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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!’

1 Jaroslav Kunz, NÁŠ Odboj v zrcadle rakouské vojenské justice (Prague, 1930), 6–10.
of Czech treason material, had them packed in boxes and sent back to
Prague. Over the next decade, he would reproduce them in colourful
reminiscences, peering behind the black and yellow Habsburg curtain so
that, as he said, ‘we do not forget the cage in which we lived’.2

Many documents from the wartime trials in Vienna had been
destroyed, or – in the case of the most famous Russophile trial3 – never
seem to have undergone archival repatriation. In the Czech case, since
1919, most have remained unsorted in Prague and ignored by historians.
In part, this document-diaspora explains why the history of high treason
(Hochverrat) in wartime Austria-Hungary has been so neglected. Usually
in the past century, those writing about the subject have had a national-
political agenda – on behalf of the ‘national traitors’ – to demonstrate
their righteous struggle under the Habsburg yoke. This was especially
ture in the mass of Czech memoirs that surfaced in the interwar period,
recalling Czech martyrdom in Vienna’s so-called ‘Prison of Death’. From
that ‘Viennese bastille’ the traitors had survived en masse to tell their
story, to bolster a new Czech national narrative, while the voices of their
accusers were silent since the Habsburg regime had lost its legitimacy. In
contrast, in the new state of Yugoslavia after the Great War, there was
a much fainter echo of the court trials conducted against Bosnian Serb
traitors.4 In fact it was not until the late 1980s, when Serbian nationalism
was suddenly resurgent in Yugoslavia, that some popular and academic
interest was aroused in the mass treason trials of Bosnian Serbs.5 Some
Serbian historians then rekindled the subject to meet a contemporary
agenda, showing how the myth of the traitor has often been cyclically
exploited in nationalist narratives.

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

2 Jaroslav Kunz, Za černožlutou oponou. Z Vídeňských vzpomínek (Prague, 1921), 5.
3 That of the Ruthene politician Dimitrij Markov in the summer of 1915.
4 For example, Vladimir Čorović, Crna knjiga. Putnje Srba Bosne i Hercegovine za vreme svetskog
rata 1914–1918 (Belgrade and Sarajevo, 1920).
5 See the useful proceedings of a Bosnian conference from 1986, collected in Veleizdajnički
proces u Banjaluci. Zbornik 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).
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’.7

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).8 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’.9 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.10

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.11 In the sixteenth century, the traitor might still be
interpreted as Satan’s agent working against God’s anointed.12 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

7 Otto Kirchheimer, Political Justice: The Use of Legal Procedure for Political Ends (Princeton,
1961), 76.
8 Coke’s words, in A True and Perfect Relation of the Whole Proceedings against the Most Barbarous
Traitors (1606), D. J. G. Bellamy, The Law of Treason in England in the Late Middle Ages
9 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.
10 Das Strafgesetz über Verbrechen, Vergehen und Uebertretungen: nebst den hiezu erlossenen
Nachtragsgesetzen, Oesterreichische Gesetzeskunde, 11), ed. Ludwig Altmann (Vienna, 1913),
62.
11 Nachman Ben-Yehuda, Betrayals and Treason: Violations of Trust and Loyalty (Boulder, CO,
and Oxford, 2001), 125.
of society’ who had turned to treason ‘because of their cowardly and
class characters’.13 In 2013, the uncle of North Korea’s dictator was
executed because he was ‘despicable human scum, worse than a dog
[who had] perpetrated thrice-cursed acts of treachery’; history would
never forget his ‘shuddering crimes’.14

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

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

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

13 The concluding speech of the prosecutor Gyula Alapi, in László Rák and his Accomplices
before the People’s Court (Budapest, 1949), 272–3: ‘The only defence against mad dogs is to beat
them to death.’
15 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.
16 Archiv Ústavu TGM (AUTGM: Archive of the T. G. Masaryk Institute, Prague), Fond
Maffie, karton 39, XIII: Markus Preminger’s concluding speech at the Kramár trial, 3845–6.
is singularly weak for the modern era).\textsuperscript{17} 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.\textsuperscript{18}

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.\textsuperscript{19} 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

\textsuperscript{17} 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).

\textsuperscript{18} 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-Hercegovina after its occupation in 1878.

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

But it was the third clause (§58c) which the Habsburg authorities would wield most persistently during the Great War since it tied the empire’s existence to an external threat. All the major wartime trials were based on this rubric of territorial treason (*Gebiets Hochverrat*) which had originated in the mid-nineteenth century in the unstable aftermath of the 1848 revolutions. Under §58c, treason was defined vaguely not only as causing a danger to the external security of the state (as in the 1803 code), but as fomenting civil war at home or – most significantly – as working to detach a part of the imperial territory.\(^{22}\) The attempted act was again akin to the act itself; the crime might be committed in speech, word or deed, with or without violence. So there was ample scope in §58c for clever lawyers to twist treason to match the state’s political objectives. Even if

many of these clauses had exact parallels in other European penal codes (Russian or Italian for example), Austrian law was still one of the severest in Europe, prescribing execution by hanging for all forms of treason. Traitors in the Magyar half of the empire were luckier since Hungarian law, though similar, was more precise and only a physical attack on the king required the death penalty.\(^{23}\)

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


\(^{22}\) 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.

\(^{23}\) 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.\textsuperscript{24}

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.\textsuperscript{25} 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 \textit{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.’\textsuperscript{26}

\textbf{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.\textsuperscript{27} The reality was not that more \textit{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.\textsuperscript{28}

\textsuperscript{24}AÚTGM, Fond Maffie, karton 39, XIII: Eduard Korner concluding speech at the Kramář trial, 4230–2.


\textsuperscript{26}Jaroslav Hašek, \textit{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.

\textsuperscript{27}Franz Exner, \textit{Krieg und Kriminalität in Österreich} (Vienna, 1927), 26.

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

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

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

\(^{29}\) 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 Gunz, Resurrection, 140.


\(^{31}\) Karl Platzer, Standrechtliche Todesurteile im Ersten Weltkrieg (Berlin and Stuttgart, 2004), 71–8.

\(^{32}\) 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. 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. 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. In Battisti’s case, the authorities typically had tried to discredit him beforehand, leaking tales of embezzlement.

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

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

While the military prosecuted treason in the war zone quite arbitrarily,
albeit with a legal veneer, in the Austrian ‘hinterland’ – the four Bohemian
and Austrian crownlands – they had no such special powers and had to
act more cautiously. Repeatedly in the first year of the war, the AOK
pressed Count Stürghkh, the Austrian prime minister, to extend martial
law into the hinterland in order to deal with treacherous civilian elements.
Czech traitors in Bohemia should just be court-martialled with no right
of appeal.37 Although this campaign was always rebuffed, it is not true
that the AOK lacked any power outside the war zone.38 Since all political
crimes now fell under military jurisdiction, in the hinterland too those
crimes had to be tried in military courts. The result was substantial
military control even if the civilian judiciary could try to temper the
proceedings; from 1914 to 1916, the number of cases tried by military
courts in the hinterland rose from 2,000 to 23,000.39

III

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

36 Überegger, Der andere Krieg, 384–6.
37 See Führ, Armeeoberkommando, 34ff, 91–7.
38 Cf. ibid., 22.
39 Manfried Rauchensteiner, Der Erste Weltkrieg und das Ende der Habsburgermonarchie (Vienna, 2013), 452.
emergency laws, they found ways to intervene and preemptively arrest suspected traitors. This occurred usually with Czech suspects, like the Czech National Socialist leader Václav Klofáč, who was arrested in September 1914 and incarcerated without trial for almost three years. By 1917, he was being earmarked for a monster treason trial that never took place.\footnote{Obžalovací spis proti Václavu Klofáčovi a Rudolfu Giuniovi pro zločin [volezrady] dle §58c tr. z., ed. Zdeněk V. Tobolka (Prague, 1919), viii–x.}

The essence of the treason trial, like all political trials, was not just about enforcing the law, but about incriminating domestic enemies so that they could be eliminated. Under §58, this was terminal since the death penalty always applied. By convicting key public figures from either the Czech or Serb communities, the regime also aimed to deter, to sound a warning-shot, to assert a normative Habsburg patriotism at the expense of any other competing allegiances. It might be argued that under the law many of those indicted were indeed traitors (for instance Klofáč), but even so – as in the trials of Casement in England or Joseph Caillaux in France – there was considerable ‘construction’ of the law to secure a conviction. And some of the Habsburg prosecutors went even further. Determined to convict, they stretched the evidence and sometimes in the courtroom manufactured an ‘alternative reality’ to explain traitors’ behaviour. This foreshadowed the techniques of totalitarian show-trials later in the century. The difference in Austro-Hungarian treason trials was that a defence lawyer was permitted, so there was some slight chance of acquittal.\footnote{Kirchheimer, \textit{Political Justice}, 46–8.}

Yet the monarchy’s political trials were not a wartime novelty nor a purely military instrument. In peacetime before 1914, several high-profile treason trials had been staged, notably against Serbs and Ruthenes. They suggest an empire already in crisis, which needed publicly to arraign the ‘disloyal’ in order to shore up its security. They also showed the real difficulty of defining treason, an uncertainty which could work to the advantage of both protagonists. In the notorious Zagreb treason trial of 1909, which lasted 150 days, 53 Serbs from Croatia were charged with treason under §58c and 31 were eventually found guilty.\footnote{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 \textit{Semantiken und Praktiken von Loyalitäten}, ed. Martin Schulze-Wessel and Jana Osterkamp (Munich, 2015).} The prosecutor’s remit was to stigmatise a broad swathe of Croatia’s Serbs and he twisted the evidence accordingly. Among the observers was R. W. Seton-Watson (a later president of the Royal Historical Society) who sat in the courtroom for three weeks. Calling it ‘one of the grossest travesties of justice in modern times’, on a par with the Dreyfus scandal, he found it hard to
believe that high treason in Austria-Hungary had ‘not yet been consigned to the lumber-room of medieval phrases’. The Czech Tomáš Masaryk agreed, warning the Austrian parliament in May 1909 about the danger of using the term Hochverrat, an anachronistic phrase from a bygone age.

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

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

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46 ‘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.
47 ‘Freispruch der Angeklagten im Lemberger Hochverratsprozeß’, *ibid.* (Morgenblatt), 7 June 1914, 2.
‘blasting and nipping’ before they ripened and brought ‘utter destruction and desolation upon the whole State’.\(^{48}\)

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

In this atmosphere, the defence lawyers had an impossible task, for a guilty verdict seemed inevitable. The presiding judge even rebuked one lawyer for being too solicitous of criminals ‘who by tomorrow would be condemned to death for treason’.\(^{53}\) Nor did the young assassins help themselves for most were determined to confess their guilt. Typically, they inverted the label of ‘traitor’ by claiming to have acted in response to the treachery of Habsburg rule; due to that tyranny in Bosnia, they wanted to destroy the empire and achieve South Slav unification. Their case was

\(^{48}\)A True and Perfect Relation of the Whole Proceedings, D4.


\(^{50}\)Rudolf Zistler, \textit{Kako sam branio Principa i drugove} 1914 godine (Ljubljana, 1937), 4, 17.

\(^{51}\)Vladimir Dedijer, \textit{The Road to Sarajevo} (1966), 336.

\(^{52}\)Speech of prosecutor Franjo Švara: \textit{Sarajevski atentat}, 332–42.

also not aided by many of their own defence lawyers. One, who was a Croat, spent a long time lambasting the Serbs, regretting that he had to represent men who had dug the grave not only of Franz Ferdinand but of the Croatian nation.\footnote{Speech of Konstantin Premužić: \textit{Sarajevski atentat}, 351–4. See also the minimal defence given to the assassin Trifko Grabčak: \textit{ibid.}, 364.} A general defence argument, however, was to question the defendants’ actual intentions. It had not been proven that the assassins, let alone their accomplices, had intended to commit \textit{Gebietsstochterrat} when murdering the heir-apparent. As silly teenagers, with heads in the clouds, they did not really know what they were doing.

On the defence team, it was the lawyer Rudolf Zistler who tried most diligently to challenge the prosecution case. He too focused on the issue of intent, arguing that under Austrian law treason required an overt act to be committed; instead, the prosecutor was ‘constructing’ treason through mere association with Serb propaganda or Yugoslav dreams. As Zistler vividly noted, ‘If you say you are a supporter of Plato’s ideal state or the utopia of Thomas More – that does not make you a traitor.’\footnote{Zistler speech: \textit{Sarajevski atentat}, 378.} The act of killing Franz Ferdinand in fact could only be defined as ‘political murder’, not ‘treason’, for despite what Princip and others were now claiming, there was no clear proof that they expected the murders to result in the secession of Bosnia from the state.

Zistler, however, then probed even more deeply, challenging the indictment’s whole political and legal framework. First, he urged the court to see the trial in the context of recent national developments, for ‘in our monarchy unfortunately treason trials recur in a steady periodic cycle, like a chronic illness’.\footnote{\textit{Ibid.}, 368.} He then delivered his legal \textit{coup de grâce}. Although Bosnia had been annexed by Austria-Hungary in 1908, the union had never been formally ratified by the Austrian or Hungarian parliaments. As a result, he argued, Bosnia was still not yet legally part of the empire, so it was impossible to commit the crime of treason in breaking it away from the state.\footnote{\textit{Ibid.}, 369–72. See also Zistler, \textit{Kako sam branio Principa}, 13: ‘The verdict could not construct a treasonable intention to destroy the annexation [which was] an illegal situation.’}

Zistler’s clever stance did not save his defendants from the gallows. Instead, it earned him several rebukes from the presiding judge and led to his expulsion from Bosnia after the trial because of his ‘hostile disposition’. At the end of his speech, he had appealed to history and to justice, but the courtroom in the belligerent context of October 1914 ignored this, leaving him to describe the overall result as ‘legal murder’.\footnote{\textit{Ibid.}, 15.} Not surprisingly, a century later (2014) Zistler’s arguments would be exploited by Bosnian Serb nationalists, including the film director Emir Kusturica, in a crude
campaign to try to overturn the court verdict and canonise their Serb hero Gavrilo Princip.\(^{59}\)

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.\(^{60}\) 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.\(^{61}\)

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.\(^{62}\) 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

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\(^{60}\) Milorad Ekmečić, “Žalosna baština iz godine 1914” (Političke namjene sudskih procesa u Bosni i Hercegovini za vrijeme prvog svjetskog rata), in Veleizdajnički proces u Banjaluci, 13, 32.

\(^{61}\) Ibid., 32. See also the memoirs of Stefan Freiherr Sarköti von Lovčen, ‘Der Hochverrats-Prozeß von Banjaluka’, Berliner Monatshefte für internationale Aufklärung, 7/1 (Jan. 1929), 33–4.

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

IV

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

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

65Führ, Armeoberkommando, 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’.\(^{66}\) 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”).’\(^{67}\)

In May 1915, Karel Kramár 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). Kramár’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. Kramár 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 Kramár 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.\(^{68}\) Just as Neo-Slavism rapidly disintegrated before 1914, so for Kramár 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 Kramár’s pre-war behaviour, that Preminger would try to unmask him as a long-term traitor.

From the start, Preminger felt that Kramár 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 Kramár’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 Kramár was not a major player

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\(^{66}\) 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’.


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

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

The trial of Kramář and Rašín finally opened in December 1915 and lasted for a full six months. Like a theatre premiere, many flocked to get

69 AÚTGM, Fond Maffie, karton 44, Preminger to AOK (A 2162/15), 31 May 1915, enclosing report.
70 Kunz, Náš odboj, 57; Paulová, Dějiny Maffie, 607.
71 Pamětí Dr. Alois Rašín, ed. Ladislav Rašín (Prague, 1994), 127, 129, 135. See also the memoirs of Jan Rezníček, Věčná smrt (Prague, n.d.), 48ff.
seats although press coverage was outlawed. On trial was the fundamental question, personified by Kramář, of what constituted loyalty to the Habsburg monarchy in peace or war. The prosecution, after translating thousands of Czech documents into German and researching widely in university libraries, had an overwhelming amount of circumstantial evidence and fielded experts on military intelligence to prove that Kramář’s treason had damaged the army. For the defence, while Kramář himself pleaded his innocence at length, an array of Habsburg statesmen lined up to endorse his pro-Austrian character, including the former foreign minister Count Berchtold and the Austrian prime minister Count Stürghk.

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

Kramář’s defence lawyer, Eduard Körner, proceeded to pick large holes in an indictment that rested on so many assumptions.\(^\text{75}\) His legal summing up typically attacked the vagueness of §58, asking like so many jurists before him whether it was appropriate for a modern state. He then questioned whether the crime had actually been committed either subjectively or objectively. Subjectively, there was little proof that Kramář through his actions was intending to transgress §58c. But objectively

\(^\text{73}\)The following draws on AÚTGM, Fond Maffie, karton 39, XIII, Preminger’s speech, 3790–846; and the indictment: Militärarwalt des Militärkommandanten in Wien (A 2162/15/960), Anklageschrift (Vienna, 1915).

\(^\text{74}\)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.

\(^\text{75}\)See AÚTGM, Fond Maffie, karton 39, XIII: Körner speech, 4227–47.
too the criteria were lacking. For as in England the crime of treason
required an ‘overt deed’, and Körner – like lawyers in the Bosnian
trials\textsuperscript{76} – queried whether spreading propaganda or writing newspaper
articles could constitute a treasonable act. Nor was there proof that
Kramář’s behaviour had actually influenced the Czech population as
the prosecution maintained. There seemed to be no ‘causal nexus’
between Kramář and Czech rebellion but just the ‘vague construction of
a connection’.\textsuperscript{77}

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

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

\textsuperscript{76} For example, the defence lawyer Danilo Dimović at the Banjaluka trial: Čaušević, 380.
\textsuperscript{77} Körner speech, 4244–5.
\textsuperscript{78} For a typical Czech nationalist reaction: Jan Hajšman, Česká Mafie. Vzpomínky na odboj
doma (Prague, 1932), 222.
\textsuperscript{79} Soukup, 28 Rýjen 1918, I, 177–82.
\textsuperscript{80} Josef Redlich, Schicksalsjahre Österreichs. Die Erinnerungen und Tagebücher Josef Redlichs 1869–
1936, II (Vienna, 2011), 171.
exiled Masaryk. From November 1916, Emperor Karl’s regime had been pursuing an idealistic new direction, dismantling military powers and reintroducing constitutional government. The amnesty, as his own personal decision after months of agonising about tendentious military justice, was meant to foster national reconciliation at home.\(^{81}\) Yet as many of his ministers warned, it seemed a foolhardy move when the ground had not been carefully prepared. Not only was a full amnesty granted with no preconditions to make the ‘traitors’ conform. The new regime acted from a position of weakness, when powerful national groups still existed who could publicly reject the rehabilitation. Most notably, could Kramář really be pardoned, a man whom many German-Austrians felt to be the ‘incarnation of an anti-German policy’?\(^{82}\) The move further destabilised the state, for the regime failed to follow it up with a concerted policy of national reconciliation.

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

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\(^{82}\) 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.

\(^{83}\) Friedrich Wichtl, Dr. Karl Kramarsch, der Anstifter des Weltkrieges (Munich, 1918), 4.

\(^{84}\) 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.
Many have questioned the ‘meaning of treason’, often with unsatisfactory or vague conclusions.\textsuperscript{85} If we search for its meaning in wartime Austria-Hungary, we discover a fundamental conflict over allegiance within the state. Before 1914, a lively discourse of treason already existed and the regime was wielding this ultimate legal weapon to silence irredentist enemies within. The war intensified this trend as the empire, under military dominance, fought a largely defensive battle for survival. Once identified, the traitors were publicly paraded as monstrous ‘outsiders’ who had supposedly plotted their evil schemes for decades. The aim was to assert a restricted version of imperial patriotism against any alternative visions, but also to justify to a European audience why Austria-Hungary had been forced to fight this total war. Ultimately then, treason meant a high-risk and dangerous power struggle. By 1918, it was the traitors who were gaining the upper hand and proudly turning the accusation on its head. Thus, as Jaroslav Kunz discovered when he went in search of those documents in Vienna, treason is always a transitory and constructed phenomenon. It constitutes an ideal subject for the historian who wishes to explain a regime in crisis.

\textsuperscript{85}See Rebecca West, \textit{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’: \textit{Journal of American History}, 52.2 (1965), 421–2.