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The State's Frontiers – in Space and Time

Metanarratives about the emergence of the modern state highlight a new form of bounded, integrated political space. One of its most important chroniclers, Charles Maier, calls it *territoriality*: a new spatiality of political authority that surfaced at the end of the seventeenth century and perhaps reached its peak at the turn of the twentieth. This "major sociopolitical invention" involved not only the hardening of frontiers at the *external* rim, but also an *internal* consolidation of power and mobilization of resources.[1] Law is integral to narratives of this sort. Scholars of the European state system sketch the transformation of plural, overlapping, "private" jurisdictions (e.g., patrimonial, feudal, or estates-based) into uniform, centralized "public" law. These older forms of law had often been non-territorial: attached to people and reflecting status and social-economic relationships rather than corresponding exclusively a demarcated segment of land. To flatten law out into an exclusively spatial understanding of jurisdiction involved the subordination of rival sources of authority: where, previously, "juridical principles of 'scalar' or conditional property" had their correlate in "parcellized sovereignty," the singular sovereignty of "the state" now acquired sharpened importance.[2]

Often told in isolation, this story has an important mirror-double. The (ostensible) rise of flat, legally homogenous territory in Europe unfolded parallel to the legal "lumpiness" of European imperial expansion into the non-European world. In the influential framework of Lauren Benton, imperial law clumped unevenly along trade routes and sea corridors and remained pockmarked by enclaves and anomalous zones of various sorts.[3] Imposed regimes of extraterritoriality in Egypt, China, the Ottoman Empire, and elsewhere—according to which Europeans abroad were subject to their own law rather than that of their hosts—institutionalized the idea that polities outside the European state system lacked properly territorialized legal orders and full sovereignty: the two went hand in hand.[4] Integrated, externally-fortified European sovereignty had its constitutive other in *dis*integrated, externally-*permeable* non-European sovereignty, ever liable to be split, shared, and seized.[5] Europeans often imagined these political forms on a sequential timeline so that the European past was associated with

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[1] Charles S. Maier, "Consigning the Twentieth Century to History: Alternative Narratives for the Modern Era," *American Historical Review* 105, no. 3 (2000): 807-831; Maier, *Leviathan 2.0: Inventing Modern Statehood* (Cambridge, Mass.: The Belknap Press of Harvard University Press, 2012); Maier, *Once Within Borders: Territories of Power, Wealth, and Belonging since 1500* (Cambridge, Mass.: The Belknap Press of Harvard University Press, 2016).

[2] Quoted phrases here from Perry Anderson, *Lineages of the Absolutist State* (London: Verso, 1979), 25.

[3] Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History* (New York: Cambridge University Press, 2002); Benton, *A Search For Sovereignty*; Lauren Benton and Richard J. Ross, eds., *Legal Pluralism and Empires, 1500-1850* (New York: New York University Press, 2013).

[4] On extraterritoriality, see for example Turan Kayaoglu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge: Cambridge University Press, 2010).

[5] See most famously Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2005).

the non-European present, by definition nonsynchronous with European modernity. To look across the globe was to look back in time.[6]

Powerful as broad interpretive schemas, such metanarratives can naturally lead astray when read as descriptive statements of historical fact. Not only because of the level of generality, but also because of the slippery movement between actors' categories and our analytical ones. Appeals to singular sovereignty began life as a polemical, normative interventions in political struggles (e.g., Hobbes) and in many senses remained so, just as images of non-European sovereignty cannot be disentangled from the material projects they served. In many ways and cases, European sovereignty, too, remained uneven and plural. And that might open up some ways of thinking in less linear terms about the history of territorialization and border-making.

The literature on sovereignty, statehood, and empire has taken its cues from states in far-western Europe and the so-called "blue water" empires they built. Along with a growing cohort of other scholars, I am interested in how our understanding of the relationship between sovereignty, statehood, empire, and territory shifts when we turn our attention to the continental empires instead.[7] What does it look like to theorize the path and nature of modern statehood from the Habsburg, Russian, and Ottoman empires, where the lands ruled were geographically contiguous? What is the relationship between "internal" borders and modes of differentiation and "external" ones? Does that very distinction not load the analytical dice, given that the line between the "inside" and "outside" of a state – and certainly the sharp distinction between "domestic" and "international" law – was often only in formation during the nineteenth century? For example: No one really spoke of a Habsburg "state" prior to the early nineteenth century.[8] Until that point, the Habsburgs also wore the crown of the Holy Roman Empire of the German Nation: a loose, patchwork polity that encompassed some of the Habsburg's hereditary lands, *but not all,* with Hungary and Croatia lying beyond its borders. The frontiers of the realm belonging to the Holy Roman Emperor were different to those of the King of Hungary, even though both were the same individual.[9] This was the logic of composite monarchy, according to which a monarch could acquire an additional title or ruling identity – *Herrscherpersönlichkeit* – so that the Archduke of Austria, the King of Bohemia, and the Margravate of Moravia were one and the same physical person, but the various polities otherwise retained an independent legal identity and broad autonomy, with their own provincial diet and customary law.[10] Composite monarchies were entirely unremarkable in

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[6] See Kathleen Davis, *Periodization and Sovereignty: How Ideas of Feudalism and Secularization Govern the Politics of Time* (Philadelphia: University of Pennsylvania Press, 2008). This conceptual framework structured various disciplines from anthropology to developmentalism. On the former, see canonically Johannes Fabian, *Time and the Other: How Anthropology Makes its Object* (New York: Columbia University Press, 1983).

[7] See my forthcoming book, *The Life and Death of States: Central Europe and the Transformation of Modern Sovereignty* (Princeton: Princeton University Press, 2023).

[8] As against the Habsburg dynasty, or House of Austria, or the Hereditary Kingdoms and Lands, and so on. See Arnold Luschin von Ebengreuth, *Handbuch der österreichischen Reichsgeschichte: Geschichte der Staatsbildung, der Rechtsquellen und des öffentlichen Rechts,* vol. 1, *Österreichiche Reichsgeschichte des Mittelalters*, 2nd. ed. (Bamberg: C. C. Buchners Verlag, 1914), 3.

[9] Only in 1804, in response to Napoleon's declaration of himself as emperor of the French, and with the dissolution of the Holy Roman Empire on the horizon, did Francis I create a comparable title – Emperor of Austria – that pertained to all *his* "own" lands – that is, lands he presided over not as Holy Roman Emperor, but as king and archduke and all his myriad other royal selves.

[10] On composite monarchy generally, see J. H. Elliot, "A Europe of Composite Monarchies," *Past & Present* 137 (1992): 48-71; H. G. Koenigsberger, "Composite States, Representative Institutions and the American Revolution," *Historical Research* 62, no.

medieval and early modern Europe and symptomatic of that world that knew no fundamental distinction between "public" and "private," between (personal) property and (state) territory, that did not think about borders and sovereignty in the way we do now. But by the mid-nineteenth century, such promiscuous, sovereign-sharing state-formations had lost their self-evidence, even as the empire formally remained a conglomerate of distinct polities (Hungary, Bohemia, Moravia, Silesia, Croatia, Tyrol, etc.). So when the 1848 revolutions forced the emperor to consent to an imperial constitution, officials and jurists faced the difficult task of translating the logic of composite monarchy and patrimonial rule into the categories and worldview of nineteenth-century European legal science and government.[11] Did the King of Bohemia, for example, have international standing and international legal personality? If not – if, internationally, he disappeared into his alter ego, the Emperor of Austria – then did the emperor step in and out of international law, and in and out of constitutional law, as he symbolically took off the imperial crown and put on a royal one? In the debate over the imperial constitution, which continued through to the empire's collapse in 1918 (and beyond), we can watch the way these older, plural, and non-territorial understandings of sovereign power were preserved and adapted at the same time.

Much of this debate turned on the "historical rights" of the empire's component lands. These bodies of traditional rights and privileges of (say) the Bohemian or Hungarian estates, were spheres of noble autonomy from princely power which the monarch had pledged to uphold at the moment of imperial incorporation and which had been cyclically reaffirmed through rituals like coronations. In the context of 19th constitutional claim-making, these traditional prerogatives were gradually reinterpreted as bodies of public law. Put succinctly, the "historical rights" of the estates became the historical rights of "states." And the Habsburg acquisition of the Hungarian and Bohemian crowns in the early 16th century was now reinterpreted as Hungary and Bohemia's respective loss of sovereignty, a sovereignty they had never formally renounced. "Historical rights" came to signal a genre of latent or suspended sovereignty, still normatively valid and simply awaiting the renewal and full recognition. Though German centralists repeatedly tried to quash these residual jurisdictions, and nationalists repeatedly tried to have the empire reorganized as a federation of (ethnic) nations, the (multi-ethnic) historical lands remained the constituent units of the empire, and even enlarged their jurisdiction over some spheres of administration.

So dynastic-feudal legal formations were, at least in part, digested into those of "modern" statecraft. But they were not, as such, territorialized: they remained vocabularies for contesting the thickness or strength of old prerogatives (especially taxation) over and against the jurisdiction of the central government. Interestingly, even those who argued that the empire should be re-structured on ethnic-national lines concluded that any such reorganization would have to take non-territorial form because national communities lived so densely intermingled that they could not be circumscribed geographically. Austro-Marxists like Karl Renner and Otto Bauer famously proposed a model of "non-territorial

148 (1989): 135-153; H. G. Koenigsberger, "Monarchies and Parliaments in Early Modern Europe: Dominium Regale or Dominium Politicum et Regale," *Theory and Society* 5, no. 2 (1978): 191-217; Albert Kiralfy, "Independent Legal Systems under Common Dynastic Rule: The Examples of England and Hungary," *Journal of Legal History* 11, no. 1 (1990): 118-128. For a sociological analysis in the context of European state building, see Thomas Ertman, *Birth of the Leviathan: Building States and Regimes in Medieval and Early Modern Europe* (Cambridge: Cambridge University Press, 1997), esp. 19ff.

[11] This is not to say that such images necessarily captured the reality: after all, states like Britain and France presided over global empires characterized by highly varied and ambiguous legal arrangements. See further below.

autonomy" in which speakers of the same language would form a collective legal entity irrespective of where they lived, analogous to church membership. We can point to some significant exceptions; that is, moments when modes of border-drawing became political preoccupations. After the Settlement of 1867 transformed the empire into an innovative dual state—the "Austro-Hungarian Empire"— composed of two equally sovereign halves complete with two regimes of citizenship, a Hungarian citizen was, technically, a "foreigner" in the Austrian half of the empire, and vice versa. A new citizenship border running square through the empire's interior: a good example of old-new legal pluralisms in late nineteenth century Europe, hovering ambiguously between domestic and international law. But in general, Habsburg constitutional struggles evince a form of legal pluralism that turned less on the (uneven) dispersal of rights throughout space, in the Benton model, than on their (imperfect) survival through time. What was living and what as dead in these old residual quasi-sovereignties, law that stemmed from a time before Habsburg rule? Latent and simmering, historical rights lingered as sovereign qualifications – as legal reminders that the establishment of the state was a not a totalizing phenomenon, that rights could evade its transformative grasp and puncture its pretension to perfect jurisdiction and perfect sovereignty. The case invites us to think further about the state's consolidation and fortification of jurisdiction as control over time and not just space.[12]

Dynamics of territorialization were radically transformed by the empire's collapse at the end of the First World War. It was a famous age of border-drawing—impassioned, chaotic, and violent—as the region was sorted into a new order of post-imperial states. The new borders and boundaries crisscrossing East Central Europe had many authors, from scholar-diplomats in the halls of the Paris Peace Conference, blithely wielding blue pencils over maps and changing lives, to militias and state armies fighting small and large wars over contested borderlands, to new genres of international expert, especially geographers, assembled in new committees and armed with charts and graphs and aggregates.[13] Some boundary disputes became full blown international crises and occupied enormous amounts of attention at the Peace Conference. ("How many members ever heard of Teschen?" Lloyd George famously asked the House of Commons as dispute over the Polish-Czech border raged. "I do not mind saying that I have never heard of it."[14]) In the coming months and years, new international institutions like the League of Nations would develop novel techniques to manage and administer contested areas, including plebiscites, right of option (in which one could opt for citizenship in a neighboring state instead), and various forms of international supervision. The most dramatic example of the latter, the minorities regime, arguably changed the nature and meaning of sovereignty by making it contingent on rights guarantees and paved the way for a long twentieth-century history of post-imperial sovereignty as sovereignty qualified by international oversight and intervention.

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[12] For an attempt to theorize rights claims of this sort, connecting European history to more contemporary indigenous land rights claims in settler colonies like Australia and Canada, see Natasha Wheatley, "Legal Pluralism as Temporal Pluralism: Historical Rights, Legal Vitalism, and Non-Synchronous Sovereignty," in *Power and Time: Temporalities in Conflict and the Making of History*, ed. Dan Edelstein, Stefanos Geroulanos, and Natasha Wheatley (Chicago: University of Chicago Press, 2020), 53-79.

[13] On border-drawing in the region more broadly, see Volker Prott, *The Politics of Self-Determination: Remaking Territories and National identities in Europe, 1917-1923* (Oxford: Oxford University Press, 2016). On the militia, see Robert Gerwarth, *The Vanquished: Why the First World War Failed to End* (New York, 2016) as well as Julia Eichenberg and John Paul Newman, "Aftershocks: Violence in Dissolving Empires after the First World War," *Contemporary European History* 19, no. 3 (2010): 183-194. On the geographers, see Steven Seegel, *Map Men: Transnational Lives and Deaths of Geographers in the Making of East Central Europe* (Chicago: University of Chicago Press, 2018).

[14] Quoted in Margaret Macmillan, *Paris 1919: Six Months that Changed the World* (New York, 2001), 239.

In this context I would like to highlight two aspects of border-making in the transition from empire to successor state. The first concerns the surprising fate of imperial constitutional law in the interwar international order. Our most prominent story about this moment in Central Europe highlights a new age of national self-determination in which peoples and nations, rather than dynastic right and/or sovereign machinations, would serve as the basis for state legitimacy.[15] In some ways, this framing affirms the nationalist view of Austria-Hungary as an archaic relic and prison-house of nations destined to collapse.[16] But self-determination remained a revolutionary challenge to the basic structure of international order and the ostensible sanctity of state sovereignty. That challenge was political – in the sense that Allied statesmen were hardly in a hurry to explicitly endorse the principle that any rebellious national group or "minority" possessed an international right to break away and form their own state – as well as theoretical or juridical – in the sense that it implied the legally-problematic creation of something out of nothing. Self-determination was also an ambivalent and inadequate resource from the perspective of the successor states because they rarely confined their aspirations to territory inhabited by their co-nationals. In this context, the old vocabulary and imaginary of "historical rights," developed in the context of imperial constitutional debate, acquired a new vocation on the world stage, now redirected from Vienna to Paris. Czech and Hungarian statesmen claimed their polities were not contingent newcomers to international life, but rather old states simply resurrecting lapsed sovereignty, paper states made real. Czechoslovakia and Hungary, they each submitted to the Peace Conference, continued the legal personality of the Kingdom of Bohemia and the Kingdom of Hungary, respectively, preserved over long centuries of imperial rule through the institution of composite monarchy. This legal continuity should affect their status and their rights: both claimed the historic frontiers of these old polities, which contained areas in which they did not have demographic majorities. In the process, the idiom of "historical rights" underwent a significant renovation: previously concerned more with jurisdiction in the sense of the extent of rights and privileges, claim-makers now re-cast the jurisdictional imaginary of historical rights in emphatically territorial terms. A style of reasoning developed out of formerly-feudal prerogatives and privileges acquired a very literal spatiality.

The Czechs, famously, were wildly successful, securing the historical borders of Bohemia despite its significant German populations in the Sudetenland in its northwest. The Hungarians, just as famously, were wildly unsuccessful, losing two thirds of historic Hungary to neighboring states on all sides. Both frontiers remained notorious features of European politics. In the Munich Agreement of 1938, Adolf Hitler seized the German-speaking Sudetenland at a critical juncture in his violent march into World War II. Hungary's Trianon borders remain a contentious source of grievance in Hungary through to the present day.

So, 1919 as the triumph of territorialized sovereignty? Yes—and no. Because at the same time, another transformation was unfolding, which brings me to my second observation. 1919 was a great age of making borders *and* the means to transcend them: that seeming contradiction holds the key to many aspects of Europe's interwar history, which we now see as a story of internationalization *and* deglobalization.

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[15] See most famously, Eric D. Weitz, "From the Vienna to the Paris System: International Politics and the Entangled Histories of Human Rights, Forced Deportations, and Civilizing Missions," *American Historical Review* (Dec 2008): 1313-1343.

[16] A view now withered under a generation of historiographical attack. See most prominently, Pieter Judson, *The Habsburg Empire: A New History* (Cambridge, Mass.: Harvard University Press, 2016).

If nationalists celebrated new borders as markers and measures of hard-fought independence (contesting their location, perhaps, but not their existence), to others they represented a major new challenge. They were a problem for things that moved – like crime, capital, refugees, and disease.[17] Such things possessed their own spatiality that did not necessarily conform to the shrunken sovereign spaces of the successor states. The need to manage that spatial disjuncture – to manage the non-alignment between national jurisdictions and these jurisdiction-hopping phenomena – spurred diverse new projects of transnational governance. The results, as I have argued elsewhere, turned Central Europe into the "ground zero" of the new international order of 1919.[18] I will give some short examples here relating to capital and to crime.

Capital. What did the new state landscape mean for economic life? A range of economists and state officials fretted about the negative impact of new borders on trade and commerce, and the drastic contraction of markets. Even to preserve the regional commercial circulation of the Habsburg period would now involve agreements between and across sovereign states. As Britain and France doubled down on their own vast imperial marketplaces, the predicament of the small states of Central and Eastern Europe drove the development of a range of schemes designed to support and manage transnational economic interaction, schemes which are now being recovered as departures in the history of global capitalism and the regulation of the world economy. Austrian bureaucrat Richard Riedl, for example, sought the protection of "trans-border commercial rights" that would remove handicaps faced by foreign commercial actors.[19] Quinn Slobodian's magisterial *Globalists* argues that the predicament of post-Habsburg sovereignty constituted the most formative context for the emergence of what we now call neoliberalism. From their Vienna offices, figures like Ludwig von Mises and F. A. Hayek wrestled with the predicament of the small rump Austrian successor state of the 1920s. Because Austria could not be self-sufficient, it had no choice, they felt, but to rely on an open world economy: it needed free trade, foreign markets, and resources.[20] Yet the constricting new borders and the rise of economic nationalism threatened free trade with tariff "walls" and demands for high worker wages. They concluded that one needed to inoculate the "rights of capital" from the demands of democratic publics and national governments. These economic thinkers could reconcile with the proliferation of nation-

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[17] Endemic disease across the region was one factor driving the transnational health collaborations of the League's newborn Health Organization (forerunner to the WHO), under the pioneering direction of the Polish bacteriologist and epidemiologist Dr. Ludwik Rajchman. See Sara Silverstein, "Reinventing International Health in East Central Europe: The League of Nations, State Sovereignty, and Universal Health," in Becker and Wheatley, eds., *Remaking Central Europe: The League of Nations and the Former Habsburg Lands* (Oxford, 2020).

[18] Natasha Wheatley, "Central Europe as Ground Zero of the New International Order," *Slavic Review* 78, no. 4 (2019): 900-911; *Remaking Central Europe: The League of Nations and the Former Habsburg Lands*, ed. Peter Becker and Natasha Wheatley (Oxford: Oxford University Press, 2020).

[19] Riedl spearheaded the 1927 Draft Convention on the Treatment of Foreigners, debated at the League of Nations. Madeleine Dungy, "International Commerce in the Wake of Empire: Central European Economic Integration between National and Imperial Sovereignty," in *Remaking Central Europe: The League of Nations and the Former Habsburg Lands*, ed. Peter Becker and Natasha Wheatley (Oxford, 2020). On business elites over the cusp of 1918, see Máté Rigó, "The Long First World War and the Survival of Business Elites in East-Central Europe: Transylvania's Industrial Boom and the Enrichment of Economic Elites," *European Review of History/Revue européenne d'histoire* 24, no. 2 (2017): 250-72.

[20] Austria, Slobodian writes, had become a "prototypical case of a small state in the storms of globalization," prefiguring the predicament of many post-imperial countries around the world. Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Cambridge, Mass., 2018), 51, 43.

states only by conceptualizing a "doubled" world, one split between *imperium* – "the world partitioned into bounded, territorial states where governments ruled over human beings" – and *dominium* – "the world of property, where people owned things, money, and land scattered across the earth."[21] New supranational institutions would be required to manage the relationship of these two worlds. As many of the Mises circle moved from Vienna to Geneva and beyond, they helped lay the foundations for international investment law, the European Economic Community, and the GATT (later the WTO), which were designed not so much to leave the market unregulated as to insulate it from the potentially disruptive effects of nation-states and democracy. This bifurcation of scales of rule – between national governments and the global economy – became a normative project, Slobodian argues, out of the ashes of the Habsburg Empire, with consequences that clearly shape today's world.

Crime. Post-imperial sovereign spatiality was not only challenging for economists. Questions of crime and policing also provoked initiatives designed to transcend the new kaleidoscope of national jurisdictions. The chaos and conflict of the war lingered in the years after 1918: ongoing violence, revolutionary agitation, social dislocation, and mass displacement exacerbated the power vacuum left in the wake of imperial dissolution. Under these conditions, and with the borders themselves contested and moving, "trans-border" crime thrived.[22] As one police official noted in 1923, "All of Europe, or at least Central Europe, is in a sense internationalized."[23] National police forces, islanded in separate state jurisdictions, were ill-equipped to confront this internationalized criminality. It was Vienna police chief, Johannes Schober, who masterminded a solution. As David Petruccelli has shown, Schober drove the creation of a new organ of police cooperation called the International Criminal Police Commission. Established in Vienna in 1923, the Commission facilitated the sharing of information on cases as well as methods. Today, that organization is known as Interpol. In its original interwar iteration, it remained a profoundly Central European product, with its focus and membership dominated by the successor states.[24] If imperial dissolution and the desire to circumnavigate new borders turned some economists into *neo*liberals, it spurred these conservative, revolution-fearing police chiefs to a deeply *il*liberal internationalism.

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[21] Slobodian, *Globalists*, 10.

[22] This trans-border crime included theft, counterfeiting, and speculation. On counterfeiting, see David Petruccelli, "Banknotes from the Underground: Counterfeiting and the International Order in Interwar Europe," *Journal of Contemporary History* 51, no. 3 (2015): 507-530.

[23] Internationale Kriminalpolizeiliche Kommission, *Der Internationale Polizeikongreß in Wien (3. bis 7. September 1923): Stenographisches Protokoll der Verhandlungen* (Vienna, 1923), 16; cited in David Petruccelli, "Fighting the Scourge of International Crime: The Internationalization of Policing and Criminal Law in Interwar Europe," in *Remaking Central Europe: The League of Nations and the Former Habsburg Lands*, ed. Peter Becker and Natasha Wheatley (Oxford, 2020).

[24] Petruccelli, "Fighting the Scourge of International Crime."