

BOOK REVIEW

## Wheatley, Natasha. *The Life and Death of States: Central Europe and the Transformation of Modern Sovereignty*

Princeton: Princeton University Press, 2023. Pp. 424.

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The twentieth century was a century of new states. The League of Nations was comprised of 42 states at its founding in 1920; the United Nations was made up of 51 members in 1945. But by 1965, thanks to decolonization, its ranks had more than doubled to 117. The United Nations currently has 193 members. What defines the biography of these states—their birth, life, and death?

Historians have typically studied state-making since the eighteenth century in contexts where sovereignty and legitimacy were based on the idea of a national community. But in the nineteenth century, most people in the world did not live in what we would today call “nation-states,” in which a single “nation” was matched to territory and state, and in which legitimacy depended on linguistic or national homogeneity. Rather, they lived in empires pieced together like puzzles of many constituent parts. These “composite” states or empires were created piecemeal over time through wars, occupations, treaties, and compromises, and with varying degrees of consent from the governed. They too needed a source of legitimacy.

In *The Life and Death of States*, Princeton historian Natasha Wheatley begins from the vantage point of the Habsburg Empire. The logic behind its existence was a puzzle that preoccupied generations of central European legal scholars and intellectuals. These theorists posed new questions about the temporal nature of statehood and sovereignty. For example, if sovereignty was lost, as with partitioned Poland, was it merely suspended? Did it still exist as a frozen possibility, an embryo of statehood that might be thawed out and implanted in the future? What “rights” or forms of autonomy did former statehood confer to these ghosts of states within states?

Wheatley’s extraordinary work spans two centuries, bringing together international, intellectual, political, and legal history. She explores how theorists and politicians from the Habsburg Empire negotiated the creation and transformation of their own state. In this process, as she demonstrates, the empire became a rich breeding ground for new principles of statehood and sovereignty that long outlasted the monarchy itself.

In the second half of the nineteenth century, for example, Czech politicians such as Karel Kramář (1860–1937) justified their claims for greater regional autonomy for Bohemia by arguing that the medieval Bohemian state had never ceased to exist, an argument that became known as “states rights.” These rights, he argued, existed continuously in principle, even if not in practice. In this view, ancient Bohemian sovereignty was simply slumbering, awaiting resurrection and recognition.

This idea of a potential distinction between principle and practice, or between law and fact, Wheatley argues, became the centerpiece of a revolution in legal philosophy that can also be traced back to the Habsburg empire via its most well-known legal thinkers, Georg Jellinek and Hans Kelsen. Kelsen’s “pure theory” of law famously insisted that law should be understood as an abstract set of norms and principles, independent from the “reality” of law as it was being practiced or lived.

These ideas—both about the temporal dimension of sovereignty and the distinction between the real and the ideal in law, morphed to accommodate the new realities of mass politics. Beginning in the 1880s, nationalist movements in the Habsburg Empire were already challenging the idea that the empire was comprised of many historic polities (known as “crownlands”). Instead, they proposed

the ethnic nation as the primary sub-unit of the imperial state. Historic polities were recast as “nations.” Nationalists argued that sovereign nations, like sovereign states, could also slumber under a blanket of suppression or indifference. It was the job of nationalists to awaken sleeping peoples to their own national consciousness to rally them to claim their rights.

But how could you create a “national” polity within the Habsburg Empire, given that linguistic or national communities were impossible to disaggregate along territorial lines? This dilemma generated a new set of ideas and laws that transformed nations themselves into collective legal entities with rights and duties, non-territorial nations. That was not the end of the discussion, however. Which nations would have the right to representation and autonomy, and which groups would not be recognized as nations at all? Were Ukrainians a nation? Roma? Jews?

These were not merely theoretical questions for the people studying them. It is no coincidence that many of the theorists that populate Wheatley’s book were themselves German-speaking Jews. These men were highly loyal to the Habsburg Empire and most at risk of becoming homeless in a world of territorial nation-states. In fact, many of them had to convert to Christianity simply to practice law in Habsburg Austria, or to gain a foothold in the academic world. Kelsen would flee the Nazis—and Europe—in 1940, taking up residence first at Harvard and then Berkeley, where he lived until he died in 1973.

But long before that, the ideas of these jurists came to the table, and came into conflict, when the Habsburg Empire was defeated and dissolved at the end of the First World War. The nationalist leaders who crowded the negotiating table in Paris in 1919 were equipped with claims for sovereignty based on historical rights. Hungary, Czechoslovakia, and Poland were not “new” states, their leaders insisted, they were “old” states whose sovereignty was finally being resurrected. In 1919, such arguments about historical and legal continuity were reassuring to the Allies, because the alternative seemed to be legal chaos. Frequently, however, the argument for historical rights competed in Paris and beyond with the ideal of national self-determination, because historical territories were themselves multinational.

The principle of national “self-determination” was famously (or infamously) sanctified by Wilson, but there was no way of fairly deciding which nations would get states and which nations would be consigned to minority status. Now, as Wheatley demonstrates, the ideas of Habsburg legal theorists trickled up into international law through the vessel of the League of Nations’ Minority section. League officials adapted the ideas of Habsburg legal theorists and wrote treatises on Austrian national law, which served as a rough draft to determine new norms of international minority rights.

The cacophonous battle for sovereignty and statehood at the end of the Habsburg Empire precipitated another major advance in Kelsen’s thinking and in the development of international law more broadly. He realized that there was no way, from within the legal framework of states, to mediate between competing claims for sovereignty and statehood *among* states. There was no way to make decisions about the temporal dimensions of sovereignty, the birth and death of statehood. A higher order was necessary. That order would be international law.

One of Wheatley’s most exciting and original leaps is how she connects the ideas of these theorists to the wave of decolonization that followed the Second World War. In particular, the notion of “slumbering” sovereignty was critical for postcolonial states, which insisted that they were not “new” states, with the juvenile status this implied, but rather “old” states that had finally been resurrected and which were entitled to international legal standing as such. This was precisely the claim that had been made by Czech, Hungarian, and Polish leaders in 1919.

Habsburg’s ideas and debates about statehood and sovereignty thus radiated through the nineteenth, twentieth, and twenty-first centuries, following tributaries that led far from Vienna or Budapest. Wheatley follows these ideas to the League of Nations and the United Nations, to discussions of decolonization and the collapse of the Soviet Union; from Austro-Marxist proposals for non-territorial nations to ideals of multiculturalism and visions for the sovereignty of indigenous people. These ideas will continue to resurface as long as conflicts over the life and death of states persist.

Wheatley’s book is timely, and her achievement is extraordinary. She takes theorists such as Kelsen and Jellinek who are familiar to legal theorists and defamiliarizes them by situating them in the

Habsburg context from which they arose. And then she pushes far beyond that context, giving us a sense of how much these ideas mattered—and how they traveled globally and transformed along the way. The Habsburg Empire, Wheatley writes in a memorable phrase, was once “figured as an absurd lump of the ancient régime stranded in the twentieth century like a beached whale, its disappearance . . . overdetermined by History itself.” But this dead state, she shows us, has had many after-lives, not only in the states made from it but in the very way states are made.