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“The Emperor, the Minister, and the Executioner: Capital Punishment in the (Late) Habsburg Monarchy”
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The quality of mercy is not strain’d;
It droppeth as the gentle rain from heaven
Upon the place beneath; it is twice bless’d;
It blesseth him that gives and him that takes;
’Tis mightiest in the mightiest; it becomes
The throned monarch better than his crown;
His scepter shows the force of temporal power,
The attribute to awe and majesty,
Wherein doth sit the dread and fear of kings;
But mercy is above this sceptered sway;
It is enthroned in the hearts of kings,
It is the attribute to God himself;
And earthly power doth then show likest God’s
When mercy seasons justice.
-- William Shakespeare, The Merchant of Venice

Die allerhöchste Majestät, die Österreich hat, ist ja doch der Galgen!
-- Karl Kraus, Die Letzten Tage der Menschheit.

On October 21, 1916, at about 1 o’clock in the afternoon, Friedrich Adler (the son of the leader of the Social Democratic Party in Austria) entered the dining room of the upscale hotel Meissl & Schadn in Vienna, ate a simple meal, paid his tab, walked briskly over to the table where the minister president of Austria, Karl Count Stürgkh, was sitting, and shot him three times. Stürgkh died instantly.2 Friedrich Adler was immediately arrested;

1 “The highest majesty that Austria has is, after all, the gallows!” Karl Kraus, Die Letzten Tage der Menschheit, Frankfurt am Main: Suhrkamp, 1986 (first edition Vienna, 1919/1922), p. 505.
he confessed; he was sentenced to death.³ It was the middle of the First World War. Parliament had been adjourned at Stürgkh’s initiative, the building itself converted into a military hospital.⁴ Much of the Habsburg Monarchy was under martial law.⁵ The right to a trial by jury had been suspended and Adler’s death sentence was issued by a panel of judges, instead of a jury, in a so-called Court of Exception (Ausnahmsgerichtshof) and was confirmed by Austria’s supreme court (Oberste Gerichts- und Cassationshof).

Ten months after the assassination, in mid-August 1917, Adler’s case was presented to the emperor Karl, whose duty it was to review all death sentences imposed by civilian courts in the Austro-Hungarian Empire.⁶ The justice minister laid out a description of the

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³ HHStA 1917 Z. 1716.

⁴ Manfried Rauchensteiner, Der Tod des Doppeldlers. Österreich-Ungarn und das Erste Weltkrieg (Graz, Vienna, Cologne: 1993), 448. Stürgkh had been advising the emperor to rule through emergency decree since March 1914.


⁶ Explanatory note on the terms “Habsburg Monarchy,” “Austria Hungary,” “Austria,” and “Hungary”: When I refer to the Habsburgs, I refer to House of Habsburg-Lothringen, the so-called “Austrian Habsburgs,” who might have changed their dynastic name when Charles VI passed his holdings to his eldest daughter, Maria Theresa, who had married Franz Stephan of Lothringen. Her descendants chose instead to emphasize their matrilineal claim to Habsburg dynastic ancestry. When I refer to the Habsburg Monarchy, Austria-Hungary, or the Austro-Hungarian Empire, I refer to the entire territorial holdings of that dynasty in the relevant time period. In order to avoid confusion, I will never refer to the entire monarchy as “Austria,” even in the period before 1867 when that might be justified. The Monarchy was divided into two halves in 1867; the eastern half, where the Habsburg ruler
events and a summary of the judicial proceedings and provided a recommendation to the emperor: Adler’s deed was malicious, cold-blooded, and carefully planned, and the assassination of the prime minister in the middle of a war was an act that endangered the state itself. But, the minister argued, Adler nevertheless deserved the emperor’s clemency. Not only had Adler confessed (although without remorse), but he was neither to blame for what the justice minister called his congenital psychopathology nor for his faulty education. Most importantly, in the justice minister’s words, “he committed the deed in the opinion that he was morally justified in making the public aware of an unlawful state of affairs and that by sacrificing his own person, he could bring this state of affairs to an end.” Moreover, “his motive was not selfish, but rather he imagined that he served the public good and consciously sacrificed his own life and his own future to that end.” Given this extraordinary line of reasoning – the justice minister described the assassination of the minister president as a selfless, if misguided, act of sacrifice in the interests of improving the lives of all the Empire’s citizens – it is perhaps not surprising that the emperor pardoned Adler and instructed the Supreme Court to substitute a prison term of 18 years. On November 1, 1918, several days before the end of the war, the emperor pardoned Adler entirely as part of a large-scale amnesty. Adler was released from prison and immediately rejoined the leadership of the Social Democratic Party. The Social Democratic party briefly led the new government of the Austrian Republic. It had, as an opposition party in the monarchy, long campaigned for the abolition of the death penalty. On April 3, the constituent National Assembly abolished the death penalty in “ordentliche Verfahren” [regular procedures] in Austria (but allowed for the

was “king,” was Hungary; the western half, where the Habsburg ruler was “emperor,” was “Austria” (but see below). Austria and Hungary shared a diplomatic and consular corps, a joint army, and a ruler; everything else was managed separately, including their legal codes, constitutions, educational systems. In 1878 the Habsburgs occupied and in 1908 they annexed Bosnia-Herzegovina; neither Austria nor Hungary wanted to incorporate the territory and its Slavic-speaking population into the carefully balanced compromise between those of their subjects who were nationally-oriented and politically active Slavs, Germans, and Italians, so Bosnia-Herzegovina was administered separately. When I refer to Hungary, I refer to the largely autonomous Hungarian “half” of the monarchy after 1867 or the territory claimed by revolutionaries in 1848-1849. When I refer to “Austria,” I refer to the half of the monarchy that was not Hungary after 1867, which was officially known as the “Lands and Provinces Represented in the Reichsrat (Parliament).”

7 “daß ihr Beweggrund kein selbstischer war, er vielmehr in d... Sinne der Allgemeinheit zu nützen, gehandelt und hierbei bewußt sein eigenes Leben und seine Zukunft aufgeopfert hat.“ HHStA 1917 Z. 1716.
8 Hugo Ritter von Schauer, Justice Minister from 23 June 1917-1918 and Paul von Vittorelli, his successor in the JM from 27. October 1918-11 November 1918, had prepared an amnesty to celebrate the emperor’s name day on November 4. “Die Enthaftung Friedrich Adlers,” Czernowitzer Allgemeine Zeitung Nr. 386, p. 3 (November 9, 1918).
10 The intransigence of social democrats in Austria regarding abolition led some Germans to suggest that they had to abolish the death penalty in Germany as well, in order to “ensure that Austria and Germany did not drift too far apart,” since convincing the Austrians to reintroduce it would be impossible. Richard Evans, Rituals of Retribution: Capital Punishment in Germany 1600-1987 (Oxford: Oxford University Press, 1996), 566-567.
possibility of capital punishment in “standgerichtliche Verfahren,” or courts of ‘summary justice’ (more about them in a moment).\textsuperscript{11} Of abolition, the Justice Committee said, “It must be one of the first duties of the young state to rid itself of this symbol of a system based on tyranny.”\textsuperscript{12} Newspapers called abolition a “giant step forward towards humanity” and a “demand of civilization since time immemorial.”\textsuperscript{13} The law passed in April 1919 was followed up by a provision in the Constitution of 1920 that similarly abolished the death penalty in “regular” courts making it not only illegal, but unconstitutional.

For defenders of the new republic, abolishing the death penalty was a sign of revolutionary change – a rejection of tyranny, the ushering in of democracy. It was a repudiation, among other things, of the infamous wartime execution of Cesare Battisti, an Austrian parliamentary representative who left his post for Italy immediately upon the declaration of war in 1914, fought in the Italian army, and was captured and tried for high treason instead of being treated as a prisoner of war (or given a military trial). He was hanged as a civilian in Trent July 1916, in a plaid three-piece suit so grossly oversized as to emphasize he was robbed of the uniform he had worn at his capture and trial and dressed in a civilian “costume” more visually appropriate for “summary justice.” Military propagandists – in a move of disastrous ineptitude – proudly distributed a photo of his body on the gallows, with the Austrian executioner grinning behind him.\textsuperscript{14} There was tremendous public backlash and the Habsburgs’ reputation as a sadistic, tyrannical regime was cemented by their own failed publicity stunt.\textsuperscript{15} Reflecting on the first time he saw the photo and writing under the penname Alpheus, the author of a 1918 article in the Viennese daily paper \textit{Der Abend} wrote, “even today, when I think of [the photo], it takes hours for my nerves to recover from the shock. It was too dreadful; human beings cannot degrade themselves any further.”\textsuperscript{16}

Alpheus’s nerves were not only shattered by the photograph because of its brutality, but also because of the violent juxtaposition between what he thought he saw at first glance and what revealed itself to be the truth of the image upon further inspection. “You think you’re in a Heurigen [Viennese wine tavern],” he explains from the perspective of a viewer of the image. The central figure in the photo, Josef Lang, grins from ear to ear; his smile recalls the “beloved Lieder singer that you know from Grinzig or Sievering [two Viennese neighborhoods known for their wine taverns], his hat pushed back towards his neck and his hands in his pockets,” he is surrounded by “admirers, obviously regular customers.” Except that, upon closer inspection, one sees this isn’t a wine tavern, and the grinning singer’s hands

\begin{itemize}
  \item Sten. Prot. 1919 Blg 113, p. 1
  \item “Der innere Adel,” \textit{Arbeiter-Zeitung} XXXI, Nr. 93 (Friday, 4 April 1919), p. 2; “Konstituierende Nationalversammlung,” \textit{Wiener Morgenzeitung} (Friday, 28 March 1919) 1, no. 69, p. 1.
  \item The photo is reproduced multiple times in Holzer, for example across from page 25. Karl Kraus used it as the frontispiece for the first edition of his monumental anti-war drama, \textit{Die Letzten Tage der Menschheit} (The Last Days of Humankind).
  \item “…auch heute noch, wenn es mir einfällt, dauert es Stunden, bis die erschütterten Nerven zur Ruhe kommen. Es war zu grässlich; tiefer konnten Menschen nicht entarten.” Alpheus, “Der Henker,” \textit{Der Abend}, 26 Nov 1918, p. 3  
\end{itemize}
aren’t in his pockets, they are resting atop a gallows. “The harmless feeling of happiness that emanates from the picture is somewhat disturbed by the fact that one of the people in it is no longer living. … The only head lacking a satisfied smile sinks feebly to the left … He is dead and the dead man is Battisti. The laughing singer is the executioner.”17 Anton Holzer, whose outrage at the atrocities committed – and documented in trophy photographs – by soldiers in the Austro-Hungarian Army during the First World War more than suffices to fill over 200 pages of text, argues Alpheus shows how the photograph “swings between the past and the present: the unsettling effect of this photograph lies exactly in the flickering [irrlichternden] present of the past.”18 But Alpheus’s story does not just vacillate (diachronically, if you will) between present and past, as the image continues, weeks after the armistice and years after it was taken, to haunt him and shatter his nerves. It also shows the (synchronic) tension between what Alpheus recognizes to be at the heart of Austria’s core culture and the violence of war that somehow betrays that essence. The Wiener Sänger (Viennese singer) is the executioner and this is what is jarring, because Vienna claims to be the home of singing and wine and harmless revelry and coziness and hospitality; all these associations with the Heuriger are what makes the laughing man’s true vocation, execution, unsettling. The image shocks and surprises because it brings together two things that do not belong together in Alpheus’s imagination: Viennese culture and grotesque violence. Alpheus does not mention that before he was put on the imperial payroll in 1900, Josef Lang, the executioner in the photograph, had owned and operated a café in the Viennese suburb of Semmering.19

Others did not see any fundamental juxtaposition between Austrian culture and execution. Karl Kraus called the photograph a “group portrait of k.k. [imperial royal] humanity,” but this was a condemnation, not an acceptance.20 In a set of musings so strange I cannot imagine it is representative, Josef Lang’s biographer wrote, “Is it not a particularly charming feature of rightly-famous Viennese hospitality and good-heartedness that [the Viennese] did not deny their company to a man who undertook the executioner’s office, even though, according to centuries of tradition, this office exposes its occupant to the worst hostility of his fellow citizens? In cozy, understanding Vienna, a whiff of mild kindness blows even around the gallows.”21 This bizarre praise for Vienna’s tolerance through its embrace of the executioner notwithstanding, many Austrians associated the k.k. executioner’s skill (if not his joy) at his work with safety and order rather than cruelty and depravity. From 1919 until its reintroduction in the 1930s, some Austrians argued that the abolition of the death penalty at a time of immense social, economic, and political disruption and disorder was an abrogation of the responsibility of the state.22 In other ways, too, the

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17 Alpheus, “Die Henker,” Der Abend 26 November 1918, p. 3.
18 Holzer, 28.
20 Karl Kraus, Die Letzten Tage der Menschheit (Frankfurt: Suhrkamp, 1986), p. 507 [Holzer 30]
21 Is this too gross to even cite? Seyrl, 19-20.
22 Even defenders of the social democratic regime acknowledged it faced challenges ranging from the “depending on new neighboring states for supplies, the threat of military intervention on the part of the victorious powers, the resistance of rural areas, the threatening dissolution of the nascent state and even an open civil war.” Otto Bauer, Die österreichische Revolution, first published 1923, Werkausgabe volume 2. 654-655, cited in Gerhard Botz, ‘Die ‘Österreichische Revolution von 1918/1919. Zu Kontexten und Problematik
state seemed to have ceded its right to punish, for example through reforms limiting or eliminating corporal punishment in schools. In reaction to this perceived condition of lawlessness promoted by the laxness of the state, some Austrians wrote the justice minister to complain about the abolition of the death penalty. Children disrespecting their teachers, disorderly pedestrians clogging the sidewalks, dogs defecating on those same sidewalks, plagues of pigeons— all these were different manifestations of the same problem: a state that neglected its duty to maintain law and order. According to these petitioners, whose letters were carefully archived by the Ministry of Justice, there was no swifter way to address the problem, to restore safety and law and order throughout the Republic, than through the reintroduction of the death penalty.

Both opponents of the death penalty and those petitioners demanding it shared the belief that not executing people was something new—but they also knew that not executing people had a Habsburg tradition of its own. How could both be true? Part of the answer depends on what kinds of records one consults and how one defines execution. Anyone collecting statistics on the rate of executions of criminals convicted in civilian courts in Austria-Hungary—especially the kind of person who might be satisfied with statistics from the Austrian half of the monarchy—would testify that execution was extremely rare and that it had grown increasingly rare in the last years of the monarchy’s existence. Between 1848 and 1918, Franz Joseph (and briefly, his successor, Karl), reviewed thousands of death sentences and pardoned all but a handful of the convicts. Between 1890 and 1916 alone—the last quarter century of his reign, Franz Joseph read files relating to the death sentences of 2,256 individuals and pardoned all but 115, or 5% (in the Austrian portion of the Monarchy, rates were even lower, hovering between 2 and 3%). In the years 1904, 1906, 1910, and

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24 In 1911, Karl Kraus noted an announcement of a laborer’s conviction for manslaughter because after he knocked another man over by hitting him with a stone, the injured man died not because of the stone, but because he suffocated in the “filth on the street” (Straßen Kot) presumably a combination of mud and feces. “In other cities,” he noted, “the claim that one is suffocating on the filth in the street is a metaphor. In Vienna, it constitutes the facts of a case.” Karl Kraus, “Wiener Totschlag,” *Die Fackel* XIII. Jahr, Heft 321-322 (29 April 1911), p23.

25 Österreichische Staatsarchiv, Allgemeines Verwaltungsarchiv, Justizministerium, Allgemein, Legislativ Angelegenheiten (Signatur I) (1848-1939), 995 Todesstrafe; folder 1930, Grundzahl 10720/30 I J I 14-a, letter from 11.2.1930; Grundzahl 10795/31 (27.3.1931); Grundzahl 11231/31 (30.5.1931); Z. 15623 (1.9.1933).

26 I have counted the files for 53 of the 71 years between 1848 and 1918 inclusive; if the average of those years (82 per year) is applied to the entire period, the rough estimate of total death sentences reviewed by the emperor-king would be 5827. Since numbers range wildly from year to year (from 32 to 177) such a fabricated average cannot hope to be accurate; it is provided only to give a sense of scale.
1913, Franz Joseph approved no executions at all. Emperor Karl, during his two years of rule, reviewed 103 cases total and allowed only 1 to go forward to execution.\(^{27}\) Some version of these statistics was known to the Austrian public at the time. The *Wiener Morgenzeitung* reported in 1919 that “according to statistics gathered over the last fifteen years, more than 600 death sentences were imposed but only four were actually carried out.”\(^{28}\) Austrian legal scholar Friedrich Nowakowski, in a history of the death penalty in Austria written on the eve of its ultimate abolition in 1968, noted that “The young republic dared to take this step [abolishing the death penalty in ordinary trials in 1919] in the first years of its existence, in a very turbulent period of crisis with high criminality. The path was prepared, however, by the habitual practice of pardon (*Gnadenpraxis*).” Commuting death sentences to prison terms was so common, Nowakowski argued, that “honesty more or less demanded the abolition of the death penalty.”\(^{29}\) From this perspective, not executing even those criminals sentenced to death was a hallmark of the Habsburg’s judicial culture, in both Austria (as discussed by Nowakowski) and Hungary (which had its own constitution and its own judicial system, but a only a slightly higher rate of executing convicts sentenced to death in criminal courts\(^{30}\)). Austrian sociologist Dieter Reicher has compellingly linked the careful bureaucratic management of death sentences and appeals for clemency to abolition: “In the case of the Habsburg Empire,” he writes, “the administrative apparatus was mainly responsible for the decline and eventual abolition of capital punishment.”\(^{31}\) Nevertheless, despite extended debate, Austrian parliamentarians’ attempts to abolish the death penalty in 1887 and 1894 had been unsuccessful, which suggests a carefully considered commitment to its importance.\(^{32}\) What then, was the role of the death penalty in the Habsburg Monarchy?

This paper will first argue that, in this state whose practice suggested execution was almost never necessary, the primary purpose of the death penalty was not deterrence but the perpetual re-inscription of imperial power, that is, the regular opportunity for the emperor to perform God-like acts of mercy.\(^{33}\) To borrow words from Shakespeare, mercy “is the

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\(^{27}\) These numbers are based on my scans of archival indices for the entire monarchy, not published statistics, which only cover Austria. Nowakowski says there were no executions with 156 death sentences from 1911 to 1913; presumably his numbers reflect Austria only.  
\(^{28}\) “Konstituierende Nationalversammlung: Die Abschaffung der Todesstrafe,” *Wiener Morgenzeitung* (Friday, 28 March 1919) 1, no. 69, page 1; similar statistics were reported in “Deutschösterreichische Nationalversammlung,” *Der neue Tag* Nr. 6 (Friday, 28 March 1919), p. 6.  
\(^{30}\) My calculations based on the indices I’ve processed so far. Are there equivalents to the k.k. statistische Jahrbücher for Hungary and, if they’re in Hungarian, can I find some way to read them?  
\(^{33}\) “When a malefactor finds himself at the mercy (*misericordia*) of a prince, the implication is that a religious notion has entered criminal justice. Mercy was an attribute of God, the ultimate judge. The relationship of all people with God had always been viewed as one of subordination. Hence God was indeed able to punish … Heavenly justice was never an
attribute to God himself; And earthly power doth then show likest God’s when mercy seasons justice”; the emperor’s regular exercise of clemency, by demonstrating the wisdom but also the divine kindness of the ruler, “blesseth him that gives and him that takes.”

In this, I am suggesting that – if the audience understood the emperor’s message – clemency could be added to the list of tools and processes, described elsewhere by Dan Unowsky, used in the manufacture of imperial patriotism, that is, the centrally controlled and administered use of the charismatic value of his person. But did it work?

I will also argue that there was an audience around the emperor for whom this messaging was fully convincing – his cabinet, his cabinet chancellery (Kabinetskanzlei), his personal staff, the teams of lawyers and judges who followed capital cases closely and were well aware of the procedures for the adjudication of clemency and rates of execution. The presentations (Vorträge) that the emperor read offered him a kind of a social history of his realm: stories about the depravity of poverty, the ubiquity of hope for rehabilitation, but ultimately, again and again, stories that placed his divine love of his miserable people at the center. This archive, that is, carefully recorded a series of stories about his dispassionate but merciful rule that, even as they obscured any information about his personal opinions or reactions, preserved a particular combination of imperial power and bureaucratic management.

Finally, I will argue that the First World War did not so much disrupt this story as reveal a fissure that ran through it. Both the absolute number of cases presented to the emperor and the rates of execution dropped during the First World War, as if first Franz Joseph and then Karl had had enough of death, as if the courts ground to a halt. Franz Joseph decreed in November 1914 that wherever regular civilian courts had ceased to function, civilians would be placed under the jurisdiction of military courts by default. But at the same time the Cabinet Chancellery files record imperial clemency, the number of death sentences carried out in other types of courts or in extra-judicial military proceedings rose to unimaginable and unrecorded heights. The brutality of military rule not only (infamously) in occupied Serbia but (less famously) within the boundaries of the monarchy itself – most especially in Galicia, Bosnia-Herzegovina, and Syrmia – reflected the conditional nature of rights that appeared firmly secured in the constitution but that were actually contingent on the absence of various approved justifications for their abrogation, such as states of emergency. A state’s right to monopolize violence is based not only on preventing others from the use of violence but also in rationalizing its own use of violence – up to and including state-sanctioned killing. A state’s right to kill is constitutive of sovereignty. That is nothing new – but the question here is how the state killed and thus how it performed its sovereignty: how the emperor-king, his advisors and ministers and staff, and automatic response. The Lord could be severe or show mercy. By analogy this line of thought was also applied to human justice practiced by a territorial lord.” Pieter Spierenburg, Spectacle of Suffering, 5.

34 William Shakespeare, The Merchant of Venice, Act IV, Scene 1 (spoken, in the play, by Portia).


36 Reichsgesetzblatt für die im Reichsrat vertretenen Königreiche und Länder,” No. 307, November 4, 1914, p. 1170. This order was not lifted until 1917 (Gunz, 112).
his citizen-subjects understood the implementation of that right. The whole elaborate bureaucratic choreography represented by the process of managing capital cases shows that the question of how people were selected for execution was of great importance to the emperor-king. The atrocities that appear to have been carried out during the First World War reveal that choreography to be little more than an elaborate performance on a very small stage before a select audience, surrounded on all sides by the wild chaos of unchecked paranoid retribution.  

From the middle of the eighteenth century, Austrian statesmen understood the regulation of punishment and the use of the most severe sentences as a reflection of the nature of the relationship between the state and its subjects. A sovereign’s position on the death penalty was a reflection not only of his or her individual conscience but also of his or her theory of justice. (By the late nineteenth century, this would be extended to the nation as a whole: “The true reflection of the civilizational of peoples and eras can always be found in their criminal law”38).

Maria Theresa considered replacing the death penalty with prison terms but decided against it because of the lack of adequate prison capacity.39 The leading legal theorists of the day both internationally (Cesare Beccaria) and domestically (principally, jurist Joseph von Sonnenfels) were convinced that punishment must serve a purpose, not only for society but also for the criminal.40 The death penalty was considered ethically questionable because the perpetrator was merely being used as the means to an end, the education of others. Even worse, that educational purpose, the deterrence of crime by showing how badly it could end, did not work.41 “The future has no place in the thoughts of the criminal. How could something that he does not even think about deter him?”42 Leading jurists, including Court

37 According to Gunz, this is an exaggeration. He shows how even in occupied Serbia, the Army High Command was itself concerned that its procedures and processes were impartial and fair; and that a famine within the monarchy increased even further the appreciation for the importance of positive relations within Serbia. Gunz, 126 (on fair trials) and elsewhere (the whole book really argues that the blind-atrocity portion of the occupation came to an end long before the war).


39 Maasburg, 2; in Maria Theresia’s time, prisons focused on the temporary housing of beggars and the indigent, who were supposed to be trained to work, their dormant desire to be useful awakened. They were not primarily intended to punish criminals. Gerhard Ammerer, “Zucht- und Arbeitshäuser, Freiheitsstrafen und Gefängnisdiskurs in Österreich, 1750-1850,” in Strafe, Disziplin und Besserung: Österreichische Zucht- und Arbeitshäuser von 1750 bis 1850 (Frankfurt: Peter Lang, 2006), p. 7-8, 12.

40 The separation of two main theories of punishment, the “absolute” (represented by Kant and Hegel) and the “relative” or “functional” theories. Functional theories could mention deterrence, but by the late nineteenth century, most Austrian legal theorists considered deterrence outdated. “The function of punishment is the rehabilitation of the criminal.” Dr. Föckel, “Über Grund und Zweck der Strafe,” Streffleur’s österreichische militärische Zeitschrift 4 (1892): 146. Sonnenfels, “Grundsätzen der Polizey, Handlung und Finanzwissenschaft.”

41 Ammerer, Strafe, Disziplin und Besserung, 11.

42 “Die Zukunft gehört in dem Denkkreis des Bösewichts nicht. Wie könnte ihn also etwas abhalten, an das er nicht denkt.” Cited in Ammerer, Strafe, Disziplin und Besserung, 11.
Councillor Josef Holger and jurist and legal philosopher Karl Anton von Martini, laid out a long list of reasons the death penalty was generally ineffective (rather than immoral) in 1781 and suggested other penalties were almost always superior: “A Regent, who must be the father of his people, may only sentence the guilty party to death in those cases where the defense of public safety absolutely requires the death of the malefactor (Müßethäter).”

Given that executions were as likely to evoke sympathy for the convict, Martini advised that more effective punishments would be “difficult and prolonged labor, carried out in public.” Joseph II announced on 22 August 1783 that he had determined no further death sentences should be imposed and an official ban followed in 1787. When Joseph II formally abolished the death penalty in Austria proper in 1787, he simultaneously ordered that it be substituted with a sentence to haul ships along rivers in Hungary – a punishment that was also imposed on men who would not have been executed before abolition, and as a consequence led to far more deaths before it was abolished in 1790 than the death penalty would have. Joseph II’s motive was the provision of more-effective deterrence and the extraction of more-useful labor, not mercy.

In a state of panic about the French Revolution, Joseph II’s more conservative son, Francis, reintroduced the death penalty for high treason only in 1795. When a new criminal code was introduced in Austria in 1803, it also included the death penalty for a range of crimes, including murder, manslaughter while committing robbery, cases of public danger, some aggravated forms of arson, and forging bank notes. Franz made the announcement in a Hofdekret that acknowledged that crime had not increased during the period of abolition: “Even under the influence of ominous events & circumstances, the number of crimes has not increased; thus this expansion [of crimes punishable by death] is by no means a reflection of the character of the nation.” He justified capital punishment not based on its utility as a deterrent, but in recognition that it would only be carried out in cases where no rehabilitation was possible in so doing asserting that the monarch could peer into a subject’s soul and determine if it could be redeemed.

Franz was careful to retain totally for himself control over death sentences, even when dramatic increases in administrative activities required that he delegate ever more responsibilities to others. In 1813, and again two decades later in 1832, he set aside a huge amount of administrative responsibility for his Staatskonferenz, reserving for his direct

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43 Martini, cited in Ammerer, Strafe, Disziplin und Besserung, p. 12.
46 Out of 1100 convicts sentenced to “hauling” between 1784 and 1790, 721 died. Out of 100 convicts sent to Peterwardein in May 1784, 37 had died by March. In November and December 1786, 75 men died, 38 of them died on December 6 alone. From November 1 1789 to January 31 1790 77 convicts died. Friedrich Maasburg, Die Strafe des Schiffziehens in Oesterreich (1783-1790), Vienna 1890, p. 16; Ammerer, Strafe, Disziplin und Besserung, 13.
47 Nowakowski, 7.
involvement and decision-making only a few areas, including all death sentences.\textsuperscript{49} Like his successors, Franz used his control over the death penalty more frequently to commend mercy than to demand justice. Between 1803, when the death penalty was reintroduced, and 1848, there were 1304 convicts sentenced to death in “ordinary proceedings,” and of those 1304, 856 (65\%) were pardoned. 2 of 121 (1.6\%) convicted of high treason were executed. 18 of 84 (21\%) sentenced for arson were executed; 421 of 911 (46\%) sentenced for murder were executed; none of the 76 convicted of forging public bonds was executed.\textsuperscript{50} That those executions that were carried out occurred “in God’s name” was emphasized through various rules that prohibited executing convicts on holy days according to whatever religion they practiced.\textsuperscript{51}

The Revolution of 1848 posed a real challenge to the premises of the emperor’s sole control over capital punishment. The revolution brought disruptions in several ways. Only about half as many cases were brought to the emperor as on average during the Vormärz period – one can imagine that the circumstances for investigating crimes as well as usual judicial processes were interrupted. Nevertheless, the emperor (now Franz’s son, Ferdinand) commuted the death sentences he did see to prison terms of between 8 and 20 years. Helene Dyganiszyn and Josefa Polezynska were each given 8 years for infanticide.\textsuperscript{52} Karl Szybinski got 15 years for murder; Wenzel Poradek, Jakob and Gertrud Jakubczyk, Franz Benda, Joseph Grabowski, Peter Kozak – all these people were recommended to the emperor for mercy and their cases were processed according to custom. Although the Justice Minister sometimes mentioned the current uncertain political situation in justifying the recommendation for mercy, the cases also offered traditionally recognized mitigating circumstances that supported prison terms rather than execution.

Other cases, however, saw different outcomes specifically because of the revolution. Anna Wieser and her lover Joseph Draschl were pardoned for the murder of her husband not because of a clemency plea but because “daß es vielleicht in dem Plane der bevorstehende Gesetzes Aenderung liege, die Todesstrafe gänzlich abzuschaffen, wonach die Vollziehung am Schlüsse der Bestehenden Gesetzgebung nicht am Orte sein dürfte“\textsuperscript{53}; Franz Salat had committed a brutal murder in the course of a robbery, and had not been recommended for mercy by any of the three courts that considered his case. The Justice Minister, Baron von Sommaruga, however, asserted on May 3, 1848, that “Your Majesty can hardly be inclined to allow a death sentence to be carried out before the retention of the death penalty in the new penal legislation has been determined, in consultation with the


\textsuperscript{51} Justiz-Hofdecret 18. September 1844 p221, Nr. 829.

\textsuperscript{52} Dyganiszyn: 1848 Z. 1765 (MRZ 448) Unlike in Germany, where infanticide was legally defined and treated differently than murder, infanticide in Austria and in Hungary was prosecuted as “murder” (gemeiner Mord). All records I have seen regarding women who murdered their own infants result in a commuted sentence, some with terms of eight years.

\textsuperscript{53} 1848 Z. 2153 (MRZ 1003), Wieser & Draschl.
Reichstag," effectively informing the emperor that he did not have the authority to order a death sentence to be carried out. Sommaruga went even further than advising Emperor Ferdinand about this position: he published it in the official (“ amtliche”) portion of the Wiener Zeitung on June 2, 1848. Thanks to Sommaruga, the Emperor had thus publicly taken the position “that his majesty is not inclined to allow a death sentence to be carried out for non-political crimes that are currently punishable by death – until the constitutional legislation regarding the retention or abolition of the death penalty has been decided.”

To the extent that these pardons constitute a recognition of the legitimate authority of the Reichstag, they simultaneously accept a limit on the power of the monarch.

As a result, Anton Just, who everyone agreed should have been executed, got 20 years in prison in a decision signed by the emperor on June 15, 1848 – this despite the fact that the appellate court begged for his execution because „in the provinces, robbery-murders have so multiplied in recent times that it is highly necessary to dispense the full rigor of the law.”

In July, Florian Rubrika, deemed by the courts and the minister to be a remorseless brute, was also given a prison term because, in the minister’s words, “Your Majesty could hardly be inclined to allow a death sentence to be carried out before the legislative bodies have determined whether to retain or abolish the death penalty.” The confusion over the emperor’s position was so great that in the case of Johann Schmid, the lower court actually sentenced him to life in prison instead of death – without making the case that he deserved clemency, because they thought the death penalty was not on the table. The Supreme Court, however, knew better and re-applied the death sentence because the announcement in the Wiener Zeitung was a reflection of the emperor’s inclinations, not a renunciation of his rights.

Ignaz Paschil was given 20 years for matricide in August, again not because there was a single voice in favor of clemency, but merely because the emperor did not feel inclined to allow executions in this moment of legislative unclarity. In September, Franz Kratochwill got 20 years only because of the legal situation.

Most telling was a case that spanned the pre-revolutionary and post-revolutionary periods. On September 26, 1846, Alessandro Ganelli murdered a watchmaker’s apprentice and stole 27 watches. He had been condemned before the revolution began and his death sentence had been approved by the emperor on 3/21/1848. But before he could be executed, on 4/1/1848 the province of Cremona, where Ganelli was imprisoned, revolted. Once Cremona was reconquered, the case was brought before the emperor again (August 30, 1848), with the new recommendation that the order to execute be overturned and that Ganelli receive 20 years in prison instead, for three reasons. First, Sommaruga’s

54 HHStA MR 1848 Karton 3 Z. 475 & HHStA MR 1848 Karton 11 Z. 2335

55 daß A.h. dieselben Sich nicht geneigt finden dürften, in nicht politischen Verbrechen, welche nach der bestehenden Gesetzen mit der Todesstrafe zu belegen sind, derzeit und bis die konstitutionelle Gesetzgebung über die Beibehaltung oder Abstellung der Todesstrafe entschieden haben wird, ein Todesurtheil vollstreben zu lassen HHStA MR 1848 Karton 11 Z. 2335

56 „sich in der Provinz die Raubmorde in neuester Zeit so vermehrt haben, daß es höchst nothwendig sèy, die Strenge des Gesetzes walten zu lassen.“ HHStA MR 1848 Z. 1004

57 HHStA MR 1848 Z 1577

58 „lediglich ausgesprochene Absicht die A.H. Gnade vorwalten zu lassen, bis eine neue gesetzl. Bestimmung über die Fortdauer oder Abschaffung der Todesstrafe erfließt, die Gerichte nicht entheben kann, nach dem bestehenden Gesetze zu erkennen.“ HHStA MR 1848 Z 1699
announcement in the *Wiener Zeitung*. Second because “beginning the just barely achieved reoccupation of the revolting provinces with an act of the greatest severity would not conform to Your Majesty’s inborn clemency.” This suggested the emperor’s advisors were inclined to make the best of the fact that the emperor had effectively lost the authority to execute a criminal and thus underscores the connection between the emperor’s sovereign power and the death penalty. And third, because “it would be an act of true cruelty [Grausamkeit] to carry out a death sentence after so much time had passed, especially since he, given his confession, could not expect any other penalty, and through no fault of his own, he had to endure this agonizing uncertainty as to his fate for more than six months.”

Six months of waking up every day to the expectation it must be his last was so cruel, that execution would now be barbaric.

All of this came to an end with the ascension of Franz Joseph to the Habsburg throne in December 1848. His predecessor (and uncle) had abdicated the throne specifically to avoid having to follow through on his promise to introduce a constitution. It took a few months before he was presented with a death penalty case, but it became immediately clear that he would not hesitate to approve an execution. The first case he saw was in May 1849: Franz Horak was given 15 years, on the recommendation of the courts and the minister. But on April 20, 1849, Franz Joseph approved the execution of the convicted murderer Joseph Witkowski, the first execution since the revolution had begun. The part of the revolution that had suspended executions was over. Franz Joseph, eager for absolutist rule, reintroduced what Unowsky called “updated ‘traditional’ forms” all across court and government practice.

There were four more civilian criminal executions in 1849; Franz Edler, in May, and three men who collaborated in a murder, in September.

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59 “Als ziemlich feststehend ist die philosophische Lehre anzusehen, dass der Charakter angeboren und unveränderlich ist, dass derselbe den Kern des Menschen bildet und weder durch Reden und Moralisiren noch durch andere Mittel umgeändert werden kann.“ Nevertheless, „Strafbare Handlungen sind nicht immer Offenbarungen des Charakters.”

“There is little disagreement about the philosophical tenet that character is innate and immutable, that it is the core of a person and cannot be changed through speech or moralizing or through other means. … Punishable acts are not always manifestations of character.” Emil Dangelmaier, *Philosophie des Militärrechts* (Vienna & Leipzig: Wilhelm Braumüller, 1896), 35-36. “Every person was destined to sin; to seek or to bestow mercy was a choice” (Harrington, 184).

60 HHStA MR 1848 Z. 1827

61 Witkowski had been convicted of theft on four prior occasions. About three weeks after his release, he was hired by Berisch Mayblum to chop wood. Having completed the task, he asked Mayblum’s wife, Sara, for the 3 kreuzers he had been promised along with some bread. When she only gave him 2 kreuzers, he killed her with an axe, accidentally striking and killing her 3-year-old child as well. The Mayblum’s 10-year-old servant, Lindenbaum, survived the attack. Neither the majority in the courts nor the justice minister recommended clemency since Witkowski had four prior convictions and the violence of his most recent crimes showed he was “an incorrigible, dangerous person, against whom the whole severity of the law should take effect.” Only one vote in each the first court and the appellate court argues for clemency, under the impression that Witkowski showed “earnest remorse” and whose “exterior showed no sign of obdurate vice.” MR 1146 Witkowski [sic] 1849.

62 Unowsky, 115.
But the most famous executions in all of Franz Joseph’s domains in 1849 occurred outside of the regular court system. In October, the so-called martyrs of Arad, the 13 Hungarian generals who had led the Hungarian revolutionary army in 1848 and 1849, were executed in the emperor’s name at the direct order of Julius Jakob Baron von Haynau; Hungary’s first Minister President, Lajos Batthyány, was executed in Budapest the next day.63 Baron Johann von Wessenberg-Ampringen, who had briefly served as Minister President of Austria in 1848, observed that “The young Emperor is being forced to make his way to power over the scaffold and the bloodbath instead of being given the chance of coming with the olive branch in his hand and so founding a lasting peace in the spirit of conciliation. … As Napoleon himself once said: ‘Il y a quelque chose qui vaut mieux que hâr, c’est pardonner.”64 Perhaps as a result of the disastrous diplomatic effects of decisions made by Haynau, Franz Joseph tried to ensure that his personal supervision of death penalty cases would be even more secure.65 Whether through the experience of Arad or the advice of his closest councilors, Franz Joseph quickly learned outsized role the attitude towards the death penalty plays in defining a ruler’s relationship with his subjects.

In 1852, a new Austrian penal code reduced the number of crimes punishable by death and re-emphasized that no person or institution had the authority to commute a death sentence except for the emperor himself.66 Here, too, the emperor’s retention of sole control over the commutation or execution of death sentences ran counter to what H.O. Meisner called the “slow but unstoppable chipping away at the substance of monarchism” as a consequence of the growing functions and duties of the state, which necessitated ever greater delegations of responsibility to the bureaucracy.67 These files suggest, however, that the bureaucracy and the emperor worked in tandem. The cabinet chancellery creates an archive of his hard work, dedication, justice, judiciousness, and mercy. According to Joel Harrington, the diary of a renaissance-era executioner, Frantz Schmitt contains the word ‘mercy’ ninety-three times and ‘justice’ only twice: “Mercy,” he concludes” was the powerful counterpart to punishment in the early modern notion of justice.”68 The Kabinettskanzlei archive seems to suggest that in the nineteenth century, although mercy and justice were still counterparts, they could also be complementary. The emperor’s sage mercy could ensure that punishments did not create false equivalencies between all willful killings. The emperor knew exactly how and when to temper the full rigor of the law with clemency. Perhaps this was a higher order of justice?

Let us skip ahead to the final months of Franz Joseph’s reign to investigate a story that perfectly encapsulates this happy marriage between bureaucratic routine and unchecked imperial power. Stefan Kray was born in Hungary and took a position in as a court secretary in the court chancellery (Kabinettskanzlei) in May 1915. In his memoirs, he recalled seeing Franz Joseph “most frequently in his study, sitting at his desk” in a simple uniform of “field grey shirt, black general’s pants with a red double strip (Lampaß)”; he sat at his desk from

63 Artúr Görgey, who had surrendered to the Russian army, was spared at Russia’s insistence.
64 Redlich, 64.
65 Haynau’s reputation as the “butcher of Arad” earned him notoriety not only in Hungary, but as far away as England and the United States.
66 Reinöhl.
4:30 in the morning until 8 o’clock night, with breaks for meals, audiences, and strolls in the park. He would attend to 10-12 Vorträge each morning. Kray’s memoir included snippets of his experience working in the emperor’s immediate proximity that he considered exemplary and one of them revolves around a capital case. Kray tells his reader that the court secretary of the cabinet chancellery who was on duty “had the right, if necessary, to be announced to the emperor at any hour and would always be received immediately.” Of course this right was not to be exploited, but in true emergencies, the court secretary on duty could even ask that the emperor be awakened from sleep. Kray reports having used this right only once. A man who had committed a murder in the course of robbery (Raubmörder) had been sentenced to death and the emperor had already read the relevant Vortrag and approved the death sentence. As a result, the execution had been scheduled for the earliest morning hours of the very next day. But at 11 o’clock at night, several hours after the emperor had retired to bed, a telegram addressed to the emperor arrived. The perpetrator’s wife and his son – “who had purely by chance returned home from the front that very day and who had been decorated with a golden medal of courage” – together begged the emperor for clemency. Kray determined he had to wake the emperor; he considered it possible “that the emperor, in consideration of these extraordinary circumstances, might be moved to decree that pardon of the delinquent, even though he had already rejected his plea for mercy once.” If he had waited until the next morning, the execution would take place before the emperor would have had the chance to order the pardon.

The emperor’s valet led Kraj to his study and went into the adjoining imperial bedroom to wake the sage old emperor. “I did not have to wait long before the emperor came out of his bedroom, fully dressed, and without betraying even the slightest sign of indignation about the nocturnal disturbance, asked why I had come to him at such an unusual hour.” Kray gave him the telegram and the relevant files (“it was namely prescribed that the copy of the ministerial Vortrag related to the death sentence must be kept at Schönbrunn until the execution of the death sentence, because the court chancellery had to be every prepared for the submission of a pardon.” The emperor listened to Kray, “deliberated for a moment, and said to me ‘I feel moved to pardon the convict, in consideration of his heroic son, and to commute his death sentence to a fifteen-year prison term. Make all the necessary arrangements and submit the written draft for my signature tomorrow morning.’” I have looked at every death penalty case in 1915 and 1916 (Franz Joseph died in November 1916), and not one fits Kray’s description of this case. I am therefore inclined, regretfully and regretfully, to suggest that this story did not take place the way Kray describes.

Kray’s story, however, is more than fiction just as it is more than fact. It is plausible to me that it felt true to him. True to Franz Joseph’s character and to his style of rule, true to some ideal version of how the Kabinettsskanzlei and the emperor were supposed to work together. What is Kray telling us? This anecdote exemplifies the careful, systematized, highly-regulated functioning of the Kabinettsskanzlei and its procedures designed to leave nothing to chance. What if the emperor is asleep when an urgent decision needs to be made? A specific person is allowed to wake him. What if the emperor needs to see a file that


70 Kray, 89-91.
he has already signed? A copy is kept on hand until it is no longer necessary. What if something is very, very urgent? The staff can act with appropriate speed. This is bureaucracy at its best, with contingency plans in place. But it is also an office that operates according to the emperor’s own values. His dedication to work, his tremendous love for his subjects and most especially his soldiers, his respect and honor of “heroism” in battle. Kray is telling us not only that it was theoretically possible to wake the emperor, but also that he could confidently predict when it was worth doing and how the emperor would react. I have seen dozens of telegrams sent to the emperor; he marked each one, in pencil, with a simple slashed zero; a circle, a line through the circle, an F, a J, an execution. But Kray knew something about the emperor that seemed truer to him than this record of rejecting last minute telegrammed pleas. He knew that together, the imperial bureaucracy, the judicial system, and the emperor would always see justice done, but tempered by mercy.  

A telegram (in Hungarian) requesting clemency and the emperor’s response: “0 FJ”

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71 The chapter in which this story appears is called “Mosaiken aus dem Leben Franz Josefs I” (Mosaics from the life of Franz Joseph I), the chapter title appears in the header of each verso page. In the header of each recto page is a short phrase that reflects on the content. The first of the pages related to this anecdote has a header that says “Begnadigung eines Raubmörders”) (Pardon of a Robber-Murder); the second says “Gerechtigkeit über Alles” (Justice above all).
A telegram (in Czech, with German translation) requesting clemency
and the emperor’s response: “Θ FJ”

The Kabinettskanzlei archive is a monument to Kray’s vision of the emperor and his
court, even though it provides the evidence that this specific anecdote is likely fiction. The
procedures for final determination of whether or not an execution would take place that
were solidified in 1852 created a massive record of state oversight over the lives and deaths
of Habsburg subjects. Every capital case produced voluminous court records and
proceedings in the courts of first and second instance and at the Supreme Court. At each
level, the judges and juries (where juries were used) and the prosecutors – from the first
district attorney to the solicitor general at the Supreme Court – made recommendations
about the sentence they considered most appropriate. The entire case, including the
circumstances of the murder and the procedures for determining the identity of the culprit,
was summarized in a lengthy report by the Justice Minister and his staff. These reports,
ranging from about twenty pages, minimum, to in excess of forty pages in particularly
complex cases, were full of pathos and drama. The characters of the victims and their
families were portrayed, the victims’ activities in their last days and hours described with a
combination of foreshadowing and suspense. The combination of luck and inspired
detective work that led to the determination of guilt was laid bare, as was the suspects’
behavior and state of mind throughout the inquiry and trial.

What does a justice minister’s report look like? Between 1848 and 1918 there were
34 ministers of justice in Austria. After 1867, there were separate ministers of justice in
Hungary. After 1878, the emperor also received petitions from the joint finance minister
relative to death sentences in Bosnia-Herzegovina.72 Between them, they sent over five

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72 For the sake of convenience and brevity only, I ask the reader to tolerate my continued use
of the phrase ‘justice minister’ to mean ‘minister submitting a Vortrag with a
recommendation for or against clemency following a death sentence’ even though a small
minority of these Vorträge came out of Bosnia-Herzegovina and were thus written by
finance ministers. I ask the reader to imagine that every generic use of ‘justice minister’ that
thousand separate “Vorträge,” or (written) presentations, to the emperor, all but 103 of them to Franz Joseph (the others went to Karl). Some justice ministers began with an arrest and
then provided more detailed information about the crime and investigation. Others built up
their narratives with suspense, beginning with the victim in his or her last hours, and only
revealing the crime in a moment of dramatic climax. All Vorträge carefully outlined the
evidence that led to the unerring conviction and detailed the verdicts of each jury and panel
of judges as well as any recommendations they made regarding clemency. There were a
handful of crimes in Austria (and Hungary) that carried an automatic death penalty; juries
and judges could not change the sentence, but they were required to make a
recommendation about possible clemency including suggestions about the duration of a
possible prison term, if substituted for execution. The original versions of the justice
ministers’ reports purported to give some sense of the convict’s personality, education,
background, reputation, motive, state of mind, mental capacity, character (as well as facts
such as age, marital status, religion, occupation, place of birth). According to every
biography of Franz Joseph that I have read, the emperor never read a piece of fiction in his
life. The justice ministers’ reports, which could run to over fifty handwritten pages, were
arguably the closest he ever came to short stories, to dramas, to narrative stories outlining
the lives and miseries of his millions of subjects. I have found no evidence that he ever read
any of them, although he signed each one.

What the emperor did read, however, were shorter summaries of each Vortrag
prepared by members of the staff of his cabinet chancellery. At least two and usually three
cabinet chancellery staff were involved in the preparation and processing of each Vortrag. A
secretary, having read the original (all originals were in either German or Hungarian) would
summarize it in around three to eight hand-written pages. He would write out in the first
person the emperor’s decision, assuming he would follow the justice minister’s
recommendation, which would be either a) Out of mercy, I pardon X and order that the
Supreme Court substitute, instead of the death penalty, a suitable prison term; or b) I
allocate to the Supreme Court responsibility for seeing that justice is served. A supervisory
secretary would check over the summary and make any necessary corrections or additions
before it was presented to the emperor. The emperor would read the summary, initial it (FJ)
and simultaneously sign the original, longer version (with his full name). On occasion, he
would reverse the decision recommended by the justice minister (no more frequently than
about once every two or three years), or specify a prison sentence that differed from the one
recommended. Very rarely, he would pencil a marginal comment or question, but these
related exclusively to procedural matters, such as the length of time it took for a case to
proceed through the courts, or an irregularity in the formulaic language used by a secretary.
On no occasion did he ever reveal what portions of the justice minister’s report he found
compelling or what reasons he had for overturning a decision. His reasoning remained
known to him alone: a secret of sovereignty.

The summaries lack some of the original reports’ narrative tension, their attention to
the detailed descriptions of the victims lives, the perpetrator’s character and background.
They are literal examples of the process, lamented by Joel Harrington, by which “whatever

does not specify the justice minister of Austria or Hungary specifically actually means
“justice minister or finance minister, as applicable.”

73 My calculations based on KK files.

74 Hungarian reports were not shortened, they were translated and presented in their full
length.
came before the crime in question” is erased by a “narrow focus on the legal aspects” of a case. But even they attend in significant measure to the importance of the emotional condition of a perpetrator at the moment of a crime, especially from the latter decades of the nineteenth century onward. Consider, for example, this explanation of why Justice Minister von Schmerling advised against commuting the sentence of Johann Jaschkowsky in 1850: “Thus, the minister of justice considers this terrible murderer -- despite the repentance he showed during the investigation, and although he was only carried away by self-preservation to those actions that led to the murder of Franz Potyka, and even though his former life provides favorable testimony to his good behavior and especially to his love of children -- nevertheless all the less worthy of your highest majesty’s consideration for clemency since he had already been punished for theft, and his present actions display too garishly an outrageous wickedness and nefarious cruelty, to offer a mitigation of the severest legal atonement.” Even in this rare example of a death sentence that was allowed to proceed to execution, the emperor was told that the murder was the result of desperate poverty; the perpetrator’s love of his own children was deemed relevant, although not enough to outweigh the particularly savagery of his crime.

Another summary from 1850 seemed to excuse an infanticide based on the mother’s own neglect as a child, “Considering, however, that Maria Jaremko grew up in utter neglect and in the absence of any upbringing, as her behavior and affect show, and that she, completely abandoned by the natural father of the child, was only driven to commit the act by her great misery, the judicial authorities unanimously request that the death penalty be commuted, and namely that the highest court of justice should convert it to a ten-year sentence.” This set of circumstances -- an ignorant, impoverished mother abandoned by her “partner” and without the kind of family support that allowed thousands and tens of thousands of indigent single mothers to keep their illegitimate children alive in the nineteenth century -- was so common in portrayals of infanticides in the chancellery records that it required no further comment. In the unusual case of Franziska Gritz, who drowned her son when he was four years old after spending weeks fruitlessly trying to convince anyone to provide him room and board for no more than she earned a month herself, the chancellery secretary devoted an entire paragraph to one single sentence: “She loved her son with all her heart.”

Much more complicated to describe to the emperor was the case of Natal Demin. Demin was born in the province Bellano in 1819 and had married Marie Caviola at the age of 19. They had two children, aged 7 and 10 in 1850. From a family of impoverished farmers, he was drawn to Styria in the 1840s in order to work on the railroad that was being built across the Alps towards Trieste at that time. While there, his wife became unfaithful and he began to hate her, which the justice minister described as understandable in relation

75 Joel Harrington, The Unwanted Child: The Fate of Foundlings, Orphans, and Juvenile Criminals in Early Modern Germany (Chicago: Chicago University Press, 2009), 8.
76 Z 1529 Jaschkowsky 1850.
77 Z 802 Jaremko 1850.
78 Harrington describes the solutions to the problem of being unable to care for an illegitimate infant that were employed much more frequently than infanticide (including “marriage, abortion,” and “successfully circulating their infants to the households of relatives, friends, or strangers,” frequently by using “female networks.” The Unwanted Child, 278, 282. See also the chapter “The Unmarried Mother”
79 Gritz, see appendix. “An ihrem Sohne hing sie mit größter Liebe.”
to her infidelity, but noted was exaggerated by his “repulsive character and fear of people and by a crankiness in his temper that is evinced by certain fixed ideas.” He was convinced that his wife was trying to kill him, but the minister noted that the “factual circumstances that he used to substantiate these claims were utterly insignificant and had absolutely no connection to any alleged attempts on his life.” The summary detailed the violent and gruesome manner in which Demin murdered his wife in 1849 in two long paragraphs, concluding that they provided “sufficient proof” of his “wild rawness.” But there was something strikingly strange about Demin, strange enough to trigger an investigation into his sanity, which concluded that he was sane, despite his “melancholy temperament and nervous agitation” and his “avoidance of close interactions with other people.” The justice minister recommended his sentence be commuted to eighteen years in consideration of the “his family’s desperate circumstances, his lack of education and the resultant rawness of his morals and character, and in consideration moreover of the causes which could indeed excuse a strong antipathy towards his spouse.”

Alexander (Sandor) Rózsa’s case was brought to the emperor in 1859. Rózsa was a csikós, or mounted horse herdsman, a notorious robber, and the leader of a band that had terrorized the Hungarian countryside for decades. He was also, in the eyes of Hungarian nationalists, a war hero who had taken his band of horsemen into battle, for a price, to assist in the revolution in 1848 and 1849. He had been arrested, after many years of searching and the failure of a negotiation for his surrender, in 1857 and charged with multiple murders, attempted murders, and armed robberies. The justice minister’s report describes his career, his revolutionary activities, his capture, and then explains his reasons for recommending clemency for a man who, he assumed, “had on his conscience not only those crimes that constituted his conviction, but many more besides.” It was not only a question of criminal law, but also of politics? “Since the time of the Hungarian revolution, the name Rózsa Sándor has acquired fame among the population, however ill-deserved, and is surrounded by a certain romantic halo. As a result, his execution would only contribute to the glorification of his name, whereas Rózsa Sándor could, after a life sentence, be kept securely in a prison (Festung) and would gradually be forgotten.” The justice minister separated the legal from the political considerations. “From the perspective of justice and the law, the execution of the death sentence against Alexander Rózsa is completely justified. … But it is not possible to separate [these considerations] from the political circumstances. … His assignments during the revolutionary war … give even those of his crimes carried out in some cases purely out of personal vengeance the significance of political agitation. His execution would thus appear to be less the just penalty for his death-deserving crimes but rather as an indirect blow at the revolutionary persons currently abroad, out of reach of the law.”

What can be made of these documents? The most important place to start is with a word of caution. These are bureaucratic documents composed by men who believed truly and deeply in the legitimacy of imperial rule. They reflect not only the perspective and priorities of the state, but of a very specific kind of state – a state with a monarch at its head who claimed the exclusive control over life and death of civilians in his empire. They are also documents that represent the culmination of a long and complicated legal process and they focus on upholding the law. The stories the justice ministers tell are fascinating; some of them are beautifully told, despite or because of their inevitably tragic ending. It is tempting

80 Z. 74 Demin 1850.
81 Z. 2196 Rózsa 1859.
82 Z. 2196 Rózsa 1859.
to see in these stories of star-crossed lovers, desperate single mothers, starving travellers, drunken revelers, little snippets of the everyday life of regular people in Austria-Hungary.

The cases can be categorized by type – most of the women who were sentenced to death had killed their own children; a smaller group killed husbands or partners; a still smaller group participated in robberies or killed friends, or rivals. Men killed their wives, their children, their siblings, their parents, their employers, their employees, their neighbors, their rivals. Some committed murders in moments of passion, almost always (according to the justice minister and their own testimony), strongly influenced by alcohol; others carefully planned long-desired murders for weeks, months, and even years. Each case, of course, was totally unique and involved the destruction of at least two lives.

By the time the folders made their way to the emperor’s desk, the cases had been encased in still other meanings. The death penalty is in some ways an ambivalent representation of imperial power. On the one hand, there were many layers of involvement, from the court of first instance, through the appellate courts. The files of the Kabinett-Kanzlei record not just the verdict and the sentence, but the opinions of every participant – majority opinions, minority opinions, the prosecutor’s opinion – all the way to the Justice Minister who summarized all those many opinions and presented them to the emperor. By the time the case summary reached the emperor, hundreds and possibly thousands of pages of court records had been condensed into about 3-4 pages of handwritten text. The emperor’s opinion was developed based on evidence that had been very carefully curated – even managed – by people who could fairly easily control what kind of case he would see.

On the other hand, however, from 1849 until 1918, despite all the many legal reforms, only the emperor had the authority to decide whether or not an execution would take place. He did not need to explain his decision (indeed, he never did). He could reverse it at any time. However rarely he approved executions, he carefully guarded the principle that the decision was his. In this sense, the abolition of 1920 not only grew logically from years, decades of non-use of the death penalty, but also out of the essential recognition that allowing one man the power of clemency created a hierarchy of power that was inimical to the new republic. The revolutionary government had attempted to abolish the death penalty in 1848 and reasserting the new monarch’s right to impose it had been a critical part of young Franz Joseph’s establishment of personal authority. The monarch’s exclusive right to overturn a death sentence – or to allow it to proceed – was a critical part of his claim to sovereignty; the state’s right to kill is constitutive of sovereignty and ensconcing that right within the person of the emperor was an example of his attempt to cling to some form of absolute power.

This does not, arguably, eliminate the radical newness of the abolition of the death penalty in the Republic of Austria. The nearly universal practice of pardoning those sentenced to death penalty meant that the retention of the death penalty in the Habsburg Monarchy did not serve, and was not intended to serve, a deterrent or primarily judicial effect but rather to allow the emperor opportunities for mercy and the only very occasional demand for the ultimate retribution as a way of underwriting imperial authority, not securing public safety. Pardon was the sacred privilege of the monarch – referred to in Hungary as his

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83 As I wrote in a review of Unowsky’s book, “After five decades on the throne, Francis Joseph had endured political, military, diplomatic, and personal losses that lent him ‘the human qualities of the emperor-martyr’ (p. 89). The exploitation of his humanity did not, however, bring an end to his ‘separation from other mortals’ (p. 176) – a separation reinforced by court ritual.” Austrian History Yearbook 38 (2007).
“apostolic majesty” in a kind of amalgamation of Jesus of Nazareth and Julius Caesar. That is radically different than the philosophy of abolition in a democratic state — to distribute mercy and replaces it with protections enshrined in the constitution and equally available to all citizens.\(^84\) Granted, even in a democracy, \textit{pardon} rests on something beyond codified legal structures: “a pardon,” writes political scientist James D. Barnett, is “wholly a matter of ‘grace’ or ‘mercy’ and not of justice.” Barnett cites the decision in \textit{United States v. Athens Armory}, “A pardon is an act of mercy flowing from the fountain of bounty and grace.”\(^85\) Nevertheless, Barnett continues “the absolute monarch, human or divine, has no counterpart whatever in the modern democratic state.”\(^86\) In a democracy, the use of pardon can arouse public complaints, such as this from the \textit{Oregonian} in 1925: “We have grown distrustful of pardons, and with abundant cause, since they have been tossed hither and thither quite as though justice had its fountainhead in the governor instead of in the people.”\(^87\)

But my appreciation of the degree of this discontinuity is distorted by my access to archival records that present to me the world as the emperor saw it: I have copies of over 5,000 records and I have read and transcribed over 250 records of petitions from the justice minister to the emperor-king. All of the emperor-king’s pardons are written in the same formula: Aus Gnade sehe ich [name] den Todesurteil nach: Out of mercy, I pardon so and so from the death penalty. But how ubiquitous was this notion of mercy running through the Austrian, Hungarian, and Bosnian judicial systems? Stefan Kray certainly thought it was so central to the emperor’s style of rule that he recorded a last-minute death penalty pardon in his memoir. But how was this version of the lessons to be drawn from death sentences and pardons in Austria-Hungary to be reconciled with Karl Kraus version, the version that leaves aside the emperor at his desk, watched over by an intimate portrait of his wife, signing pardon after pardon and instead places the executioner, Josef Lang, in its center, grinning behind Cesare Battisti’s corpse?

The abrogation of civil rights including jury trials – and even civilian trials altogether – became widespread during the war, but it was written into legal codes that predated the war. Standard law allowed for exceptions in times of war or unrest that undermined the reliability of imperial paternalistic mercy at the same time they undermined the rule of law (Rechtstaat) and Austria’s proto-democratic institutions. Mark Cornwall says that by the fall of 1914, “the Rechtstaat was no longer working.”\(^88\) Local or regional unrest could bring with it the introduction of Ausnahmsgerichte (Courts of exception) and thus the elimination of jury trials; in addition, military courts offer an entirely separate process for soldiers and officers and even be imposed on civilians. “Harsh penalties all came neatly packaged in the \textit{Militärstrafgesetz} and \textit{Standrecht} (summary justice), old systems of legal coercion already in

\(^{84}\) In Great Britain, the monarch was not granted the power to commute a sentence, although he or she could issue an absolute pardon or a conditional pardon (for example, on condition of transportation to a colony). Peter Brett, “Conditional Pardons and the Commutation of Death Sentences,” \textit{The Modern Law Review} 20 (1 Jan 1957), p. 136.


\(^{86}\) Barnett, 493.

\(^{87}\) Cited in Barnett, 499.

\(^{88}\) Conference paper on treason trials; figure out what he wants me to cite.
place in parts of the Empire during the war. *Standrecht* subverted the *Militärstrafprozeßordnung* (rules for trial procedure), which had been newly revised in 1912.\(^89\)

These were exceptions, albeit more common than we might expect, in peacetime. *Standrecht* could be declared, but only for certain specified crimes and over a 48-hour period.\(^90\) But during the First World War, the “exception” became the norm. The ranks of men serving in the military and subject to its rules and procedures swelled immensely. And states of exception were declared, one by one, across the empire. Between July and November 1914, civilians were placed under military authority (and thus subject to *standrechtliche* trials) in every province of the Austrian half of the monarchy except Moravia, Upper Austria, and Lower Austria. Long before the monarchy’s infamously violent occupation of Serbia, its own citizen-subjects in Vienna, Galicia, Bohemia, Dalmatia, Syrmia, Tyrol were subject to the same abrogation of their civil rights to trials.\(^91\) The emperor’s records told him that there were fewer than 200 death sentences between 1914 and 1918—and only 5 executions (including 3 of the Sarajevo “assassins”). But what did his people see, what did they actually experience during the war? Not the wise, merciful emperors Franz Josef and Karl imagined themselves to be, and saw reflected in the eyes of their devoted staffs. There was nothing “exceptional” about wartime executions, unimaginably more common during the war than they had been before. And increasingly people wondered if there was anything “lawful” or legitimate about them.

Take Adler’s case as an example: The *Arbeiterzeitung*, which was the first paper to announce publicly Adler’s pardon, on September 7, 1917, said Adler’s whole trial was worthless because he had been tried in a “Court of Exception,” not by a jury.\(^92\) If the message of imperial clemency and pardon seemed clearly to justify the monarch’s power to his own immediate circle of advisors, it did not seem to have that effect on any portion of the press. For the left, his case undermined the legitimacy of the law more than his pardon underwrote the emperor’s wisdom or mercy. The *Illustriertes Oesterreichisches Journal* denied the very premise of the commuting of the death sentence: “Nothing would be more foolish than to associate this crime of a madman with political motives. This damnable assassination has nothing to do with politics” – it was premeditated murder, not the selfless act of a martyr for social and political justice.\(^93\) On the far right side of the political spectrum, the *Reichspost* said it was obvious that Adler would be pardoned, not because of the emperor’s Christlike clemency, but because Adler’s father was a powerful Social democrat, because Lenin had pressured the emperor to pardon him, and because “powerful Jews always look after their own family affairs.”\(^94\) Karl’s amnesties received praise in some quarters, but were greeted with reproof in others.\(^95\)

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\(^{89}\) Gumz, 105.

\(^{90}\) Lelewer, 197.


\(^{92}\) *Arbeiterzeitung* (7 Sept 1917), p. 1. On the placement of civilians under martial law and the suspension of civil rights including jury trials, see Leidinger, 240.


\(^{94}\) “Machenschaften der Geheimdiplomatie,” *Reichspost* (13 November 1917), p. 4. But I can’t find the quotation any more so it might be another article – what did I mess up?

\(^{95}\) Dornik, 71, citing Francis Roy Bridge, the Habsburg Monarchy among the Great Powers 1815-1918, New York, Berg, 1990, p. 359.
Worse even than the proliferation of courts of exception were two kinds of courts that only existed during wartime. Standgerichte and Feldgerichte (field courts) were a subcategory of civilian Ausnahmegerichte and military courts. In Standgerichte, a verdict had to be reached within 3 days and an execution had to take place within 2 hours of the verdict. They were designed to frighten people, not to restore a sense of calm and trust. Battisti was the most infamous example of a man summarily tried as a civilian by military authorities.

Throughout European history, executioners have been reviled. It was considered a dishonorable trade. Georg Lelewer, in a historical analysis of military executions, suggested that soldiers were traditionally executed by firing squad rather than hanging since “any penalty that was carried out by the executioner was dishonorable.” During the late imperial period, the Austrian executioner, Josef Lang, had gained some respect. He appeared in a top hat, patent leather shoes, and glacé gloves, “as if going to a ball, in order to dance with the delinquent and so convey him to the next world.” Only a few months after the war’s end, when the National Assembly abolished the death penalty, the satirical journal Kikeriki ran a front page caricature of an executioner silently standing by an empty gallows as a parade of ne’er-do-wells pass in front of him, each holding a tall lily in the hand, the first with a bloody dagger, the second with a drawn pistol, the third with an axe dropping with blood (fig. 1).

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96 Spierenburg, Spectacle of Suffering, 16; “One outcast departs this life, another remains behind, sweeping up his victim’s charred bones and embers. Professional killers like Frantz Schmidt have long been feared, despised, and even pitied, but rarely considered as genuine individuals, capable – or worthy – of being known to posterity.” Joel Harrington, The Faithful Executioner: Life and Death, Honor and Shame in the Turbulent Sixteenth Century (New York: Farrar, Straus & Giroux, 2013), xv; “a profession that was widely despised and even officially designated as ‘dishonorable’” (xvi). Ironically, after his retirement, Franz Schmidt sent a petition to the Habsburg emperor, Ferdinand II, asking that his honor be restored. “The petition was clearly formulated and penned by a professional notary, but the sentiments expressed are highly personal, even surprisingly intimate at times.” Harrington, xxi.

97 Georg Lelewer, Grundriß des Militärstrafrechts, p. 36.

98 Karl Kraus, claiming to quote the Neue Freie Presse, but I have been unable to find the original quotation in the NFP. Kraus, Die Fackel, 77 (May 1901) III. Jahr, p. 9.

Caption: Henker, kannst du keine Lilie knicken?

The caption, a quotation from Schiller’s 1782 poem *The Infanticide* (*Die Kindsmörderin*), explains the symbolism of the lilies, “Hangman, you can’t break a lily?” the protagonist, Luise, cries as her executioner hesitates to complete his task. The hangman here is depicted not in a top hat and dress coat, but rather as an honorable working man, his sleeves rolled up as if ready for labor, but crossed in front of him in a sign of idleness. His feet are spread slightly greater than shoulder’s width apart, appearing stable, strong, firmly planted; his eyes are closed as if in sleep. The delinquents, in contrast, are on the move – parading fearlessly in front of the gallows, the hangman, and the ravens with their weapons on display.

Similar scenes of brutality could be seen across the empire’s borderlands – most especially in Galicia, where residents were suspected of treasonous attachment to Russia after the end of the Russian Occupation of Galicia and Bukovina, and in the Southeast. Throughout the empire, summary executions followed military trials – Galicia, Bosnia-Herzegovina, Backa, Croatia, Dalmatia, Bucovina all fell under military control as were those parts of Italian Tyrol controlled by Austria. Regionally-specific studies suggest that rates

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100 Wolfram Dornik, “Conrad von Hötzendorf and the ‘Smoking Gun’: A Biographical Examination of Responsibility and Traditions of Violence against Civilians in the Habsburg
of summary execution were not consistent across all these territories; Oswald Überegger’s research on Tyrol, for example, suggest that rates of summary execution were much lower there than in the eastern and southeastern parts of the monarchy where German- and Hungarian-identified military leaders doubted Slavic subjects’ loyalties. This is not just the impression of nationalist historians from successor states, but was a matter of concern to Emperor Karl as well. Establishing just how many Habsburg subject-citizens were summarily executed in Standgerichte and Feldgerichte is impossible. After parliament was reconvened in 1917, parliamentary deputies from Galicia repeatedly asserted that 30,000 men, women, and children had been executed without traditional trials, hung or shot. On June 15, 1917, Ignacy Daszyński lamented that “the gallows and murder marched in” to Galicia along with the Austro-Hungarian army (after the Russian occupation from Fall 2014 to Spring 2015). “I don’t know how many people were executed,” he continued, “but they were executed willy-nilly, they were executed without any consciousness of what it was all about.” Polish and Ruthenian parliamentarians, usually enemies, agreed that the rates of execution in Galicia were horrific. Historians have been unable to quantify them, with estimates ranging from 11,400 to 30,000 to 60,000. But one of the hallmarks of Standgerichte and Feldgerichte is that they were extra-judicial, they were extra-bureaucratic, they were not recorded in any kind of imperial file or record, they were not compiled for the Statistical compilations the Habsburgs created on almost every subject of imperial activity within Austria (and possibly within Hungary, although my own linguistic and scholarly limitations mean I have not seen the Hungarian equivalents of the Statistische Jahrbücher). Various historians have tried to estimate the scale of these executions. Hannes Leidinger


103 Leader of the Polish Social Democratic Party for Galicia and Silesia.

104 Stenographic Protocolls, XXII. Session, 7. Sitzung (15 June 1917), 305. [Leidinger, 236]

105 Walter Mentzel, Kriegsfüchtlinge in Cisleithanien im Ersten Weltkrieg (University of Vienna, PhD dissertation, 2005) cited in Leidinger, 236. Leidinger says that high-ranking representatives of the Imperial Russian Army reported 1500 standrechtliche executions by Austro-Hungarian troops in Galicia; Ritter von Schilling-Singalevic mentioned 30,000 Ukrainians executed without even military trials. Daszynski, perhaps referring to this, said “Some say there were 30,000 executions, others say there were twice as many.” A Ruthenian Dringlichkeitsantrag said on June 5, 1917, vaguely, that “Thousands of men, women and children were hanged, shot, after a standrechtlich trial, or just so, or if they were lucky they were arrested and deported. All Leidinger, 245. The range of executions was referenced in Kraus’ monumental play “The Last Days of Mankind” (Die Letzten Tage der Menschheit), in the voice of the Grumbler (Nörgler), usually taken to represent Kraus himself: “Bedenken Sie, daß unter dem Armeecoberkommando des Erzherzog Friedrich allein … 11.400, nach einer andern Version 36.000 Galgen errichtet worden sind. Einer, der nicht bis drei zählen konnte!” (Consider that under the Army High Command of Archduke Friedrich, 11,400, or according to another reckoning 36,000 gallows were erected. And he can’t even count to three!). Kraus, Letzten Tage der Menschheit, 505.
says at least 620 Galicians were hung or shot during the first year of the war, based on official cases that were recorded in the files of the High Command.\textsuperscript{106} Manfred Rauchensteiner says there were 5000 death sentences in Galicia and Bukowina alone. Wolfram Dornik says that eyewitnesses report to seeing „rows of hanged men in the trees lining Galician streets.”\textsuperscript{107} Holzer, too. Similar claims have been made about Bosnia and Syrmia, not to mention the atrocities that were recorded in occupied Serbia.\textsuperscript{108} Marxist historian Hans Hautmann said that 5000 death sentences were passed in the monarchy on the basis of a state of emergency during the war.\textsuperscript{109}

This was all possible because regular civilian rights, the rights carefully observed and recorded in thousands of pages of cabinet chancellery files, were abrogated during the war. Austrian subjects were not protected by the Hague convention or the 1906 version of the Geneva convention because what Wolfram Dornik has identified as „crimes against ethnic minorities in the monarchy concern Austro-Hungarian subjects on imperial territory.”\textsuperscript{110} Instead, the Military Criminal Code of 1855 allowed for emergency courts in a state of “Kriegsnotwehr,” in which “short work was made of trials, and there were no provisions for detailed evidence or appeals.”\textsuperscript{111}

Whatever the emperor’s cabinet chancellery thought his attitude towards clemency was, it was a set of beliefs shared by a few. But the postcards showing Josef Lang grinning behind Cesare Battisti’s corpse were distributed all over Europe. Photographs of group executions of civilians forced to the gallows with signs of “traitor” and “spy” hung around their necks were collected and kept in soldiers’ coat pockets and photo albums all across the monarchy. [Kraus’s use of a scene of a group hanging in Arbeiter Zeitung – see Holzer p. 34] \textit{This} image and not only “paternalistic imperialism” is what the republicans thought they were leaving behind.

\textsuperscript{107} Manfried Rauchensteiner, \textit{Der Erste Weltkrieg und das Ende der Habsburgermonarchie} (Vienna: Böhlau Verlag, 2013), 273-276; Dornik, 67.
\textsuperscript{108} Holzer.
\textsuperscript{110} Dornik, 69.
\textsuperscript{111} Dornik 70.
What those republicans did not so much like to acknowledge was that they did not entirely eliminate the death penalty. The constitution of 1920 only abolished the death penalty for regular civilian courts, the so-called ordentliche Verfahren. In June 1933, when a state of emergency was declared in various parts of the Austrian republic, ordentliche Verfahren were suspended. The government put the nephew of the executioner who had executed Cesare Battisti on its payroll, a new executioner became a salaried bureaucrat in public service. The Republic had its own hangman.

Appendix

Here is a sample Vortrag in two versions. The first is the Vortrag as it was written by the Justice Minister. The second is the summary version that was actually presented to the emperor. The emperor initialed the second and it was kept in the Court Chancellery archives. The emperor signed (but likely did not read) the first version and sent it back to the Justice Ministry. It is kept in the Allgemeines Verwaltungsarchiv.

Version 1 (993 words):

On May 24 1907, the 28-year-old, single farmer’s servant, Franziska Gritz, presented herself before the district court in Oberwölz in Styria and confessed that she had killed her 4 year old illegitimate son, Rudolf Gritz. Because her confession was completely consistent with the results of the investigation, it was possible to determine the following:

Franziska Gritz has been in service with the farmer Thomas Mang since the beginning of 1906. In December 1906 she took back her son, who was born illegitimately on April 14 1903, and whom she had previously left with other people. She paid her employer 6 crowns from her monthly wage of 8 crowns to cover the cost of his food and lodging. Her employer told her that the child would have to find a different place to live in the summertime. Because of this Franziska Gritz turned in the spring of 1907 to her aunt, who refused to take on the child. On Pentecost Monday, May 20th 1907, in the afternoon, Franziska Gritz took the child to a farmer’s wife who lived not far from her place of service, hoping she would take the child. This woman said she would keep him over the summer in exchange for 8 crowns a month. The child heard this arrangement and began to cry and absolutely refused to be separated from his mother. Because of this, the mother could not bear to leave the child behind, and since the child would not calm down, left the farmer’s house with the intention of bringing the child to someone else once he had fallen asleep. She took the child to a meadow and hoped that it would fall asleep, but this did not happen. She says that the thought came to her quite suddenly that she should dispose of the child
once and for all. She had always been distressed that the child would never be able to support himself because of his crippled legs. She believed what she had read in books and heard in church, that the child would curse her one day because she had brought him into the world with crooked legs, and that having been cursed she would never be able to go to heaven – just the same as if she killed him. Out of pity for the child, “the poor sweet thing,” she thought it better to bring the great shame of murder onto herself rather than to give him an unlucky future. She carried the child to a watering trough in the area and held his head underwater until he gave no more sign of life. According to the medical examiner, he died within one or two minutes. Then she hid the corpse under a wooden bridge a few steps away and returned to her place of employment after a sleepless night spent outdoors. On the very same day she quit her job after a meaningless exchange of words and turned herself in to the court, as she said, overtaken with regret and plagued by her own conscience. She thought that without being punished she simply couldn’t continue.

Franziska Gritz is Catholic and was born on March 8, 1879 in Oberwölz, the child of poor farmers. In her earliest youth she lost both parents and has worked as a farmer’s servant since her 15th year of life. All her employers describe her as uncommonly hardworking and well-behaved, quiet and deeply religious. She has no prior crimes and a good reputation. She was devoted to her illegitimate son and loved him dearly. She showed her affection for him openly and was always solely responsible for his upkeep. According to the medical examiner’s report, although he was otherwise perfectly healthy, the child did have a bad case of rickets (what causes rickets – low vitamin D and calcium, comes from malnutrition, can be cured with sunlight and Vitamin D and calcium, sometimes also surgery), leading to substantial weakness and deformity in his legs, so that the mother could have believed that he would be crippled for his whole life.

The jury in Leoben on July 1, 1907 convicted her of murder and sentenced her to death by hanging. The defense attorney’s request that she be found not guilty by reason of insanity was rejected after an expert opinion ruled out insanity.

The jury unanimously determined, with the district attorney’s support, to recommend the convict to your majesty’s mercy and to suggest a sentence of 10 years imprisonment. Aggravating is the fact that she murdered her own child. On the other hand, mitigating is that Franziska Gritz led a blameless life before the deed and was a hardworking servant and had always behaved admirably, furthermore that she confessed at a time when her deed hadn’t even been discovered, and that she truly regrets her act, finally that she has reduced rational capacity and her constant worries about her child’s incurable disease and the possibility that the child would curse her and the necessity of giving him over into the care of strangers, all shine a mitigating light on the deed.

The supreme court, which does not doubt at all the accuracy of the judgment, agrees unanimously with the Attorney General’s recommendation of a 10-year sentence.

Also I believe that the convict deserves your majesty’s mercy. It was not anger at the child, not the intention of doing away with an obnoxious burden, that was the driving motive behind the deed, but rather love for a child that the mother believed would be unhappy for his whole life. Under the influence of such beliefs and placed in a position where it was necessary to give her child, who did not wish to be separated from her, over to
strangers, she was placed in a condition of the highest degree of depression, in which condition she carried out the terrible deed. The motive of the deed and the later remorseful behavior of the condemned woman justify the application of the greatest clemency.\textsuperscript{112}

Version 2 (471 words):

In May of the current year, the 28-year-old, single farmer’s maidservant Franziska Gritz voluntarily disclosed to the District Court in Oberwölz in Styria that she had killed her 4-year-old illegitimate son, Rudolf Gritz, on May 20.

The aforesaid was in service at a farm since 1906. In December 1906 she took back her son, whom she had placed in the care of other people and committed herself to paying her employer 6 crowns a month, out of her monthly salary of 8 crowns, for her son’s board and lodging. Her employer told her, however, that she would have to find another place for her son come Summer. She endeavored to find a place for her son, but was not successful. The thought of getting rid of the child is reported to have come to her suddenly. She had always been aggrieved that the child would never grow into a man fit for work because of his crippled legs and due to her superstition believed that the child would one day curse her for this reason.

She carried the child to a watering trough and held it there with his face turned downward under the water until he gave no more sign of life.

Franziska Gritz lost both her parents in her earliest youth and has sustained herself as a farmer’s maidservant since she was 15. All her employers describe her as uncommonly able worker with a withdrawn and deeply religious nature. Her record is spotless and she has a very good reputation.

She loved her son with all her heart.\textsuperscript{113}

Franziska Gritz was found guilty by the unanimous verdict of the jury in Leoben on July 1, 1907. The verdict is valid.

The court unanimously, in agreement with the prosecutor, decided to declare the convict worthy of your imperial highness’s mercy and to propose a ten-year sentence as a substitute, for the only aggravating circumstance is that she killed her own son, whereas the following mitigating circumstances apply: the convict had a spotless record before this deed, she turned herself in, and finally her lower intelligence and the perpetual emotional agitation about what she thought was her child’s incurable ailment and about the possibility he would curse her all make her deed appear in a better light.

The Supreme Court and the Solicitor General agree with this report and recommend that, should Your Majesty deign to pardon the convict’s death sentence, the 10-year-sentence recommended by the jury court should be supplemented with a monthly fast and a dark room every year on May 20.

The petitioner\textsuperscript{114} agrees with this proposal and allows himself to present the following draft resolution.

Out of mercy I pardon Franziska Gritz of the death penalty imposed on her for the crime of murder and leave it to my Supreme Court to substitute a suitable prison term.

\textsuperscript{112} Z. 2869

\textsuperscript{113} “An ihren Sohne hing sie mit der größten Liebe.”

\textsuperscript{114} Justice Minister Dr. Klein.