
Book review:
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The life and death of states: Central Europe and the transformation of modern sovereignty, by Natasha Wheatley, Princeton, Princeton University Press, 2023, 424 pp, $45 (hbk), ISBN 978-0691244075

Natasha Wheatley's crisply written *The Life and Death of States* is a welcome addition to the immense scholarship on sovereignty and the emergence of 'the state' as the primary political unit in the international sphere. Wheatley places the Habsburg Empire at the centre stage of the story, arguing that it played a key role in three ways. First, demands for political rights in the aftermath of the revolutions of 1848 'turned the Habsburg lands into a remarkably explicit workshop for the attempted production of abstract, singular sovereignty out of multinational dynastic empire' (3). Second, the collapse of the Habsburg Empire in 1918 also provides material to study 'the demise of (formal) empire and the rise of the nation-state in its wake' since 'the whole of its former territory was converted into independent, postimperial states' (3). Finally, Habsburg legal thinkers such as Georg Jellinek and Hans Kelsen 'exercised a radically outsized influence on the evolution of modern legal thought in general and theories of the state in particular' (4). Studying the decades of debate over sovereignty in the Habsburg Empire can, therefore, provide a lens through which to examine the development of modern statehood more generally.

Chapter 1 opens with the revolutions of 1848 and examines a series of constitutions that were promulgated between the years 1848 and 1861. Wheatley focuses on the Kremsier constitutional draft of 1849, which was agreed after months of debate by delegates to the imperial parliament and remained a source of legal ideas even after it was overlooked by the emperor who simply imposed his own version (31–45). Although parliamentary deliberations were about how imperial sovereignty was to be distributed among the various entities that were

knitted together to form the Habsburg Empire, the new imperial constitution 'proclaimed one free, indivisible, and indissoluble constitutional Austrian hereditary monarchy with a central imperial parliament, central administration, and a high imperial court, codifying the ambitions of German centralism' (47). Although the standing of individual kingdoms and lands was restored in laws promulgated in 1860 and 1861, a centralist bent was retained (53–54).

In Chapter 2, Wheatley examines the extensive debates over the nature of the Settlement of 1867, which split the monarchy into the separate states of Hungary and Cisleithania (colloquially, Austria), each of which had their own legislatures, territories, and citizenship, while maintaining common ministries for war, foreign affairs, and the finances relating to these two functions; consequently, 'the empire was one state and two states at the same time' (57). Even the two halves did not produce uniform sovereign centralisation within their own territories, with various autonomous units and regions exercising self-government (67). The structure of the Habsburg monarchy consistently raised questions about the nature of sovereignty, with international law playing key a role in the debates. Scholars such as Friedrich Tezner argued that Hungary could be a state only in constitutional law since international law recognised only the Habsburg Empire as a whole as an international legal person, while Theodore Zichy claimed that the emperor of Austria and the king of Hungary were separate legal personalities even if the titles were borne by the same physical person; this debate eventually led to Hungary entering into some international treaties in its individual capacity (77–83). Wheatley argues that the development of constitutional law in the empire (which barely existed as a field prior to 1848) was entangled with the constitutional reformulations of the period since 'political and scholarly registers [were] easily blurred' (84). Alongside attempts to create a coherent state ran positivist attempts to construct a logical and gapless system of legal knowledge (89–91). Despite these efforts, however, the Austro-Hungarian

Empire did not practically fit within categories of legal thought; consequently, the jurist Georg Jellinek argued that 'the dominant doctrines of singular sovereignty were non-sense, rather than the pluralistic forms of statehood they failed to explain' (61). Jellinek instead argued that a sovereign state that freely gave up some of its powers through treaty remained fully sovereign: therefore, the two halves of the Austro-Hungarian Empire were sovereign despite being united together (97–98).

Chapter 3 moves to analysing public deliberations over the constituent elements of the Habsburg lands, with 'rising national movements challenging the notion that the (multiethnic) lands should remain the empire's principal subunits' (106). Diet delegates from Moravia and Bohemia, for instance, attempted to fashion the private law-adjacent rights of estates into something that looked like a state, while Bohemia strenuously defended its rights after the Settlement of 1867 attempted to merge it into Hungary (111–114). The Czech politician František Palacký argued that nations (such as the Bohemians, Poles, Hungarians, and Germans) were distinct from states and, more significantly, were legal persons in themselves, thereby possessing rights and obligations; the Romanians similarly pressed to reorder the empire along national lines (124–128). At the turn of the twentieth century, Otto Bauer and Karl Renner of the Austro-Marxist movement proposed a federation based on personality, with co-nationals constituting collectives non-territorially based on wherever they happened to live; this would enable speakers of the same language but spread across territory to be constituted into autonomous political units (128–132). After the First World War, the idea of national collectives possessing legal personality was transformed into minority protection regimes guaranteed by the League of Nations (132–138). Legal positions then switched: while officials from the new states of Eastern and Central Europe defended the traditional relationship between a state and territory and avoided constituting minorities as collective legal entities, the

Nazi regime began to argue that a nation had the right to consider all members (even those not in its territory) as part of a cultural whole (139–140).

In chapter 4, Wheatley traces the attempts of scholars to come up with new theories of law in order to encapsulate the complicated imperial Austro-Hungarian state. The initial sections of the chapter are marked by the reappearance of Georg Jellinek, last seen in chapter 2, where the book examined his early-career interest in an empirically accurate understanding of statehood. However, Jellinek soon concluded that empirical observation was insufficient for legal phenomena and instead argued that law 'was a science of abstractions' that 'could not be read from the world of naturalistic facts' since '[a] legal norm did not tell us what *would* unquestionably happen, but what *should* happen' (149–150). With this conceptualisation of the law, the state was, therefore, '*an act of human synthesis* rather than an empirically observable "fact"', with legal thought playing a role in 'ordering its legal characteristics into a consistent whole, "free from contradiction"' (151–152). Jellinek also aimed to analyse the social reality of the state through his 'two sides' theory, which hypothesised that '[t]he "double nature of the state" as a legal *and* a factual object required a double epistemology' (159). Jellinek, therefore, argued that the legal and the social theories of the state were distinct but needed to be brought into conversation in order to truly explain the world (160). It was Jellinek's attempt to bring the two sides together that came under sharp critique by one of his own students, Hans Kelsen, who 'seiz[ed] and radicaliz[ed] the idea of law as a world of pure *ought*, pure thought, pure norm' (161). While Kelsen agreed with Jellinek 'that law must be understood as a *purely* abstract domain of norms, categorically distinct from the material world of facts', he claimed that Jellinek 'had failed to follow this insight through to its logical conclusion', which was that the divide between the legal and the social sides was 'unbridgeable' (166). Kelsen instead sought to construct a 'pure' and '*exclusively* normative legal science', following which he

concluded that ‘the state, as such, did not exist’ (166–168). The state, in his view, ‘emerged *only* as a system of legal norms’ and ‘was a “normative order,” a system of *oughts*, of imputations made by humans that did not, as such, exist in material reality’ (169).

Chapter 5 moves back to political realm, with the collapse of the Austro-Hungarian Empire in 1918 and the rise of nations, which raised questions about the birth of new states. Although Charles I attempted to preserve the empire as a federation of nations, nationalists in various constituent units, including Bohemia, Moravia, and Silesia, announced independence as their goal, relying on their historical state rights (185–187). At the Paris Peace Conference, these claim makers recycled older arguments about the historical survival of political entities within the imperial context to argue that Hungary and Czechoslovakia were not new states but entities that carried forward the legal rights of the Kingdom of Hungary and Kingdom of Bohemia (188–193). Representatives of the new Austrian republic argued that the Austro-Hungarian Empire had legally disappeared, with there being no connection between the old empire and the new state, which had a friendly attitude to all countries (194–195). Despite intense debates in the British Foreign Office, the question of whether Austria was the legal successor of the Habsburg Empire was never fully resolved (196–200). The discourse of historical state rights soon developed into the language of self-determination, with jurists such as Gyula Wlassics arguing that the right of self-determination could only apply to entities with historical rights (like Hungary) rather than any group of people (201–205). Others, however, vehemently contended that historical state rights were inimical to the will of the people, which was the basis of self-determination (209–201). Both types of claims won out in different parts of the erstwhile empire: while the Czechs managed to establish boundaries based on historical rights, Hungary lost out on territory to the national claims of the Slovaks (211–212).

Chapter 6 examines the new theoretical framework of the state developed by Hans Kelsen and his Viennese collaborators in the face of the collapse of the Habsburg Empire. The Vienna school questioned the root of authority of the state, thereby challenging the positivist conception of the state being the highest source of law (225). For Kelsen, law was ultimately linked to the 'basic norm', which lay outside the legal system in the realm of thought; it was 'something that the legal scholar had to *presuppose* for the whole rest of the legal order to make sense' (226). Wheatley links the emergence of the basic norm to concrete legal struggles in the Austro-Hungarian Empire, arguing that Kelsen attempted to make sense of the maze of sovereign authorities in the empire and their clashing claims of superiority by pointing out the significance of the point of departure: since interpretations of sovereignty and jurisdiction would differ based on whether one relied on the constitutional laws of 1861 or of 1867, an extra-legal basic norm was necessary to provide logical order (228–231). Many of these ideas then acquired practical significance: Kelsen became involved in plans for constitutional reform, working on proposals to transform the Habsburg Empire into a federation of nations as well as in developing arguments on state continuity that were used by republican Austria at the Paris Peace Conference (237). With the collapse of states also came questions about the continuity of legal order. Fritz Sander soon provided an influential solution to this issue: international law, which was placed outside the state, could determine the existence of the state and thereby 'judge and record such continuities and discontinuities' (239). In pure theory, therefore, international and state law became integrated into a single system, with Alfred Verdross advocating for 'a monist theory of law based on the primacy of international law instead of state sovereignty' (240). Kelsen himself, however, was more equivocal, refusing to choose between the two standpoints of the supremacy of international law and the superiority of the state (242–244), but still broadly invested in expanding the scope of international law and the monist vision (246–247).

Chapter 7 picks up the story in the aftermath of the Second World War, when vast numbers of postimperial states emerged during the height of the decolonisation of European empires. Wheatley connects the sovereignty debates at this moment with those that had been conducted during the collapse of the Habsburg Empire a few decades earlier by focusing on the careers of Charles Henry Alexandrowicz and Krystyna Marek, who had been born in Central Europe but moved across the world. Many decolonised states rejected the category of 'new', contending that they had long traditions of independence prior to European colonisation, and thereby deploying the arguments on historical rights that many Central European politicians had in 1918; scholars such as Alexandrowicz, Ram Prakash Anand, and Upendra Baxi similarly rewrote Asian states into the history of international law (259–265). Marek reworked the monist framework of Kelsen and his collaborators to argue for the supremacy of international law that would ensure that her native Poland could re-emerge after illegal Nazi and Soviet occupation (269–271). Others in the global south, such as Mohammed Bedjaoui, however, considered the continuity imposed by international law to be a problem, since it forced postcolonial states to continue with erstwhile legal and economic obligations, thereby hollowing out their sovereignty (273–276). Questions continued to be raised over whether the law of state succession shaped by the decolonisation of European empires could be applied to new states rising in Eastern, Central, and Southern Europe in the 1990s – and to additional cases beyond (277–282).

As the above description demonstrates, the book's chapters alternate between the details of scholarly arguments and the world of political machinations; consequently, the discussion is not chronological but moves backwards and forwards over time. Although this structure can be a little distracting and takes a little while to get used to, it ultimately demonstrates, as Wheatley

herself states, ‘how states and the ideas designed to capture them were reconfigured in parallel’ (27), a crucial methodological intervention in the current crop of histories of international law. A little more background for the non-specialist in Central European history (like me) would have been helpful for a fuller understanding but this does not take away from the book’s significance. By placing the Habsburg Empire – an entity that is largely neglected in English language scholarship on the history of international law – at the heart of the story, the book captures the development of statehood (and its legal conceptualisation) from an unusual angle. It is also littered with examples that would be of keen interest to historians of other parts of the world, particularly in South Asia and Africa. For instance, as Wheatley herself notes, the Settlement of 1867, which established the dual sovereignty of the two halves of the Austro-Hungarian Empire, proved influential for discussions of the future of Ireland, India and Pakistan, as well as Egypt (59). The final chapter of the book uses the lives of specific individuals to link two moments of imperial collapse while also acknowledging their differences, thereby providing an instructive example for effective ways of doing comparative (and connected) legal history. All in all, this book is a scintillating read, both for historians of international law as well as for legal historians of empire.

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