been formally ratified by the Austrian or Hungarian  
 472 parliaments. As a result, he argued, Bosnia was still not yet legally part  
 473 of the empire, so it was impossible to commit the crime of treason in  
 474 breaking it away from the state.<sup>57</sup>

475 Zistler's clever stance did not save his defendants from the gallows.  
 476 Instead, it earned him several rebukes from the presiding judge and led to  
 477 his expulsion from Bosnia after the trial because of his 'hostile disposition'.  
 478 At the end of his speech, he had appealed to history and to justice, but the  
 479 courtroom in the belligerent context of October 1914 ignored this, leaving  
 480 him to describe the overall result as 'legal murder'.<sup>58</sup> Not surprisingly, a  
 481 century later (2014) Zistler's arguments would be exploited by Bosnian  
 482 Serb nationalists, including the film director Emir Kusturica, in a crude

<sup>54</sup>Speech of Konstantin Premužić: *Sarajevski atentat*, 351–4. See also the minimal defence given to the assassin Trifko Grabež: *ibid.*, 364.

<sup>55</sup>Zistler speech: *Sarajevski atentat*, 378.

<sup>56</sup>*Ibid.*, 368.

<sup>57</sup>*Ibid.*, 369–72. See also Zistler, *Kako sam branio Principa*, 13: 'The verdict could not construct a treasonable intention to destroy the annexation [which was] an illegal situation.'

<sup>58</sup>*Ibid.*, 15.



campaign to try to overturn the court verdict and canonise their Serb hero Gavrilo Princip.<sup>59</sup>

While the Sarajevo trial was at least one of criminal assassins, the mass treason trials that mushroomed across Bosnia in 1915–16 were legally far more questionable. It is unclear how many were caught up in this judicial hysteria but it certainly reached into the hundreds. Serbian historians have struggled to explain the political meaning, suggesting even that behind the trials lay some grand purpose by the Habsburg military to wipe out Serb intellectuals as a prelude to reforming the empire radically.<sup>60</sup> The reality was probably more prosaic: a military regime convinced that the Bosnian Serb population was riddled with *staatsfeindliche* elements. Certainly, the Sarajevo trial, after an intense inquiry into Serb irredentism, gave the authorities obvious 'traitors' to pursue. The new trials that started the following spring were in two main groups. The first targeted the Serb *omladina* or youth organisations, seeing in them the hothouses that had produced fanatics like Princip. The second – three major trials – were more politically weighty, indicting several hundred of the Bosnian Serb intelligentsia. All these court-cases interpreted propaganda as treason: that working to raise Serb national consciousness, via societies like *Narodna Odbrana* or Sokol, was akin to plotting the annexation of Bosnia by Serbia. That link might be tendentious, dependent on a construct of the treason law, but there is no doubt that the military authorities believed in their own arguments. They thought (wrongly) that *Narodna Odbrana* was the terrorist organisation that had planned the archduke's murder. Mistrust of all Serbs was ubiquitous: according to one of Bosnia's wartime governors, only a third were loyal while another third were trying to give the impression of loyalty.<sup>61</sup>

Yet there was a deeper meaning to this political theatre, organised in the war zone by a military power that could manipulate the court personnel to its advantage. Alongside the brutal arrests there was, as even one of the Sarajevo assassins noted, some evidence of the *Rechtsstaat* in operation.<sup>62</sup> The larger purpose, glimpsed already in the Sarajevo trial, was to justify publicly Austria-Hungary's war in the Balkans, consistently underlining the traitors' place in Serbia's international plot. Thus, in the

<sup>59</sup>See for example, <http://www.invest-in-serbia.com/archive/general/1391910600-kusturica-to-see-annulment-of-gavrilo-princip-s-trial.html> (accessed 31 Aug. 2014).

<sup>60</sup>Milorad Ekmečić, "'Žalosna baština iz godine 1914'" (Političke namjene sudskih procesa u Bosni i Hercegovini za vrijeme prvog svjetskog rata), in *Veležajnički proces u Banjaluci*, 13, 40.

<sup>61</sup>*Ibid.*, 32. See also the memoirs of Stefan Freiherr Sarkotić von Lovćen, 'Der Hochverrats-Prozess von Banjaluka', *Berliner Monatshefte für internationale Aufklärung*, 7/1 (Jan. 1929), 33–4.

<sup>62</sup>Vasa Čubrilović, 'Razmišljanja o veleizdajničkim procesima u prvom svetskom ratu', in *Veležajnički proces u Banjaluci*, 4.

517 famous Banjaluka trial, which arraigned 156 intellectuals over six months,  
 518 the seeds of treason had supposedly been planted over a decade earlier  
 519 and had flourished through espionage and propaganda before the war.  
 520 The actual evidence at the trial was slight and wholly circumstantial: a  
 521 list of names in some documents seized by Habsburg troops in Serbia.  
 522 Yet none of the defence arguments had any effect in the face of political  
 523 manipulation from Vienna and Sarajevo. In April 1916, sixteen men were  
 524 handed the death penalty, commuted to life imprisonment a year later.<sup>63</sup>

#### IV

525  
 526 It is useful now to juxtapose how Austria-Hungary treated Czech traitors  
 527 compared to Serb. After the war, much of this national treason lost  
 528 its pejorative edge, the traitors became heroes, and in their memoirs  
 529 they took care to minimise their wartime opportunism. In August 1914,  
 530 the Czech population, in comparison to Serbs or Ruthenes, was not  
 531 immediately suspect to the military authorities for there was no obvious  
 532 irredentist threat. Even so, according to §58 certain Czech politicians  
 533 were indeed already traitors. Václav Klofáč for example was not just  
 534 a virulent pre-war critic of the empire but in early 1914 had plotted  
 535 in Russia to organise an underground Czech resistance should war  
 536 break out; in September, after returning from an American lecture tour  
 537 full of treasonable speeches, he was arrested and locked up without  
 538 charge.<sup>64</sup> Only thereafter did the military begin to stigmatise Czechs as  
 539 unreliable. The main reason was clear evidence that some Czech troops  
 540 were performing weakly at the front, seemingly due to Czech civilian  
 541 disloyalty in the hinterland. After repeatedly failing to impose martial law  
 542 on Bohemia, the AOK in May 1915 finally pounced.<sup>65</sup> Two key Czech  
 543 politicians, Karel Kramář and Alois Rašín, were arrested. A treason case  
 544 was carefully constructed against them in Vienna, resulting in the most  
 545 impressive European treason trial of the whole war.

546 Much later in the 1920s, when the young actor Otto Preminger (the  
 547 later film director) appeared in a play in the Czechoslovak capital of  
 548 Prague, he decided temporarily to change his surname. For his father  
 549 Markus had been Austria's public prosecutor, a hate figure to many  
 550 Czechs as chief prosecutor in the Kramář trial. Markus Preminger was  
 551 an outsider in many ways. A Jew, from the eastern-most province of the

<sup>63</sup>See *ibid.*: Dženana Čaušević, “‘Veleizdajnici’ na sudskom procesu u Banjaluci i u zatvorima”, 369–85.

<sup>64</sup>See Bohuslav Šantrůček, *Václav Klofáč (1868–1928)* (Prague, 1928), and Milada Paulová, *Dějiny Maffie. Odboj Čechů a Jihošlanů za světové války 1914–1918*, 1 (Prague, 1937), 27ff, 113–15.

<sup>65</sup>Führ, *Armeeoberkommando*, 47–8; Rauchensteiner, *Der Erste Weltkrieg*, 355–60, 444. For the mythology around Czech military treason: Richard Lein, *Pflichterfüllung oder Hochverrat? Die tschechischen Soldaten Österreich-Ungarns im Ersten Weltkrieg* (Vienna, 2011).

monarchy, he had taken part in early 1914 in prosecuting Russophile traitors and had then fled westwards as the Russian armies invaded. He would always divide opinion for he publicly personified a supranational German-Jewish loyalty in the face of nationalist treachery. One Czech historian described him as 'a marvellous speaker, a master of rhetoric, but an unscrupulous and egotistical Bukovina Jew'.<sup>66</sup> One English supporter noted in retrospect Preminger's 'sharp mind and acid wit', a man hardened to anti-Semitic abuse who had 'led the prosecution of Dr Kramarz (which in German rhymes with "arse")'.<sup>67</sup>

In May 1915, Karel Kramář was targeted by the military as the leading Czech traitor. The timing coincided with Italy's entry into the war, but also with a notorious case of Czech 'mass-desertion' on the eastern front (infantry regiment 28). Kramář's arrest in fact was a knee-jerk reaction after months of military anxiety. The last straw was news that he had secretly (and stupidly) met the Italian consul in Prague, but most significant was his political background, as a leading Czech statesman who had constantly been advocating Slav unity and Russian friendship. Kramář was married to a Russian and regularly holidayed in the Crimea. Before 1914, he had been the leading promoter of so-called 'Neo-Slavism', a cultural movement to foster closer Slav cooperation across Eastern Europe in the face of German dominance. 'Neo-Slavism' was not inherently anti-Habsburg, but it had an underlying political agenda as Kramář hoped to re-balance the Austro-Hungarian empire in favour of its Slav majority. Yet its real prerequisite was a much closer international alliance between Austria and Russia, a dream that was scuppered because of the Bosnian crisis of 1909 followed by the Balkan Wars.<sup>68</sup> Just as Neo-Slavism rapidly disintegrated before 1914, so for Kramář the outbreak of a European war was a disaster: Russia, his chief Slav ally, was now the official state enemy. He felt it impossible publicly to espouse loyalty to the monarchy alongside the German empire. It was on this basis, and a retrospective interpretation of Kramář's pre-war behaviour, that Preminger would try to unmask him as a long-term traitor.

From the start, Preminger felt that Kramář could certainly be accused of 'crimes against the war power of the state', for 'as leader of the Czech people he has undoubtedly failed to fulfil the heightened patriotic obligation of these serious times'. But a charge under §58 for *Hochverrat* was also likely. Already on Kramář's arrest in Prague, evidence had been seized showing his links to the Czech resistance movement now organised abroad by Tomáš Masaryk. The reality was that Kramář was not a major player

<sup>66</sup>Paulová, *Dějiny Maffie*, 154. See also František Soukup, *28 Říjen 1918*, 1 (Prague, 1928), 172: Preminger advanced in Austria as 'a great legal star of the war'.

<sup>67</sup>Willi Frischauer, *Behind the Scenes of Otto Preminger* (1973), 26, 29, 40.

<sup>68</sup>See Paul Vyšný, *Neo-Slavism and the Czechs 1898-1914* (Cambridge, 1977).

591 in the Czech Maffie (the name assumed by the small resistance group at  
 592 home) and was struggling with his own loyalties. However, on his arrest  
 593 the police found incriminating material at his house: apart from twenty-  
 594 four copies of the English *Daily Mail*, an edition of *Nation Tchèque*, the  
 595 Czech independence journal produced in Paris by the historian Ernst  
 596 Denis. Preminger saw treason in the mere possession of these enemy  
 597 papers. But then there was Kramář's highly suspicious meeting with the  
 598 Italian consul, as well as a letter from Mrs Kramář, asking her husband  
 599 to purchase a copy of Edward Gibbon's *Decline and Fall*: clearly, she was  
 600 expecting the downfall of the Austro-Hungarian empire. All this suggested  
 601 to Preminger that Kramář had a 'disloyal mentality' which was probably  
 602 criminal; further investigation was now needed to uncover the full extent  
 603 of his conspiracy.<sup>69</sup>

604 While Preminger meticulously set about preparing the indictment,  
 605 Kramář and other Czech traitors were moved to the garrison prison  
 606 in Vienna. The AOK had decided that all Czech political trials should  
 607 be staged at the military court in Vienna, not in Prague. It ensured  
 608 less collusion with Czech officialdom, and facilitated the coordination of  
 609 treason material at the centre (for in the summer the major Russophile  
 610 trial, which could not be staged in Galicia, took place in Vienna).<sup>70</sup> After  
 611 the war, the garrison prison, the 'Prison of Death', gained notoriety as  
 612 epitomising Czech martyrdom and Austrian barbarism, even if by the  
 613 standard of later regimes it was mildly oppressive. The traitors were left  
 614 in solitary confinement for months, fully cut off from the world and wholly  
 615 unsure about their fate while evidence was gathered against them. Some  
 616 like Kramář did not cope well. Others like Alois Rašín remained stoical,  
 617 quietly considering a martyr's end. As a lawyer, he could smile at how the  
 618 law was being reinterpreted, and took solace from reading *War and Peace*  
 619 where man was portrayed as just a 'speck of dust raised on the wheel of  
 620 history'. Rašín sensed that the trial was a historic watershed and hoped  
 621 (vainly) that historians would later pay it due notice.<sup>71</sup>

622 The trial of Kramář and Rašín finally opened in December 1915 and  
 623 lasted for a full six months.<sup>72</sup> Like a theatre premiere, many flocked to get

<sup>69</sup>AÚTGM, Fond Maffie, karton 44, Preminger to AOK (A 2162/15), 31 May 1915, enclosing report.

<sup>70</sup>Kunz, *Náš odboj*, 57; Paulová, *Dějiny Maffie*, 607.

<sup>71</sup>*Paměti Dr. Alois Rašín*, ed. Ladislav Rašín (Prague, 1994), 127, 129, 135. See also the memoirs of Jan Rezníček, *Ve věži smrti* (Prague, n.d.), 48ff.

<sup>72</sup>There is no historical analysis of this trial in any language although the full transcript was quickly translated into Czech: *Proces dra Kramáře a jeho přátel*, ed. Zdeněk V. Tobolka (5 vols., Prague, 1918–20). A rare study is Tomáš W. Pavlíček, 'Politicum a martyrium v nejdelším trestním procesu první světové války. Stylizace a strategie během procesu s Karlem Kramářem', in *Karel Kramář (1860–1937). Život a dílo*, ed. Jan Bilek and Luboš Velek (Prague, 2009), 344–66.

624 seats although press coverage was outlawed. On trial was the fundamental  
625 question, personified by Kramář, of what constituted loyalty to the  
626 Habsburg monarchy in peace or war. The prosecution, after translating  
627 thousands of Czech documents into German and researching widely  
628 in university libraries, had an overwhelming amount of circumstantial  
629 evidence and fielded experts on military intelligence to prove that  
630 Kramář's treason had damaged the army. For the defence, while Kramář  
631 himself pleaded his innocence at length, an array of Habsburg statesmen  
632 lined up to endorse his pro-Austrian character, including the former  
633 foreign minister Count Berchtold and the Austrian prime minister Count  
634 Stürgkh.

635 Preminger argued<sup>73</sup> that these notable witnesses were irrelevant, for  
636 Kramář was a wily and manipulative individual who had been playing a  
637 double game for years; any support he had given the Austrian government  
638 before 1914 was purely opportunistic and a mask for treason. Crucial to  
639 the prosecution case was to tie together Kramář's behaviour before and  
640 during the war in one enormous conspiracy. His Neo-Slavist movement  
641 was depicted retrospectively not as a failure, but as a successful plot to  
642 unite all Slavs under Russian leadership and destroy Austria-Hungary;  
643 his many speeches, his pre-war trips to Russia or Serbia, were trawled  
644 over to prove his close plotting with the monarchy's Serb and Ruthene  
645 traitors. Indeed, the plot was Europe-wide, a 'large criminal design' if  
646 one factored in his ties to France and Italy and obvious sympathy for the  
647 arch-traitor Masaryk. While colluding with these enemies to violate §58,  
648 he had then set a depraved example for all Czechs at home, failing to  
649 display any patriotic loyalty. This had resulted in large numbers of Czech  
650 civilians being prosecuted for 'political crimes', and in mass desertions at  
651 the front. History, said Preminger, would judge this disgraceful example  
652 of treacherous seduction.<sup>74</sup>

653 Kramář's defence lawyer, Eduard Körner, proceeded to pick large  
654 holes in an indictment that rested on so many assumptions.<sup>75</sup> His legal  
655 summing up typically attacked the vagueness of §58, asking like so many  
656 jurists before him whether it was appropriate for a modern state. He  
657 then questioned whether the crime had actually been committed either  
658 subjectively or objectively. Subjectively, there was little proof that Kramář  
659 through his actions was intending to transgress §58c. But objectively

<sup>73</sup>The following draws on AÚTGM, Fond Maffie, karton 39, XIII, Preminger's speech, 3790–846; and the indictment: Militäranwalt des Militärkommandanten in Wien (A 2162/15/960), *Anklageschrift* (Vienna, 1915).

<sup>74</sup>*Ibid.*, 111. Preminger referred here to official data for prosecutions under §58 which showed that Czechs were most likely to be accused: AÚTGM, Fond Maffie, karton 2, Glivitzky to Preminger, 27 May 1916.

<sup>75</sup>See AÚTGM, Fond Maffie, karton 39, XIII: Körner speech, 4227–47.

660 too the criteria were lacking. For as in England the crime of treason  
 661 required an ‘overt deed’, and Körner – like lawyers in the Bosnian  
 662 trials<sup>76</sup> – queried whether spreading propaganda or writing newspaper  
 663 articles could constitute a treasonable act. Nor was there proof that  
 664 Kramář’s behaviour had actually influenced the Czech population as  
 665 the prosecution maintained. There seemed to be no ‘causal nexus’  
 666 between Kramář and Czech rebellion but just the ‘vague construction of  
 667 a connection’.<sup>77</sup>

668 On 3 June 1916, the military court gave its verdict: Kramář and  
 669 Rašín were both found guilty of treason and sentenced to death pending  
 670 appeals. As this was simply announced in the press without any comment,  
 671 it stirred strong public emotions. Two Czech leaders, even if their  
 672 loyalties were dubious, had been judged traitors to the community.  
 673 Their Czech compatriots in Prague were now cowed and alarmed about  
 674 future persecution; many would later claim that the verdict had been  
 675 a judgement on the whole Czech nation, something that Preminger in  
 676 court had precisely denied.<sup>78</sup> German nationalists meanwhile tended to  
 677 gloat, noting that, just like France’s Dreyfus affair, this moment was a  
 678 fatal watershed for the Czech nation.<sup>79</sup> The real danger however, in the  
 679 middle of the war, was how this public stigmatisation might affect imperial  
 680 cohesion. As the Austrian liberal Josef Redlich observed, the hostility of  
 681 the Czechs would not be defused by death sentences, only by the state  
 682 intervening wisely and sensitively; thus he predicted, the Kramář verdict  
 683 was likely to be ‘the starting point for the most dangerous internal battles  
 684 in the Austro-Hungarian monarchy’.<sup>80</sup>

685

## V

686 The climax of our stroll in the landscape of treason brings us to the  
 687 rehabilitation of these traitors. Usually, for such rehabilitation to be  
 688 effective, it takes place after a full regime change when the traitor’s  
 689 fortunes are reversed, or when the state sees fit to grant a magnanimous  
 690 pardon from a position of strength. In July 1917, a year after the  
 691 Kramář sentence, the new Habsburg emperor Karl suddenly announced  
 692 a full amnesty for all those found guilty of political crimes. It meant  
 693 the immediate release of Kramář and Rašín, and a halt to the other  
 694 trials Preminger was organising for Czech traitors like Klofáč or the

<sup>76</sup> For example, the defence lawyer Danilo Dimović at the Banjaluka trial: Čaušević, 380.

<sup>77</sup> Körner speech, 4244–5.

<sup>78</sup> For a typical Czech nationalist reaction: Jan Hajšman, *Česká Mafie. Vzpomínky na odboj doma* (Prague, 1932), 222.

<sup>79</sup> Soukup, *28 Říjen 1918*, I, 177–82.

<sup>80</sup> Josef Redlich, *Schicksalsjahre Österreichs. Die Erinnerungen und Tagebücher Josef Redlichs 1869–1936*, II (Vienna, 2011), 171.

695 exiled Masaryk. From November 1916, Emperor Karl's regime had  
 696 been pursuing an idealistic new direction, dismantling military powers  
 697 and reintroducing constitutional government. The amnesty, as his own  
 698 personal decision after months of agonising about tendentious military  
 699 justice, was meant to foster national reconciliation at home.<sup>81</sup> Yet as many  
 700 of his ministers warned, it seemed a foolhardy move when the ground had  
 701 not been carefully prepared. Not only was a full amnesty granted with  
 702 no preconditions to make the 'traitors' conform. The new regime acted  
 703 from a position of weakness, when powerful national groups still existed  
 704 who could publicly reject the rehabilitation. Most notably, could Kramář  
 705 really be pardoned, a man whom many German-Austrians felt to be the  
 706 'incarnation of an anti-German policy'?<sup>82</sup> The move further destabilised  
 707 the state, for the regime failed to follow it up with a concerted policy of  
 708 national reconciliation.

709 Indeed, in the last year of war, the accusations of treason moved  
 710 from the private courtroom back into the public domain and were  
 711 particularly virulent between Czech and German-Austrian agitators.  
 712 German-Austrian nationalists, having attacked the amnesty from the  
 713 start, proceeded to publicise all examples of Czech wartime treason;  
 714 they reproduced Preminger's arguments and publicly labelled Kramář  
 715 as 'the dark demon who unleashed the world war'.<sup>83</sup> The released  
 716 Czech prisoners meanwhile were fêted in their communities and could  
 717 pose as national martyrs. Since the Austrian government increasingly  
 718 backed a 'German course', banking on victory at the side of the German  
 719 Reich, most Czech leaders began to narrow their allegiance in a national  
 720 direction: moving from dual Czech-Austrian loyalty to simply backing  
 721 Czech state independence. The result was clear by April 1918, when  
 722 the Habsburg foreign minister Count Czernin made a tactless speech  
 723 attacking Tomáš Masaryk and warning of other such Czech traitors at  
 724 home. In reply, the domestic Czech leaders rejected the label of traitors,  
 725 but added that in fact there was no difference between themselves and  
 726 Masaryk.<sup>84</sup> In other words, the badge of treachery was one they were  
 727 now proudly brandishing as their own.

<sup>81</sup> *Kaiser Karl. Persönliche Aufzeichnungen, Zeugnisse und Dokumente*, ed. Erich Feigl (Vienna and Munich 1984), 206–7; and especially the vivid discussion in Arthur Graf Polzer-Hoditz, *Kaiser Karl. Aus der Geheimmappe seines Kabinettschefs* (Vienna, 1929), 421–33.

<sup>82</sup> Joseph Maria Baernreither, *Der Verfall des Habsburgerreiches und die deutschen Fragmente eines politischen Tagebuchs 1897–1917* (Vienna, 1938), 231–3. Also Kirchheimer on political amnesties: *Political Justice*, 405–6, 410–11.

<sup>83</sup> Friedrich Wichtl, *Dr. Karl Kramarsch, der Anstifter des Weltkrieges* (Munich, 1918), 4.

<sup>84</sup> Viktor Dyk, 'Czernin', *Národní listy*, 4 Apr. 1918, 1; and *speech of Staněk*, quoted in *ibid.*, 14 Apr. 1918, 1. Also Zeman, *Break-Up*, 175.

728 Many have questioned the 'meaning of treason', often with  
729 unsatisfactory or vague conclusions.<sup>85</sup> If we search for its meaning  
730 in wartime Austria-Hungary, we discover a fundamental conflict over  
731 allegiance within the state. Before 1914, a lively discourse of treason  
732 already existed and the regime was wielding this ultimate legal weapon  
733 to silence irredentist enemies within. The war intensified this trend as the  
734 empire, under military dominance, fought a largely defensive battle for  
735 survival. Once identified, the traitors were publicly paraded as monstrous  
736 'outsiders' who had supposedly plotted their evil schemes for decades.  
737 The aim was to assert a restricted version of imperial patriotism against  
738 any alternative visions, but also to justify to a European audience why  
739 Austria-Hungary had been forced to fight this total war. Ultimately then,  
740 treason meant a high-risk and dangerous power struggle. By 1918, it was  
741 the traitors who were gaining the upper hand and proudly turning the  
742 accusation on its head. Thus, as Jaroslav Kunz discovered when he went  
743 in search of those documents in Vienna, treason is always a transitory and  
744 constructed phenomenon. It constitutes an ideal subject for the historian  
745 who wishes to explain a regime in crisis.

<sup>85</sup>See Rebecca West, *The Meaning of Treason* (1982), 413–20, who took a firm moral stance against the traitor. One reviewer questioned whether she had actually explained 'the meaning': *Journal of American History*, 52.2 (1965), 421–2.