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## Anti-Constitutional Moments

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**Anti-Constitutional Moments**  
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# Anti-Constitutional Moments

Enrique Guerra-Pujol

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## I. Introduction

In the fall of 1924, when young Kurt Gödel began his studies at the University of Vienna, the vast majority of states in Europe were parliamentary democracies. But by the time Gödel and his wife Adele left their beloved Vienna for good fifteen years later in January 1940, thirteen democracies had become dictatorships and every single constitutional democracy in Central Europe, Gödel's corner of the world, had become a constitutional dictatorship. [Cf. Bermeo, 1997, p. 1.] In the words of two eminent European historians (Costa-Pinto & Larsen, 2006, p. 251), "[Central] Europe was strangled by various dictatorships: some fascist/Nazi dictatorships, some puppet, and a variety of semi-fascist or right-wing nationalist and royalist authoritarian regimes." Simply stated, "all the states of this area [Central Europe] ... succumbed to royal or military or political dictatorships." [Rothschild, 1962, p. 241, n.2.]

[make reference to "Goedel's loophole"]

### A. Gödel's Vienna

Although Gödel lived only 15 years in Vienna, in many ways those were the most productive and important years of his life. Karl Sigmund, for example, writes thus: "Kurt Gödel spent barely fifteen years in Vienna ... However, the years [in Vienna] ... constituted his formative period. He was deeply affected by the extraordinary cultural and intellectual following of what has been called 'Vienna's Golden Autumn,' and he may one day be seen as its most prestigious scion." [Sigmund, 2011, p. 75.] Vienna is where Gödel attended university and received his doctoral degree, where he attended the philosophical discussions of the Vienna Circle, where he met and wed his wife Adele, where he did his most important and original work, where he made landmark contributions in the fields of logic and mathematics.

In other words, Vienna was not only his primary residence from 1924 to 1940; it was the grand Central European capital city where Gödel came of age. But what many students of Gödel's life and work fail to mention is that Vienna—the imperial capital of the former-Austro-Hungarian Empire—must have also offered Gödel a perfect vantage point from which to observe (even casually) the degeneration of constitutional democracies into constitutional dictatorships.

We shall thus return to Gödel's *interbellum*--his residency in the old imperial city of Vienna from 1924 to 1940--with a focus not on his research or personal life but

rather on the major constitutional events or “constitutional moments” swirling around him in the Republic of Austria and the other neighboring countries in Central Europe. In brief, most countries in Europe had adopted bona fide democratic constitutions during the interwar period between WWI and WWII, yet these *interbellum* constitutions proved unable to stop dictators from taking power. What lessons might Gödel have learned from these *interbellum* constitutional and “anti-constitutional” moments?

### ***B. “Anti-constitutional moments”***

Here, we wish to say a few words about our approach or methodology in this constitutional survey. In brief, we shall focus on the process of constitutional change in those countries in interbellum Europe that became dictatorships, and we shall borrow Bruce Ackerman’s theory of “constitutional moments” to survey the major constitutional events in Europe during the interwar period. Broadly speaking, Ackerman argues that in times of political or economic crisis, the electorate may act collectively to affirm major constitutional change through informal or extra-constitutional means outside the formal constitutional amendment process (Ackerman, 1998, pp. 4-6). A case in point, for example, is the power of Congress to regulate interstate commerce under the Commerce Clause of the U.S. Constitution. (U.S. Const., art. I, § 8.) Prior to the New Deal, the U.S. Supreme Court interpreted Congress’ commerce power narrowly. [*Cite Lochner era cases striking down federal legislation.*] But after FDR’s landslide electoral victories in 1932 and 1936, the Supreme Court began to interpret the commerce power far more broadly. Although the Commerce Clause was never formally amended or repealed during this time, our collective understanding of the Commerce Clause was changed informally at the ballot box \*\*\*

Although Ackerman’s theory of “constitutional moments” was originally meant to explain the major “paradigm shifts” in constitutional interpretation that occurred at crucial points in U.S. history, his theory can also be used to explain the process of large-scale constitutional change in other countries. (See, e.g., Choudhry, 2008, who applies Ackerman’s theory to Canadian constitutional law.) We shall thus borrow Ackerman’s theory of “constitutional moments” to survey the major constitutional events in Europe during the interwar period.

Although there is some controversy among scholars over the details or finer points of Ackerman’s theory—for example, how does one define or measure a “constitutional moment” (see, e.g., Young, 2013)—, we shall focus on the major and most obvious constitutional-level events to occur in *interbellum* Europe, such as the drafting and ratification of new constitutions, the formal and informal amending of existing constitutions, as well as the wholesale suspension or repeal of old constitutions.

In addition, and perhaps more importantly, we shall also expand Ackerman’s concept of “constitutional moments” to include “anti-constitutional moments” in our constitutional survey of interbellum Europe, that is, moments when major

political change occurs outside the constitutional process, such as military coups, *putsches*, states of emergencies, self-coups, and other unconstitutional seizures of power. In brief, when it comes to understanding constitutional change in interbellum Europe, these so-called “anti-constitutional” moments are just as important as Ackerman’s constitutional moments ... [explain why]

For simplicity, we shall analogize each interbellum constitution in our survey to a biological entity with three major phases: birth, growth or change, and death. In other words, we shall consider three categories or “ideal types” of constitutional and anti-constitutional moments—(i) *birth*, (ii) *change, both inside and outside the formal amendment process*, and (iii) *death*. By *birth*, we refer to those foundational events leading up to the adoption and ratification of new, interwar constitutions. By *change*, we mean those events generating formal and informal amendments of existing constitutions during the interwar period. And by *death*, we refer to those dramatic events leading up to the wholesale suspension or repeal of such interbellum constitutions.

### ***C. Roadmap***

In short, we shall review the most obvious and dramatic constitutional-level events to occur in Europe during the interwar years and then discuss any lessons a casual observer (someone like Gödel) might have gleaned from these major and dramatic constitutional moments. Our goal is to identify possible lessons these constitutional and “anti-constitutional” moments might have for us and for Gödel who, after all, lived mostly in Vienna, the heart of Central Europe, during these turbulent times.

## **II. Gödel’s Pre-Vienna Years**

We begin our survey with the constitutional and “anti-constitutional” moments unfolding in Hungary, Italy, and Turkey during the late 1910s and early 1920s. We group these disparate examples together here only because Horthy, Mussolini, and Atatürk’s rise to power occurred early, while Gödel was still attending secondary school, well before he matriculated at the University of Vienna in the fall of 1924 and made his great mathematical discoveries in the years 1929–1931.

Born in 1906 in a remote corner of the Austro-Hungarian Empire, Kurt Friedrich Gödel was a mere lad during the Great War and during the first few years of the *interbellum* period. So, while great statesmen like Miklos Horthy in Hungary, Benito Mussolini in Italy, and Mustafa Kemal in Turkey were consolidating their powers and rewriting the constitutions of their respective countries, young Gödel was still in secondary school in the city of Brünn (now Brno, Czechoslovakia).

[Kurt Friedrich Gödel was born on 28 April 1906 in the city of Brünn in Moravia, one of the 15 former “crown lands” (*Kronländer*) or provinces of the Cisleithania, the Austrian part of the now-defunct Austro-Hungary Empire. [See entry for

“Cisleithania” in Wikipedia.] Although Moravia officially became a part of the Republic of Czechoslovakia a decade later when the Czechs and the Slovaks declared their independence in October 1918, [In all, Czechoslovakia combined the lands of Bohemia, Moravia, Austrian Silesia, Upper Hungary (present-day Slovakia), and Carpathian Ruthenia into a single state.], \* \* \* Gödel considered himself an Austrian and received Austrian citizenship in 1929.]

Gödel attended Brünn’s top preparatory school or “Realgymnasium”--the *K.-K. Staatrealgymnasium mit deutscher Unterrichtssprache*--for eight years, from 1916 to 1924 or from the age of 10 to the age of 18. [See generally Dawson, 1997, pp. 12-19.] By the time young Gödel graduated from the Realgymnasium on 19 June 1924 and matriculated at the University of Vienna in the fall of 1924, Hungary, Italy, and (to a lesser extent) Turkey had become or were becoming “constitutional dictatorships.”

Moreover, it has been said that the young Kurt Gödel “kept more or less to himself and devoted most of his time to his studies.” [Letter of Harry Klepetar (one of young Gödel’s secondary-school classmates) to John Dawson, dated 30 December 1983, quoted in Dawson, 1997, p. 14.] Nevertheless, during his formative years in Brünn, the young Gödel liked to read the Viennese newspaper *Neue Freie Presse*, [Dawson, 1997, p. 22.] and given his general inquisitive nature, [Ibid., pp. 1-3.] it is certainly possible, maybe even probable, that Gödel had some knowledge or awareness of the great events unfolding in Central Europe and beyond during this time.

### **A. Horthy’s Regency**

It is worth remembering that Kurt Gödel was born in 1906 in the Austrian part of the Austro-Hungarian Empire. Forty years earlier, before his mother Marianne Handschuh and his father Rudolf Gödel, Sr. had even been born, the rising Apostolic Kingdom of Hungary and the declining Empire of Austria had negotiated an unprecedented constitutional union under the so-called “Austro-Hungarian Compromise of 1867,” a union that lasted until 31 October 1918. This unparalleled political union consisted of two co-equal states (Austria and Hungary) and one semi-autonomous country (Croatia-Slavonia). Although this union became known as the “Dual Monarchy,” both states were originally ruled by the same monarch, Franz Joseph I, the emperor-king in Vienna. But after the defeat of Austria-Hungary in the Great War of 1914–1918, the Hungarians would dissolve their constitutional union with Austria on 31 October 1918 and follow their own national destiny.

Although Hungary began the post-war period as a republic, during the interwar years Hungary was a constitutional monarchy. Ironically, however, the interbellum Kingdom of Hungary had neither a written constitution nor a king. [Although Hungary did not officially adopt a formal written constitution until 1949, Hungary’s “historical constitution” can be traced back to the Golden Bull of 1222, the Pragmatic Sanction of 1713, the April Laws of 1848, and the Austro-

Hungarian Compromise of 1867.] She had no king because the victorious Allies (Britain, Italy, and the United States) would not have tolerated any return of the Habsburgs to power after the Great War, and she had no constitution because she retained her pre-existing parliamentary system under the Austro-Hungarian Compromise of 1867.

We thus review the leading constitutional and “anti-constitutional moments” occurring in Hungary leading up to the Horthy regime in 1921:

*October 1918.* Following a revolt by soldiers of the Hungarian Army, King Charles IV of Hungary (and Charles I of Austria), the last ruler of Austria-Hungary, appoints Mihály Károlyi as prime minister of Hungary on 31 October 1918, an event referred to as the “Chrysanthemum Revolution.” [One of Károlyi’s first official acts as prime minister is to formally terminate the union between Austria and Hungary. See \* \* \*.]

*November 1918.* King Charles issues separate proclamations--one on 11 November for Austria and another on 13 November for Hungary--in which he recognizes the right of the peoples of Austria and Hungary to self-government and in which he “relinquish[es] every participation in the administration of the State.” Less than one week later, Károlyi proclaimed Hungary to be a “people’s republic” on 16 November 1918, thus ending 400 years of rule by the House of Habsburg. [See \* \* \*.]

*March 1919.* The charismatic Communist leader Béla Kun (then residing in Russia) returns to Hungary, and the people’s republic is replaced by a “soviet republic”--but only for 133 days--when the leaders of a new coalition government consisting of Social Democrats and Communists proclaim the Hungarian Soviet Republic and dismiss Károlyi from office on 21 March 1918. [See Borsanyi, 1993, p. 178.]

*August 1919.* The “Hungarian Soviet Republic” lasts 133 days, falling when the Romanian Army invades Hungary and captures the city of Budapest, forcing Béla Kun and the other former leaders of the soviet republic into exile in Vienna, Austria. After the fall of the short-lived soviet republic, Gyula Peidl leads a new government (referred to as “trade union government”) and issues a decree on 2 August 1919 restoring the “people’s republic.”

*March 1920.* A broad coalition of conservative political parties form a new government and proclaim the restoration of the Kingdom of Hungary, thus reestablishing Hungary’s constitutional monarchy, but instead of inviting Charles IV to return to the throne, the new government appoints Miklós Horthy to the position of “regent.”

*November 1921.* After two failed attempts (one in March 1921; the other in October 1921) by the former king, Charles IV, to regain power in Hungary, the Hungarian Diet (National Assembly) votes on 6 November 1921 to dethrone the

Habsburgs from the Hungarian monarchy by formally nullifying the “Pragmatic Sanction” of 19 April 1713. [See entry for “Charles I of Austria’s attempts to retake the throne of Hungary” in Wikipedia.] Horthy consolidates his position and remains in power until 15 October 1944, when he is arrested by German commandos and deposed by Hitler.

Although Admiral Horthy was not a totalitarian dictator like Hitler or Mussolini, he was a dictator nonetheless. In brief, he retained significant influence through his constitutional powers as Regent. [See Deak \*\*\*.] Although he did not have any direct power to draft or approve legislation, as Regent his powers were a legal continuation of the constitutional powers of the King of Hungary, adopted earlier during the Hungarian federation with the Austrian Empire. In particular, he had the power to adjourn or dissolve the Hungarian Diet (parliament) at his own discretion, and he also had the power to appoint the prime minister, and he used these powers to influence the laws passed by the Hungarian parliament. [See Denis, 1959, p. 289.] Horthy’s rule as regent could thus be construed as an informal dictatorship.

### ***B. Mussolini’s Dictatorship***

In October 1922 Benito Mussolini would not only Italy’s youngest prime minister since the unification of the Kingdom of Italy in 1861; his appointment would be made in a constitutional manner. [Bosworth, 2010, p. 139.]

Young Gödel was still in secondary school in Brünn (now Brno, Czechoslovakia) while Mussolini was marching on Rome and consolidating his fascist dictatorship. Nevertheless, Mussolini’s rise to power and the dramatic events unfolding in Italy were well reported around the world. Moreover, Gödel himself would subsequently travel to Italy on at least two separate occasions, once as early as September 1928, when he visited Bologna to attend a lecture by David Hilbert at the International Congress of Mathematicians. [\[Confirm this fact in Wang or Goldstein\]](#). The International Congress of Mathematicians (ICM) met in Bologna on 3–10 September 1928. See Coen, 2012, p. 374. Hilbert’s address to the ICM was titled Problems of the grounding of mathematics.” See Zach, 2009.] In addition, Gödel would spend several days in Italy in June 1934--including a three-day vacation in Venice--on his way home to Vienna via Naples, Genoa, and Milan after returning from his first visit to the United States aboard the Italian liner *S.S. Rex*. [Dawson, 1997, p. 103.]

From 1861 to 1948, the Kingdom of Italy was a constitutional monarchy. Italy’s constitution was the *Statuto Albertino*, dating from March 4, 1848, and itself based on the French Charter of 1830. In summary, the Statuto Albertino consisted of 84 articles. The king had extensive powers under the Statuto. He had the absolute power to name and dismiss ministers, so, on paper, the executive was answerable to the king, not the parliament. [Duggan, 1994, p. 121.] Moreover, the king had the right to veto all legislation approved by parliament



and also had the power to issue 'decree laws' without parliament's consent. [Ibid.]

Although there is no doubt that the Kingdom of Italy became a fascist dictatorship under Mussolini, it is difficult to pinpoint the precise date when Italy became a dictatorship. In the words of one scholar, "Just as the fascist regime emerged in an ad hoc manner and never assumed a definitive form, so the liberal state was never really abolished. In fact, *continuity was more striking than change*." [Duggan, 1994, p. 210, emphasis added.]

Throughout the interwar years, Italy remained a monarchy. [Bosworth, 2010, p. 173.] So, when did the Kingdom of Italy become a dictatorship?

Constitutional moments:

*Oct. 1922.* King Victor Emmanuel appoints Mussolini prime minister on 29 October 1922. Mussolini is sworn in on 31 October as Italy's youngest prime minister. [Bosworth, 2010, p. 139.]

*Dec. 1922.* Mussolini convenes a "Grand Council" of Fascism on 15 Dec. 1922, a body parallel to the parliament but separate from it. [Bosworth, 2010, p. 148.] A few weeks later, in January 1923, the Grand Council ratifies Mussolini's plan for a unified fascist militia (the *Milizia Volontaria per la Sicurezza Nazionale* or MVSN) under his personal command. [Bosworth, 2010, p. 149. See also Mussolini, 2006, p. 154; Duggan, 2008, p. 437.]

*Jan. 1924.* In January, with the approval of the king, parliament is dissolved; elections for a new parliament are scheduled for 6 April 1924. [Bosworth, 2010, p. 156. See also Mussolini, 2006, pp. 157-158; Duggan, 2008, pp. 441-442.]

*Apr. 1924.* Mussolini's party wins a landslide electoral victory in the April 1924 elections. [Mussolini, 2006, p. 160.] "Never before in Italian national history since 1861 had there been such a resounding victory." [Bosworth, 2010, pp. 157-158.] These would prove to be the last elections in Italy until 2 June 1946.

*May 1924.* The twenty-seventh Legislature (since unification in 1861) opens on 24 May 1924

*June 1924.* The opposition boycotts parliament after the kidnapping and disappearance of opposition leader Giacomo Matteotti on the night of 9–10 June 1924. [Mussolini, 2006, pp. 162-164; Duggan, 2008, pp. 444-445.] On 13 June, a hundred deputies abandon the parliament, branding the government itself unconstitutional. [Bosworth, 2010, p. 163.]

*Jan. 1925.* Mussolini openly declares himself dictator of Italy in a speech to parliament on 3 Jan. 1925 [Mussolini, 2006, pp. 167-173; Duggan, 2008, pp. 447-448.] On 12 January, the King approves a new cabinet. [Bosworth, 2010, p. 166.]

By August 1925, Mussolini was Prime Minister, Minister of Foreign Affairs, Minister of War, Minister of the Navy, Minister for Aviation. [Ibid.]

*Nov. 1926.* Mussolini becomes Minister of the Interior on 6 November 1926. In addition, a “Special Tribunal for the Defense of the State” is instituted on 25 November 1926. [Bosworth, 2010, pp. 178-179. From 1927 to 1943, the Special Tribunal successfully prosecuted 13,547 political cases. Ibid., p. 181.]

*Dec. 1928.* Fascist Grand Council, 9 Dec. 1928 [Townley, pp. 63-64]

*Mar. 1929.* More than eight and a half million Italians vote “yes” in support of the Mussolini regime in a referendum held on 24 March 1929. [Bosworth, 2010, p. 186, p. 197.]

In summary, although Mussolini’s fascist dictatorship in Italy “developed in a rather haphazard way” (Duggan, 1994, p. 210), it is worth noting that Mussolini’s dictatorship (like Miklos Horthy’s regency in Hungary and Mustafa Kemal’s presidency in Turkey) was a constitutional dictatorship. Not only was Mussolini appointed prime minister in a constitutional manner [Duggan, 2008, p. 434; Duggan, 1994, p. 204]; Italy’s constitution, the Statuto Albertino, was never formally abolished or amended during the fascist era. In fact, the Statuto was not officially abolished until 1948, when the Republic of Italy went into effect

### ***C. Primo de Rivera’s Dictatorship (Spain, Sept. 1923)***

\* \* \*

### ***D. Atatürk’s Constitution (Turkey, April 1924)***

During the 1923–1924 academic year--Gödel’s last at the Realgymnasium in Brünn--, the Republic of Turkey was proclaimed (29 October 1923), and just two months before Gödel’s graduation from the Realgymnasium in June 1924, the newborn republic ratified a new constitution in April 1924.

Although there is no evidence to suggest whether the young Gödel was aware of the constitutional events unfolding in the former Ottoman Empire, we surmise that he must have been aware of Mustafa Kemal Atatürk, one of Europe’s great statesmen during the interwar years.

[INSERT MY FIRST DRAFT OF “ATATURK’S TURKEY” HERE]

\* \* \*

### ***D. Lessons learned?***

In retrospect, although the constitutional histories of Hungary, Italy, and Turkey during the *interbellum* could not be more divergent--Turkey adopted a modern

constitution under the leadership of Kemal Mustafa in April 1924; Hungary, by contrast, did not adopt a formal constitution until 1949; while Italy's constitution, the Statuto Albertino, dated from 1848 and was never formally amended or abolished during Mussolini's fascist dictatorship (1922–1943)--there is, in fact, a common thread that ties all these disparate examples together: the leaders of these three great countries--Miklos Horthy in Hungary, Benito Mussolini in Italy, and Kemal Mustafa in Turkey--all rose to power in a constitutional manner.

Admiral Horthy was constitutionally appointed "Regent" of the Kingdom of Hungary in March 1920, 'Professor' Mussolini was constitutionally appointed prime minister of Italy in October 1922, and Mustafa Kemal Atatürk was the first constitutionally-elected president of the newfound Republic of Turkey until his death in 1938. In short, although Gödel was still in secondary school at the time--and thus probably too young to follow the great constitutional and "anti-constitutional" events unfolding in Hungary, Italy, and Turkey--we conjecture that what must have struck Gödel the most in all these cases--Horthy in Hungary, Mussolini in Italy, and Atatürk in Turkey--is how these great leaders all assumed their powers legally and constitutionally. All three leaders were able to consolidate their power "from within," so to speak.

\* \* \* **transition to G's university years** \* \* \*

#### **IV. Gödel's University Years, 1926–1929**

Kurt Gödel would matriculate at the University of Vienna in the fall of 1924. By the summer of 1929, he would complete his doctoral thesis logically proving the completeness of the first-order predicate calculus. [Gödel's dissertation was approved by his academic advisors on 6 July 1929 (see Dawson, 1997, p. 55), and he was granted his Ph.D. on 6 February 1930 (ibid., p. 60).] And he would prove his famous "incompleteness theorem" in 1931 and then obtain his *Habilitation* as well as the right to lecture by March 1933. [Ibid., pp. 86-89.]

At the same time, during Gödel's first few years at the University of Vienna, several European states would discard their parliamentary constitutions and become full-fledged dictatorships. In Poland, Józef Piłsudski, the retired war hero and First Marshal of Poland, would stage a military *coup d'état* in May 1926 against the existing Polish parliamentary system. In Portugal, General Manuel Gomes da Costa would initiate a military coup in the city of Braga and march on Lisbon later that same month. In little Lithuania, a small band of soldiers would burst into a session of parliament and seize power in December 1926. And in the Kingdom of Yugoslavia, King Alexander would proclaim a royal dictatorship, abolish his country's constitution, and prorogue Yugoslavia's National Assembly (parliament). [See Graham, pp. 455-456. As an aside, the last European monarch to prorogue a parliament (i.e. suspend parliament without dissolving it) was King James II in 1685!]

Did Gödel have the time or the inclination to take notice of these dramatic anti-constitutional moments occurring across Europe during his student days at the University of Vienna? How could he not have?

For example, at the time of the coups in Poland and Portugal (May 1926), Gödel was taking a course on the kinetic theory of matter given by Professor F. Kottler [See Dawson, 1997, p. 25.] and living in an apartment in the heart of Vienna, at Florianigasse 42/16, which he shared with his older brother Rudolf, a medical student at the University of Vienna. [Ibid., p. 21.] In addition, although “Gödel devoted himself intently on his studies ... he was not asocial,” [Ibid., p. 31.] for “he spent a good deal of time in the coffeehouses that were then so central to Viennese intellectual and cultural life.” [Ibid.] So it is certainly possible, perhaps even probable, that Gödel read about the May coups in one of Vienna’s leading newspapers or that he overheard talk about events in Poland or Portugal in one of his favorite coffeehouses.

#### **A. Piłsudski’s Coup** (Poland, May 1926) [REVIEW & REVISE]

We think Gödel might have taken special notice of the anti-constitutional events in Poland, given Poland’s geographical location in Central Europe and her proximity to Austria

Moreover, one historian has described the May Coup in Poland as “the great watershed of Polish political life between the world wars,” [Rothschild, 1962, p. 241] for the coup not only put an end to constitutional democracy in Poland; it also “signaled the failure and death of parliamentary democracy throughout the area of East Central Europe.” [Ibid.]

The Second Polish Republic was also a parliamentary democracy until the May 1926 coup, having officially adopted the democratic “March Constitution” on 17 March 1921. Although the 1921 March Constitution was modeled on the constitutional system of the Third French Republic (the French Constitutional Laws of 1875) and was highly democratic, putting the military under civilian control, abolishing all royal titles, and prohibiting all forms of racial and religious discrimination, the constitution was tainted *ab initio* by partisan politics ...

According to historian Joseph Rothschild, the Polish Right “detested” First Marshal Piłsudski, fearing that he would become Poland’s first post-war president. [p. 246] Those fears were not unfounded, for as the creator of the Poland’s postwar army and bearer of the Polish army’s highest rank (First Marshal of Poland), Piłsudski regarded himself as the father of the Polish army and the nation’s first soldier. [Ibid., p. 242] As a result, “The Right therefore decided to tailor the constitution to suit its own apprehensions, and gave Poland a basic charter providing for an emasculated presidency and an omnipotent legislature.” [p. 246]

Given this weak executive branch along with the large number of competing political parties in postwar Poland, this constitutional design was thus a recipe for political stalemate:

“In effect, executive power rested with the cabinet, which was dependent on a Sejm majority. The large number of parties--at least ten Polish parties during the early 1920's not counting the half-dozen or more national minority parties--and their tendency toward splits, schisms, excessive maneuvering, and frequent change of partnerships, rendered the Sejm majorities highly unstable ... (The cabinet which Piłsudski ousted by his coup of May, 1926, was Poland's fourteenth since November 1918--not counting 'replasterings' of portfolios within any one cabinet.)” [Ibid., p. 248, footnote omitted.]

On 10 May 1926, the same day Polish president Stanisław Wojciechowski appointed a new prime minister and formed a new coalition government (Poland's fourteenth government since 1918), Piłsudski, in an interview with the *Kurier Poranny* (the Morning Courier), said that he was ready to fight the evil of *Sejmocracy* and promised a “sanitation” of political life. This interview was the signal some units of the Polish army was waiting for. On the night of 11-12 May, several military units defected from the government, marched to Rembertów, on the outskirts of Warsaw, and pledged their support to Piłsudski. The next day, these units marched into Warsaw and captured all the bridges over the Wiśła river. The government, meanwhile, declared a state of emergency.

At about 5pm on 12 May, Piłsudski met in person with Wojciechowski on the Poniatowski Bridge. Picture for a moment this dramatic encounter on the bridge. On one side we have Marshal Piłsudski demanding the resignation of the entire cabinet; on the other we have President Wojciechowski demanding Piłsudski's surrender. The two men attempted to negotiate a peaceful resolution to the standoff, but their positions were too far apart. Their talks, doomed from the start, thus ended in deadlock.

That same evening, military units loyal to Piłsudski attempted to take Warsaw by force. More fighting ensued over the next two days. On 14 May, after more failed negotiations, the Polish Socialist Party declared its support for Piłsudski and called for a general strike. To prevent further bloodshed and violence, President Wojciechowski resigned and the military appointed a new government. In all, 215 soldiers and 164 civilians were killed and more than 900 others wounded during the May Coup. Although Piłsudski himself declined to accept the office of the presidency, a new government was formed--referred to as the Sanation government--with Piłsudski in power as minister of military affairs.

The anti-constitutional coup in Poland would be repeated in Portugal (May – July 1926), Lithuania (Dec. 1926), and Yugoslavia (Jan. 1929).

## **B. Smetona's Coup** (Lithuania, Dec. 1926)

The December 1926 coup was the defining event of interwar Lithuania. On 17 December 1926 a small band of soldiers would burst into a session of the *Seimas*, Lithuania's parliament, and seized control of the state. [See Bermeo, 1997, p. 7.] The subsequent dictatorship would last until the Soviet occupation of Lithuania 14 years later.

Eleven different governments were formed between Lithuania's declaration of independence in Feb. 1918 and the Dec. 1926 coup, [See Crampton, \*\*\*.]

Summary of constitutional and "anti-constitutional" moments:

Feb. 1918. The Council of Lithuania declares Lithuania's independence on 16 Feb. 1918 and calls for the formation of a constituent assembly.

Apr. 1920. The Constituent Assembly of Lithuania is elected on 14–15 April 1920. [Nohlen & Stöver, 2010, p. 1201.] The Lithuanian Christian Democratic Party wins 24 of the 112 seats in the Constituent Assembly. [Ibid., p. 1218.]

Summer – Fall 1920. The Constituent Assembly ratifies a new constitution in August 1922. [See entry for "Constituent Assembly of Lithuania" in Wikipedia.] In summary, the Constitution of 1922 creates a strong unicameral parliament, the *Seimas*, and a weak president. The president, who is selected by the *Seimas*, has the power to appoint the prime minister. [See Laučka, \*\*\*.] Elections to the first *Seimas* take place on 10-11 October 1922. [Nohlen & Stöver, 2010, p. 1201.]

Election of the Third *Seimas*

Fall 1926. Leaders of the military make plans for a coup.

December 1926. The coup begins on the night of 17 December 1926. During the night, military forces occupy government buildings, arrest members of parliaments, disperse the *Seimas*, place President Kazys Grinius under house arrest, and declare Colonel Povilas Plechavičius dictator. [See entry for "1926 Lithuanian coup d'état" in Wikipedia. Later that day, Colonel Plechavičius appoints Antanas Smetona, one of the leaders of the coup, as the new president.

To give the coup the appearance of legality, a rump *Seimas* met on 19 December--only 42 delegates of the *Seimas* were present; delegates from the Social Democrats or the Peasant Popular Union were excluded. The rump parliament elected Aleksandras Stulginskis as the new speaker of the *Seimas* and then elected Antanas Smetona as the new president. [38 deputies voted for Smetona, two against, and two abstained. See Eidintas, pp. 53-58; see also Gerutis, pp. 216-221.]

May 1928. President Smetona promulgates a new authoritarian constitution on 15 May 1928. He would remain in power until 15 June 1940.

More importantly, President Smetona would establish an important (pseudo-constitutional?) precedent that many dictators across interbellum Europe would soon follow--e.g., Yugoslavia in September 1931, Portugal in March 1933, and Poland in April 1938. Specifically, all three of these countries would eventually adopt new authoritarian constitutions ratifying ex post the unconstitutional dictatorships in each country.

Moreover, given the proximity of Yugoslavia to Austria and Gödel's own travels in the region, the 6 January Dictatorship in Yugoslavia might have been of special interest to Gödel.

### **C. The 6 January Dictatorship (Yugoslavia, Jan. 1929)**

On 6 January 1929, King Alexander of Yugoslavia--or "the Kingdom of the Croats, Serbs, and Slovenes" as Yugoslavia was officially called at the time--would proclaim a royal dictatorship, abolish his country's constitution, and prorogue Yugoslavia's National Assembly (parliament). [See Graham, pp. 455-456. As an aside, the last European monarch to prorogue a parliament (i.e. suspend parliament without dissolving it) was King James II in 1685!] King Alexander would also later enact by royal decree a new constitution consolidating his powers in Sept. 1933.

From its inception in 1918, the Kingdom of Serbs, Croats, and Slovenes (officially renamed the Kingdom of Yugoslavia in 1929) was an ambitious and disparate state, a federation formed by the merging of the formerly independent kingdoms of Serbia and Montenegro with a motley crew of territories that were formerly part of Austria-Hungary, including (i) the crown province of Bosnia and Herzegovina; (ii) Carniola, a portion of Styria, and most of Dalmatia, all from Austrian part of the former Austro-Hungarian Empire; and (iii) Croatia, Slavonia, and Vojvodina, all from the Hungarian part of the former empire. [See Durham, ch. 1.]

Below, then, we survey the major constitutional and anti-constitutional moments in the Kingdom of Yugoslavia during the interwar years:

*Winter 1918.* The original Kingdom of Serbs, Croats, and Slovenes (officially renamed the Kingdom of Yugoslavia in 1929) is officially proclaimed on 1 December 1918. Following the fateful 1 December proclamation, a provisional legislature serves as Yugoslavia's parliament. This provisional body authorizes a constitutional assembly to draft a new constitution for the kingdom and approves an electoral law for this purpose: delegates to the constitutional assembly would be chosen by popular elections.

Summer 1921

*June 1921.* The constitution is formally approved by a simple majority of Yugoslavia's Constitutional Assembly on 28 June 1921. [Out of 419 delegates, 223 voted in favor of ratification, 35 delegates voted against ratification, and 161 delegates abstained from voting at all.] The so-called "Vidovdan Constitution"--named in honor of St. Vitus, since it was ratified during the feast of St. Vitus, a Serbian holiday--becomes Yugoslavia's first postwar constitution. Under her new constitution, the Kingdom of Serbs, Croats, and Slovenes becomes a unified constitutional monarchy.

The drafting and ratification of Yugoslavia's first constitution, however, generated deep divisions between the different nationalities within Yugoslavia, especially between Croats and Serbs. [Graham, pp. 452-453.] The Dalmatian Croat leader Ante Trumbić, one of the architects of a unified Yugoslavia, and Stjepan Radić, the leader of the Croatian Peasant Party, initially opposed the 1921 Vidovdan Constitution. Indeed, delegates from five opposition parties decided to boycott the constitutional assembly altogether: the Communist Party, the Croatian Republican Peasant Party, the Slovenian People's Party, the Croatian People's Party, and the Croatian Union Party. [Ibid., p. 452.]

*Aug. 1921.* Under the Vidovdan Constitution, Alexander I (Alexander Karađorđević, b. 16 Dec. 1888, d. 9 Oct. 1934), a prince regent of the former Kingdom of Serbia, becomes the King of Yugoslavia upon the death of his father (King Peter I) on 16 August 1921.

*June 1928.* The long-simmering political tensions between Serbs and Croats finally explode on 20 June 1928 (almost seven years to the day from the ratification of the Vidovdan Constitution) on the floor of the federal legislature, the National Assembly, Yugoslavia's highest law-making body. [Durham, ch. 2.] On this fateful day, a Serbian deputy, Puniša Račić, shoots and kills five deputies from the opposition Croatian Peasant Party, including Croat leader Stjepan Radić. Two Croat deputies die on the spot on the floor of parliament, while Radić, mortally wounded, dies six weeks later on 8 August. Although the National Assembly reconvenes on 1 August 1928, deputies from opposition parties decided to boycott all parliamentary proceedings and call for new elections.

*Jan. 1929.* King Alexander proclaims a dictatorship on 6 January 1929.

*Sept. 1931.* King Alexander promulgates a new constitution on 3 September 1931. The collapse of the original Vidovdan Constitution is now complete. [Durham, ch. 3.]

It is worth noting that at the time of King Alexander's 6 January proclamation, Gödel was in Vienna, beginning his work on his doctoral dissertation. [Dawson, 1997, p. 53.] In addition, a few years later, sometime during the summer of 1933, Gödel would visit Yugoslavia and vacation for a time in the resort town of Bled with his mother. [Dawson, 1997, p. 93. Bled is just across the border from the Austria in Slovenia.]



When King Alexander decreed a new constitution in Sept. 1931, Gödel was preparing to attend a meeting of the German Mathematical Union in the spa town of Bad Elster (which is located in the state of Saxony in Germany) and give a lecture on his incompleteness theorem. [Gödel's lecture was delivered on the afternoon of 15 September 1931. See Dawson, 1997, p. 75, n.12.]

Assuming, then, that Gödel had taken notice of these “anti-constitutional moments” in Yugoslavia's history, especially the royal proclamation of 6 Jan. 1929 and the new constitution of Sept. 1931, what lessons might he have learned from them?

#### **D. Salazar's *Estado Novo*** (The Second Portuguese Republic, May 1926)

Most of the interbellum dictatorships we have studied thus far—including those of Horthy, Mussolini, and Piłsudski—would eventually collapse during the Second World War. Salazar's dictatorship in Portugal, by contrast, would prove to be the most stable and longest-lasting dictatorship in modern Europe.

The dictatorship in Portugal was preceded by chaotic and unstable First Portuguese Republic. Between 1910 and 1926, Portugal had no less than eight presidents and forty-three different prime ministers. By way of example, Portugal's first democratic government did not last all of ten weeks, while the longest lasted little more than a year. [See entry for “António de Oliveira Salazar” in Wikipedia.] Worse yet, the cost of living increased twenty-fivefold during this time, Portugal's currency fell to one thirty-third part of its gold value, and acts of terrorism and political assassination were frequent. [Ibid.] Between 1920 and 1925, for example, three hundred and twenty-five bombs burst in the streets of Lisbon. [Ibid.] In short, one could argue that conditions in Portugal were ripe for dictatorship. We thus review the key constitutional and “anti-constitutional” moments of the First Republic as follows:

*October 1910.* Birth of the First Portuguese Republic. The leaders of the Portuguese Republican Party or PRP (known at the time as “the Democrats”) stage a successful coup on 5 October 1910, officially proclaiming the creation of Portugal's first republic, deposing Portugal's constitutional monarchy, and establishing a provisional government.

*May 1911.* Elections for a Constituent National Assembly are held on 28 May 1911, and the PRP wins 229 out of 234 seats. [Nohlen & Stöver, 2010, p. 1551.] The Constituent Assembly convenes on 19 June 1911.

*August 1911.* The Constituent National Assembly ratifies a new parliamentary constitution on 21 August 1911.

*May 1926.* After years of political instability, General Manuel Gomes da Costa initiates a military coup in the city of Braga on 26 May 1926 and marches on

Lisbon and seizes power on 28 May. The May Revolution thus marks the end of the First Republic and the start of the Second Republic.

*July 1926.* António Oscar de Fragoso Carmona leads a counter-coup on 8-9 July 1926 and appoints himself “interim” president of the republic in November 1926. President Carmona thus establishes the *Ditadura Nacional* or “National Dictatorship,” lasting from 1926 to 1933.

*March 1928.* General Carmona is officially elected president of the republic on 25 March 1928 by direct popular vote. He is the only candidate on the ballot.

*July 1932.* President Carmona appoints Antonio de Oliveira Salazar as prime minister, the post he would hold for the rest of his life. [Freidheim, 1995, p. 396.] Salazar begins drafting a new corporatist and authoritarian constitution.

*March 1933.* The text of Salazar’s proposed constitution is published in the *Diário do Governo* on 22 February 1933 and then submitted to the voters in a national plebiscite on 19 March 1933. Voters approve Salazar’s new constitution, which takes force on 11 April 1933, with publication of the results of the plebiscite in the official *Diário do Governo*.

Note that from a constitutional perspective the 1933 plebiscite was not a constitutional act; it was an “anti-constitutional” act. Similarly, the events preceding Salazar’s dictatorship--the May Revolution (the coup of May 1926), General Carmona’s counter-coup of July 1926, and his election as president in March 1928--were also unconstitutional acts. Neither General Gomes da Costa nor President Carmona assumed power in a manner consistent with the constitution of the First Republic, the Constitution of 1911. Indeed, the leaders of the 1926 coup and counter-coup suspended the 1911 constitution, dissolved the *Cortes* (Portugal’s parliament), and ruled by decree. This is why the Constitution of 1933 is important from a legal perspective. It attempted to legalize Portugal’s National Dictatorship and Salazar’s so-called *Estado Novo*.

[Salazar’s *Estado Novo* and Constitution of 1933 thus provide a general lesson for all would-be dictators. If you want to become a dictator legally or constitutionally, you can do so by following the following two steps. First, seize power. Once you are in power, you can then legalize or “constitutionalize” your position **ex post** through a new constitution. In this respect, the case of Portugal can be compared to Yugoslavia and to Poland, countries in Gödel’s corner of the world, East Central Europe. The respective rulers of Poland, Portugal, and Yugoslavia all seized their positions of power through military coup or royal proclamation, but in all three cases these seizures of power were eventually ratified ex post through the adoption of new constitutions, e.g., by royal decree in September 1931 in Yugoslavia, by plebiscite in March 1933 in Portugal, and by parliamentary votes in April 1934 in Austria and April 1935 in Poland.]

## **E. Lessons learned?**

While Gödel was completing his studies at the University of Vienna, several more states in Europe ended in dictatorship. Military officials in Poland, Portugal, and Lithuania would seize power through coups in 1926 and King Alexander of Yugoslavia would proclaim a royal dictatorship in his country in 1929.

The military coups in Poland, Portugal, and Lithuania and the royal self-coup in Yugoslavia thus represent textbook “anti-constitutional moments.” First Marshal Piłsudski in Poland, Generals Carmona and Gomes de Costa in Portugal, President Smetona in Lithuania, and King Alexander in Yugoslavia all seized power in their respective countries by force or royal proclamation. None of these leaders, in short, assumed power in a manner consistent with their countries’ pre-existing constitutions.

The dictatorships that arose during Gödel’s university years are thus instructive, but in a negative way. In short, we think these dictatorships teach us what Gödel did not have in mind when he reportedly discovered a logical contradiction or inconsistency in the U.S. Constitution in late 1947. In particular, Gödel was most likely not thinking of a forceful seizure of power or an ex post legalization of a forceful takeover of power. [Instead, he was most likely thinking of a possible way of seizing power in a peaceful manner, a manner consistent with the rules of the constitutional game.]

But could a would-be dictator legalize his position of power *internally* or “from within,” that is, in a manner consistent with his country’s existing constitution? Ironically, it is Hitler’s rise to power that teaches us that such a maneuver is, in fact, logically possible. The constitutional events of March 1933 in Austria and Germany in particular may thus shed some light on what Gödel did have in mind when he reportedly discovered a logical contradiction in the U.S. Constitution.

## **V. March 1933**

By the time Kurt Gödel was awarded the right to lecture at the University of Vienna in March 1933, nine or ten states in interbellum Europe (depending on whether Atatürk’s Turkey is classified a dictatorship or not) had become dictatorships: Hungary under Admiral Horthy, Italy under Mussolini, Spain under Captain General Primo de Rivera, [Turkey under Atatürk], Poland under First Marshal Piłsudski, Lithuania under President Smetona, Yugoslavia under King Alexander, Portugal under Prime Minister Salazar. To this list we must now add Germany under Hitler and Austria under Dollfuss.

The month of March in 1933 would turn out to be one of the most pivotal “anti-constitutional” moments in interbellum Europe. This month would also represent an important milestone in Gödel’s academic life. In the capitals of Lisbon, Berlin, and Vienna, three different dictatorships would be legalized during this same time period. In March 1933, Portugal would ratify via referendum António de Oliveira Salazar’s authoritarian constitution; in Berlin, Adolf Hitler would

engineer the self-destruction of the Weimar Constitution of 1919 and consolidate his powers through an unconstitutional “enabling law”; and in Gödel’s Vienna, prime minister Engelbert Dollfuss would seize dictatorial powers in a dramatic self-coup. Meanwhile, in March 1933 Gödel would be appointed *Privatdozent* at the School of Philosophy of the University of Vienna, a position he would hold until the spring of 1938 (see Part III of this paper below).

Here, we present the major constitutional events unfolding in Germany and Austria leading up to the creation of legalized or constitutional dictatorships in both countries in March 1933. We then sum up the possible lessons Gödel may have learned from these dramatic constitutional and anti-constitutional moments.

### **A. Hitler’s Dictatorship** (The Weimar Republic and the March 1933 “Enabling Law”)

Although Kurt Gödel may or may not have been following events in faraway Lisbon, he must have certainly taken notice of Adolf Hitler’s rapid rise to power in Berlin.

So much has been written about Hitler’s rise to power that we re-enter this fray with humble trepidation. It suffices to say that, ironically, Hitler’s immoral and evil dictatorship was perfectly legal from a constitutional perspective. That is, Hitler did not stage a military coup or suspend his country’s constitution in 1933. Instead, he destroyed it legally from within. [In the words of Peter Pulzer, “Though despising the rule of law, Hitler appreciated, after the fiasco of the 1923 Munich *putsch*, that he could gain power only through, not against the existing institutions.” Pulzer, p. 128.] We review, then, the major constitutional moments of the Weimar Republic below: [Note: we purposefully omit reference to “anti-constitutional” moments here to emphasize the strictly legal nature of Hitler’s dictatorship.]

*Nov. 1918.* Following Germany’s defeat in the Great War, Emperor Wilhelm II is deposed and a parliamentary republic is proclaimed in Berlin on 9 November 1918. [Fulbrook, 2004, p. 155.]

*Jan. 1929.* Founding of the Weimar Republic. Elections to a National Constituent Assembly are held in Germany on 19 January 1929. The Constituent Assembly convenes in the city of Weimar on 6 February.

*Summer 1919.* Creation of the Weimar Constitution. The National Constituent Assembly completes its draft for a new constitution for Germany on 31 July 1919. [Pulzer, p. 97.] The Weimar Constitution takes effect on 11 August 1919.

*Mar. 1930.* Collapse of the “Great Coalition” in the *Reichstag*. As one historian notes, 27 March 1930 “was the last day of the last government of the Weimar Republic that was based on a parliamentary majority.” [Pulzer, p. 120.]

Furthermore, “In the elections of 1930 ... no major party commanded enough support to build a workable coalition. In fact, the parties worked to prevent legislation rather than pass it, and the Reichstag was paralyzed.” Turk, p. 107.]

*1931–1932.* Parliamentary paralysis and rule by emergency decree. Even before Hitler’s rise to power in early 1933, the Reichstag meets only 41 times in 1931 and 13 times in 1932. [Pulzer, 1997, p. 121.] Moreover, in 1932 (the year immediately preceding Hitler’s appointment as chancellor), the Reichstag is able to pass only five laws, while the president issues 59 decrees. [Ibid.] One could argue that this inability to pass legislation left the Reich President no choice to rule by emergency decree under Article 48 of the Weimar constitution, thus paving the way for Hitler’s dictatorship.

*Winter–Spring, 1933.*

\* *Jan.* Appointment of Hitler as Chancellor. Reich President Hindenburg “reluctantly” appoints Hitler chancellor of Germany on 30 January 1930. [See Fulbrook, p. 177. See also Pulzer, p. 126.] According to Eleanor Turk (1999, p. 113), “Adolf Hitler came to power legally on Jan. 30, 1933. Ironical as it seems, in hindsight, President von Hindenburg actually restored the Weimar constitutional process by appointing Hitler, the leader of the largest party in the Reichstag, as Germany’s chancellor.” Why? Because under the Weimar constitution, the president was actually required to appoint the chancellor from among the members of the largest Reichstag party. [Ibid., p. 103.]

\* *Feb.* The Reich President issues an emergency decree on 1 Feb. 1930 dissolving the *Reichstag* and calling for new elections on 5 March 1930. [Broszat, p. 61.] President Hindenburg issues further emergency decrees on 4 Feb. and 28 Feb. 1930 suspending all rights under the Weimar constitution. [See Broszat, p. 62 as well as pp. 71-72.]

\* *Mar.* The *Reichstag* approves an Enabling Law (\*\*\*) amending the Weimar Constitution on 23 March 1933 authorizing Hitler to rule by decree for a period of four years. [See generally Broszat, pp. 80-84. See also Fulbrook, p. 179; Pulzer, p. 127.]

*Summer 1933.* The *Reichstag* approves the “Law against the formation of new parties” on 14 July 1933. [Broszat, pp. 90-91; Fulbrook, p. 180.] Then, with the death of President Hindenburg on 2 August 1934, “Hitler [makes] use of the occasion to combine the offices of President and Chancellor in his own person as Fuehrer ...” [Fulbrook, p. 181.]

*Spring 1933.* The *Reichstag* renews the Enabling Law of 23 March 1933 for another four years on 1 April 1937. [Broszat, p. 84.]

So, when, precisely, did the Weimar Republic collapse? One scholar notes that “from a purely political perspective it is impossible to determine just when the

break with the [Weimar Republic] and the dictatorship took place.” [Mommson, 1986/1996, p. ix.] This is because the Weimar constitution was never formally suspended or abrogated during the Hitler dictatorship. Instead, once Hitler was appointed chancellor in January 1933, he worked to subvert the constitutional system internally from within.

More importantly, would the Weimar Constitution have collapsed even without Hitler’s rise to power? The consensus among historians is that the ill-fated Weimar Republic was “inherently unstable.” [Fulbrook, 2004, p. 179. See also Pulzer, 1997, ch. 5.] But why? Some see economic conditions, such as the German hyperinflation of 1922-1923, as the source of the Weimar Republic’s troubles. [See, e.g., Feldman, 1927.] Others point to Article 48 of the Weimar Constitution itself, which granted the German President the right to rule by emergency decree. [Fulbrook, p. 162; Pulzer, pp. 120-121.] One historian reports that “after 1930 increasing use was made of Article 48 to promulgate emergency decrees, while parliamentary sittings and parliamentary legislation decreased.” [Fulbrook, 2004, p. 173.] Indeed, “Hitler’s government was an emergency cabinet which owed its existence not to a parliamentary majority but to the Reich President’s right to pass emergency decrees.” [Broszat, 1981, p. 58. See also *ibid.*, p. 63: “... even after 30 January 1933, the German president’s right of issuing emergency decrees remained for the time being the most important instrument of Hitler’s government on its way to concentrating power.”]

Was Hitler’s dictatorship inevitable? That is, would he have seized power anyways, through unconstitutional means if necessary as a last resort? Although we shall never know the answer to this conjecture, what we do know, however--and what may have impressed Gödel--was that Hitler’s dictatorship in Germany (like Mussolini’s in Italy) was a “constitutional dictatorship.” Hitler did not stage a military coup or suspend his country’s constitution. Instead, he was not only the constitutionally appointed chancellor of Germany; he also constitutionally assumed the power to rule by decree via a constitutional amendment, the passage of the infamous Enabling Law of 23 March 1933. When the Reichstag met at the Kroll Opera Theater in Potsdam on 23 March 1933, it effectively followed the amendment procedures set forth in the Weimar Constitution of 1919 to destroy the Weimar Constitution from within.

\* \* \* transition to Goedel’s Austria \* \* \*

Recall that Gödel was born in Brünn (now Brno) in the Austrian part of the now-defunct Austro-Hungarian Empire in 1906. Although Gödel became a “citizen by fiat” of Czechoslovakia when the Czechs and the Slovaks declared their independence in 1918, [Dawson, 1997, p. 21.] one of his schoolmates once confirmed that “Gödel considered himself always Austrian ...” [Letter of Harry Klepetar to John Dawson, dated 30 December 1983, quoted in Dawson, 1997, p. 15.] Indeed, Gödel officially became a citizen of the Republic of Austria in 1929, [SOURCE.] and Vienna was his primary residence from 1924 to 1940. We

therefore surmise that Gödel must have followed events in interbellum Austria very closely.

## **B. Dollfuss's Self-Coup** (The Republic of Austria, Mar. 1933)

Interbellum Austria began as a parliamentary democracy with the enactment of a new constitution in October 1920--a constitution which is still in force (with some amendments) today--but ended in a personal dictatorship in March 1933 with a cunning constitutional coup orchestrated by Chancellor Engelbert Dollfuss. [Dollfuß.] By the time of Hitler's annexation of Austria in March 1938, the infamous "Anschluss," Gödel's Austria was already a dictatorship, a dictatorship inspired by and modeled after Mussolini's fascist dictatorship in Italy.

*Oct. 1920.* The Constitution of Austria (*Österreichische Bundesverfassung* or B-VG) is enacted on 1 October 1920. The 1920 constitution, which was drafted in large part by Hans Kelsen, establishes a parliamentary democracy with legislative power residing in the Federal Convention or Federal Assembly (*Bundesversammlung*)--composed of two houses, the National Council (*Nationalrat*) and the Federal Council (*Bundesrat*)--and with executive power residing in the Cabinet led by a Chancellor, who was appointed by the National Council. The president was to be elected by both houses and would serve as head of state.

*Dec. 1929.* Austria's parliament approves a series of constitutional amendments on 7 December 1929 creating a presidential system of democracy by providing for the direct or popular election of the president. [This provision, however, did not become effective until 1951, when Theodor Körner became the first president directly elected by the Austrian people. See \*\*\*.]

*Winter 1933.* Politics in interbellum Austria becomes highly polarized, escalating into violence many times. A railway strike in Feb. 1933 precipitates a dramatic constitutional crisis. Specifically, on March 4, 1933, an irregularity occurs in the parliament. Karl Renner, the president of the National Council--the *Nationalrat*, the lower house of parliament--resigns in order to cast a vote on a controversial proposal to deal with the railroad strike. Consequently, the two vice-presidents representing the other parties, Rudolf Ramek of the Christian Social Party and Sepp Straffner of the Greater German People's Party, also resign for the same reason. But in the absence of a president, the session of the National Council cannot be conducted. Since there are no procedural or constitutional rules in place which could have been followed given this unprecedented and unforeseen event, Chancellor Dollfuss describes this constitutional crisis as the "self-elimination of Parliament" (*Selbstausschaltung des Parlaments*) and declares parliament unable to function. Specifically, citing an emergency law enacted during World War I, the Economic War Powers Act (*Kriegswirtschaftliches Ermächtigungsgesetz*) [KWEg 24, Juli 1917 RGBl, Nr. 307], Dollfuss assumes legislative power on March 7 and advises Austrian president Wilhelm Miklas to

issue a decree adjourning parliament indefinitely. The First Republic and democratic government are thus effectively ended in Austria, leaving Chancellor Dollfuss to govern as a dictator with absolute powers. The opposition, the Greater German People's Party and the Social Democrats, attempt to reconvene the National Council on March 15, but the members of the opposition are physically prevented from entering parliament by the police.

*Spring 1934.* Chancellor Dollfuss eventually stages a rump parliamentary session in April 1934 with just the members of his political party present in order to approve a new constitution. The rump parliament also retrospectively legalizes all decrees already issued since the constitutional crisis of March 1933. The 1934 constitution becomes effective on May 1, 1934, sweeping away the last remnants of parliamentary democracy and the electoral system of the first Austrian Republic. The 1934 constitution--which abolishes freedom of the press, establishes a one-party system, and creates a total state monopoly on employer-employee relations--remains in force until Adolf Hitler's annexation of Austria in March 1938, the infamous "Anschluss."

As a brief postscript, the 1920 constitution is reinstated on 1 May 1945 after the defeat of Nazi Germany and remains in force to this day.

### **C. Lessons learned?**

Hitler's Enabling Law and Dollfuss's self-coup in Austria offer an important constitutional lesson, one that might not have been lost on Godel. Instead of acting outside the existing constitutional framework, a would-be dictator can also act within the existing constitutional system to create a legal or "constitutional dictatorship." In the case of Germany, parliament legally granted legislative powers to the executive branch. In the case of Austria, parliamentary paralysis produced a political vacuum that was filled by the executive branch.

These constitutional dictatorships in Germany and Austria thus pose a novel theoretical question and provide another possible clue regarding Godel's discovery on the eve of his citizenship hearing. Recall Dollfuss's description of the procedural crisis on 4 March 1933 as the "self-elimination of Parliament" (*Selbstausschaltung des Parlaments*). Although in reality the Austrian parliament was suspended by Dollfuss, who even resorted to force to prevent the National Council from reconvening, the possibility of a "self-elimination" poses a paradox (cf. the German Enabling Law of March 1933): can a legislature legislate itself out of existence?

\* \* \*

In retrospect, March 1933 represents a symbolic turning point in the constitutional and political history of interbellum Europe. In March 1933, Germany and Austria became "constitutional dictatorships." The example of Nazi Germany is especially important. Unlike previous coups and seizures of power, would-be dictators now had a new model for taking power: first, play by the rules



of the political game to win power; then, once in power, change the rules of the game in order to stay in power. It is this possibility that Gödel may have had in mind many years later when he discovered a logical contradiction in the U.S. Constitution. But the interbellum years were not over. Gödel would witness many more countries in Europe becoming “constitutional dictatorships” in the next few years.

## **VI. Professor Gödel, 1933–1939**

Gödel had published his famous incompleteness theorem in 1931 and was awarded his *Habilitation* and the right to teach at the University of Vienna in early 1933. Around that time, Professor Gödel was invited to spend the 1933–1934 academic year as a visiting scholar at the Institute for Advanced Studies in Princeton, New Jersey. During the Spring Term of 1934, while Gödel was still in Princeton, three more European democracies would become dictatorships. In the little republic of Estonia, the politician Konstantin Päts would carry out a “preemptive coup” and take power on 12 March 1934. [Bermeo, 1997, p. 10.] In the neighboring republic of Latvia, the former prime minister Kārlis Ulmanis would seize power on the night of 15–16 May 1934. [Ibid.] Four days later, Colonels Danyan Velchev and Kimon Georgiev would carry out a military coup in the Kingdom of Bulgaria on 19 May 1934. [\*\*\*Rothschild, 1974, ch. 7.\*\*\*]

At the time of these Baltic and Bulgarian coups, Gödel was still living in Princeton, New Jersey and studying at the newly-founded Institute of Advanced Studies (IAS), where he spent most of the 1933 – 1934 academic year. [This was the first of three visits to the United States (and to the IAS) during the decade of the 1930s.] Gödel had arrived in New York City aboard the *S.S. Aquitania* on 6 October 1933 and remained in the United States (mostly in Princeton, N.J.) until 26 May 1934. Ibid., pp. 97-103. During his first visit to the United States, he lived at a house on 32 Vandeventer Avenue in quiet Princeton. [Ibid., p. 98.] We are thus left to wonder whether Gödel took notice of the events in Europe during the winter–spring of 1934 or how much contact he may have had with the outside world at this time. Nevertheless, Gödel was surrounded by European intellectuals at the IAS during his visit in Princeton. In fact, the IAS’s original full-time mathematics faculty in 1933 included three Europeans--Albert Einstein (German-Swiss nationality), Hermann Weyl (German nationality), and John von Neumann (Hungarian nationality). [See Dawson, 1997, p. 96, Fig.10.] In addition, the IAS had invited 24 academics (including Gödel) to serve as “visiting scholars” during the 1933 – 1934 academic year, the IAS’s first year in existence, and many of these visiting scholars were from Europe like Gödel himself.

### **A. The 12 March Coup (Estonia, March 1934)**

In Estonia, the politician Konstantin Päts would seize power and declare a six-month “state of emergency” on 12 March 1934. During this time, the emergency government of Konstantin Päts banned all political parties, suspended parliament, and ruled by decree. Although the original six-month state of

emergency was set to expire in September 1934, Päts would extend the state of emergency six times in all and would remain in power until the illegal Soviet occupation of Estonia in June 1940. During this “era of silence,” Estonia was effectively a personal dictatorship under the rule of Päts.

In summary, we review the major constitutional and “anti-constitutional” moments in interwar Estonia as follows:

*Apr. 1919.* The Estonian Constituent Assembly is elected on 5–7 April 1919.

*Feb. 1920.* The Constituent Assembly ratifies Estonia’s first constitution (“the First Constitution”) on 15 June 1920. The First Constitution takes force on 21 December 1920. [See Nutt, 2005.]

*Aug. 1932.* The Estonian parliament proposes a constitutional amendment, and a constitutional referendum is held on 13–15 August 1932. [Nohlen & Stöver, 2010, p. 574.] The amendment is rejected by 50.8% of voters. [Ibid., p. 579.]

*June 1933.* Parliament again proposes a constitutional amendment, and another constitutional referendum is held on 10–12 June 1933. [Nohlen & Stöver, 2010, p. 574.] The amendment is rejected by 67.3% of voters. [Ibid., p. 580.]

*Oct. 1933.* A popular citizens’ movement known as the Movement of Veterans of the War of Independence (referred to as the “Vaps Movement” at the time) proposes a new constitution calling for a strong and independently-elected executive. [Nutt, 2005b.] A constitutional referendum is held on 14–16 October 1933, [Nohlen & Stöver, 2010, p. 574.] and the amendment is approved by 72.7% [56%?] of the voters. [Ibid., p. 580. Bermeo, p. 10.]

*Mar. 1934.* After the Veterans’ Movement wins an absolute majority in municipal elections and is posed to win Estonia’s first presidential election called for April 1934 under the newly-amended constitution, Konstantin Päts seizes power and declares a state of emergency on 12 March 1934.

[Jan. 1938. A new constitution (“the Third Constitution”) takes force on 1 January 1938. [See Nutt, 2005c.]

## **B. The 15 May Coup (Latvia, May 1934)**

From 1918 until the coup of May 1934, the position of Prime Minister and the ministries of Agriculture, Communication, Defense, Education, Finance, Foreign Affairs, Interior, Justice, and Labor were held by 94 different men, [See Rogainis, 1971, p. \*\*\*.] and in the four Saeimas (parliaments) from 1922 to 1934, between 22 to 28 parties were represented at any one time. [Ibid.]

Next, we review the major constitutional and “anti-constitutional” moments in interwar Latvia as follows: [See generally Rogainis, 1971.]

*Apr. 1920.* Constituent Assembly elections are held in Latvia on 17–18 April 1920. [Nohlen & Stöver, 2010, p. 1122.]

*Feb. 1922.* The Constitution of Latvia is ratified by the Constituent Assembly on 15 Feb. 1922.

*Feb. 1934.* The government of prime minister Margers Skujnieks resigns on 4 Feb. 1934 after its education-reform bill is defeated in the *Saeima*. [Rogainis, 1971, p. \*\*\*.]

*Mar. 1934.* After seven weeks without a government, a new cabinet under Adolf Blodnieks is formed [Ibid.]

*May 1934.* Lacking the votes in the parliament to form a new government, former prime minister Kārlis Ulmanis and the military carry out a coup and overthrow the constitution by force on the night of 15–16 May 1934. After units of the army, police, and Home Guards occupy key government buildings and arrest one-third of the deputies to the *Saeima*, Ulmanis declares a state of emergency under Article 62 of the 1922 constitution, bans all political parties, and suspends the *Saeima* by decree.

Four days later, this familiar pattern (parliamentary deadlock followed by a military coup) would repeat itself in the Kingdom of Bulgaria ...

### **C. The 19 May Coup (Bulgaria, May 1934) and the Restoration of the Tarnovo Constitution (January 1935)**

After years of political instability Bulgaria's constitution would be temporarily suspended after a military coup in May 1934 and then restored in January 1935 when Boris III, Tsar of Bulgaria, returned to power.

Whether Gödel took notice of these dramatic events--the coup in Bulgaria in May 1934, the restoration of the Tarnovo Constitution in Jan. 1935, and the approval of the April Constitution in Poland in April 1935--is an open question.

Gödel was in Princeton and in New York City for most of May of 1934, getting ready to return to Europe via ocean liner after having spent most of the 1933-1934 academic year (from October 1933 to May 1934) at the newly-incorporated Institute for Advanced Studies in Princeton, New Jersey. [See Dawson, 1997, pp. 97-103.] Gödel departed for Europe on 26 May 1934, aboard the Italian liner S.S. Rex and arrived at Genoa on 3 June, where he debarked. [Ibid., p. 103.]

In January 1935 Gödel was in Vienna, immersed in his academic affairs. According to Karl Menger, Gödel spent the first half of the year 1935 participating in Menger's "Mathematical Colloquium" at the University of Vienna. [Menger, 1981, p. 11.] In addition to Menger's Colloquium, Gödel was also preparing to

offer his second course at the university on “Selected Chapters in Mathematical Logic.” [Dawson, 1997, p. 108. His lectures on mathematical logic commenced on 9 May 1935.]

Given Gödel’s transatlantic travels in May-June 1934 and his immersion in academic affairs in early 1935, one might presume that Gödel would have taken little notice of the great constitutional events unfolding in the Kingdom of Bulgaria from May 1934 to January 1935. Nevertheless, according to Karl Menger, “Gödel now spoke more about politics” during this time. [Menger, 1981, p. 12, quoted in Dawson, p. 107.] Moreover, Bulgaria was a large country. By 1946, for example, the Kingdom of Bulgaria consisted of 110,994 km<sup>2</sup> (42,855 sq mi) and had a population of 7,029,349 million. [See entry for “Kingdom of Bulgaria” in Wikipedia.]

In any case, assuming that Gödel was even remotely aware of the Tarnovo Constitution or the events unfolding in the Kingdom of Bulgaria at this time, we now present Bulgaria’s major “constitutional moments” during the interbellum period:

*Apr. 1879.* After Bulgaria’s independence from the Ottoman Empire in 1878, the Constituent National Assembly, meeting in Veliko Tarnovo, the “City of the Tsars,” adopts the Tarnovo Constitution on 16 April 1879, Bulgaria’s first official constitution.

*Oct. 1918.* With the abdication of Prince Ferdinand I of Bulgaria, his eldest son Tsar Boris III accedes the throne on 3 October 1918.

*Mar. 1920.* Parliamentary elections are held on 28 March 1920. [Nohlen & Stöver, 2010, p. 368] Aleksandar Stamboliyski is elected prime minister.

*June 1923.* General Ivan Malkov stages a military coup and overthrows the elected government on 9 June 1923. The next day, Tsar Boris III legitimates the coup by decree. Later, prime minister Stamboliyski is arrested, tortured, and killed. [See entry for “Bulgarian coup d’etat of 1923” in Wikipedia.]

*June 1931.* Parliamentary elections are held on 21 June 1931. [Nohlen & Stöver, 2010, p. 368]

*May 1934.* Colonel Damyan Velchev and Kimon Georgiev carry out a military coup on 19 May 1934, overthrowing the elected government and suspending the 1879 constitution.

*Jan. 1935.* Tsar Boris III stages a counter-coup, returns to power, and restores the 1879 constitution in January 1935. Bulgaria’s king would remain in power until his death by heart failure in 1943. [[confirm date of restoration of Tarnovo Constitution](#)]

*Postscript: September 1944.* During WWII, forces loyal to Kimov Georgiev stage yet another military coup (on 9 Sept. 1944) and once again suspend the constitution. The new regime also orders and carries out the executions of Prince Kyril (the brother of Tsar Boris) and former prime minister Bogdan Filov, among many others, and abolishes the old constitution and the monarchy via popular referendum held on 15 Sept. 1946.

In any case, although we have no direct evidence whether Gödel took any special notice of the restoration of the Tarnovo Constitution in Bulgaria, it is hard to imagine anyone not taking notice of the great civil war starting in Spain in the summer of 1936.

#### **D. The Nationalist Revolt in Spain (July 1936)**

For many European intellectuals, the Spanish Civil War was (and continues to be) one of the defining events in Europe during the *interbellum* period. [\[Add sources.\]](#) The Spanish Civil War, a three-year conflict that began in July 1936 and continued until March 1939, would represent a great battle of ideas, constitutional democracy's last stand in Europe before the Second World War. The Spanish Civil War would begin in July 1936. Less than one month later, King George II of Greece and General Ioannis Metaxas would establish the so-called Twin Dictatorship in the birthplace of democracy.

For his part, looking back 40 years later, Gödel would declare the year 1936--the year the Spanish Civil War began; the year democracy dissolved in Greece--as one of the worst years of his life. [Dawson, 1997, p. 112.] For most of 1936 Gödel was staying in various mental institutions in Austria, trying to recover from depression and mental stress. According to his biographer John Dawson, Gödel mentioned having stayed in a sanatorium for nervous diseases at Rekawinkel, just west of Vienna for several months in 1936. [Ibid., p. 111.] In addition, "among his papers there are also receipts dated June 1936 from an institution in Golling bei Salzburg." [Ibid.] Also, "On three occasions later in the year (17-29 August, 2-24 October, and 31-21 November) Gödel stayed at hotels in Aflenz, a spa that in earlier years had been a favorite retreat of the Gödel family." [Ibid.]

The story of the short and turbulent life of the Second Spanish Republic (1931–1939) has been told and retold many times. [See, e.g., Payne; [add some additional citations here.](#)] Here, we review the major constitutional and "anti-constitutional" moments in interbellum Spain:

#### [\[Constitution of 1876\]](#)

*Sept. 1923.* Captain General Miguel Primo de Rivera stages a coup on 13 September 1923, suspends the Spanish constitution (the Constitution of 1876), and rules by decree. King Alfonso XIII of Spain continues in power as head of state.

*Jan. 1930.* Primo de Rivera voluntarily resigns on 28 January 1930. He dies in Paris on 16 March 1930. King Alfonso appoints a new government to replace Primo de Rivera.

*Aug. 1930.* Political leaders opposed to the monarchy meet in the city of San Sebastian on 17 August 1930 and pledge their support to the “Pact of San Sebastian.” They agree to abolish Spain’s monarchy and support a republican constitution. [Casanova, 2010, pp. 12-13.]

*Apr. 1931.* The Second Spanish Republic is proclaimed on 14 April 1931 following the municipal elections of 12 April. King Alfonso flees Spain, although he does not formally abdicate his right to the throne.

*June 1931.* Elections establishing a Constituent Assembly are held on 28 June 1931. The Constituent Assembly (*Cortes constituyentes*) proceeds to a draft a new constitution for Spain and officially ratifies the new republican constitution (the Constitution of 1931) on 9 December 1931.

*July 1936.* Although the Popular Front coalition wins (by a narrow margin) the national elections in February 1936, Nationalist forces stage a military uprising on 17 July 1936. Civil war ensues for the next three years.

Less than two weeks later, a dictatorship would ensue in another European state. General Ioannis Metaxas and King George II of Greece would establish the so-called Twin Dictatorship in the birthplace of democracy.

### **E. The “Twin Dictatorship” in Greece (August 1936)**

In Greece between March 1924 (the proclamation of the Second Hellenic Republic) and August 1935 (the collapse of the republic) there were 23 changes of government and 13 coups and counter-coups, culminating in the Twin Dictatorship of King Geórgios II and Ioannis Metaxas of August 1936. The constitutional history of interbellum Greece is thus a history of coups, counter-coups, and dictatorship. We review the major constitutional and “anti-constitutional” moments in interwar Greece as follows:

#### **[The Constitution of 1927]**

*Nov. 1935.* A referendum proposing the restoration of the monarchy is held on 3 November 1935. [See Nohlen & Stöver, 2010, p. 830.] The proposal is approved by 97.9% of the voters. [Ibid., p. 838.] King Geórgios II returns from exile and assumes the throne on 30 November 1935. [William Miller (1936), “A new era in Greece,” *Foreign Affairs*, 14(4), pp. 654–661.]

*Jan. 1936.* The legislative elections of 26 January 1936 result in a political deadlock. [See Nohlen & Stöver, 2010, p. 830 & p. 838]. King Geórgios appoints Ioannis Metaxas as interim prime minister.

*May. 1936.* King Geórgios declares a “state of emergency.”

*Aug. 1936.* King Geórgios signs decrees dissolving parliament, banning political parties, and abolishing the Constitution of 1927. The dictatorship which came to be known as “The Fourth of August Regime” remained in power until 1941. [See John Van der Kiste (1994), *Kings of the Hellenes*, Alan Sutton Publishing, pp. 154-156.]

#### **F. King Carol’s Dictatorship (Romania, February 1938)**

The Kingdom of Romania or “Greater Romania”--an expanded kingdom consisting of 295,000 sq. km. and a population of over 18,000,000 persons--would go from a constitutional monarchy to a constitutional dictatorship in a matter of days. [See entry for “Kingdom of Romania” in Wikipedia. Prior to 1918, the old kingdom consisted of just 137,000 sq. km. and only 7.8 million persons. Ibid.] Specifically, in February 1938, King Carol II would suspend his country’s constitution (the Constitution of 1923) and proclaim a royal dictatorship on 10 February 1938. Less than two weeks later, the people of Romania would approve via plebiscite (under duress) a new authoritarian constitution.

Where was Gödel in February 1938? He was still living in Vienna. According to his biographer John Dawson, “In mid-November 1937 Gödel [had] moved out of the building on Josefstädterstrasse and took up residence in a third-floor apartment at Himmelstrasse 43/5 in the Viennese suburb of Grinzing.” [Dawson, 1997, p. 126.] In addition, “Gödel managed over the next three months [i.e. starting in December 1937] to fill three notebooks on the Continuum Hypothesis.” [Ibid.]

In addition, in the fall of 1937, Edgar Zilsel, a philosopher of science and a former student of Heinrich Gomperz (who, in turn, was also one of Gödel’s former professors), had re-established a philosophical discussion group and had invited Gödel to join his circle. [Ibid., pp. 124-125.] “It was agreed the group would meet every other Saturday, and Zilsel suggested to Gödel that he report at an upcoming meeting on the status of consistency questions in logic ...” [Ibid., p. 125.] As fate would have it, Gödel eventually accepted Zilsel’s invitation and agreed to lead a discussion on the question of consistency in logic. He presented a paper on this subject on 29 January 1938, and “so far as is known his lecture to the Zilsel circle on 29 January 1938 was his last presentation to a Viennese audience.” [Ibid.]

Was Gödel aware, then, of the dramatic events unfolding in Greater Romania in the winter of 1938? Perhaps, for after his lecture of 29 January 1938, Gödel may have had extra time to reflect on the events unfolding in Central Europe in February 1938. “With [Hans] Hahn and [Karl] Menger gone there was little in the way of seminars or colloquia for Gödel to take part in.” [Ibid., p. 124.]

“Presumably, Gödel devoted the winter and spring of 1938 to the preparation of his manuscript and to making arrangement for his upcoming year abroad.” [Ibid.,

p. 127. Note that Gödel spent the 1938-1939 academic year in the United States (October 1938 to June 1939).] Presumably, too, he also read about the events unfolding simultaneously in Greater Romania.

In summary, we present the major “constitutional moments” in the Kingdom of Romania during the interbellum period and during the winter of 1938:

[[The Constitution of 1866](#)]

*Apr. 1918 to Dec. 1920.* The creation of “Greater Romania” through the union of the lands of Bessarabia, Bucovina, and Transylvania with the Old Kingdom of Romania. [See entry for “Kingdom of Romania” in Wikipedia.]

*Mar. 1923.* Parliament approves the “Constitution of Union” on 26-27 March 1923. [The Chamber of Deputies approves the constitution by a vote of 247 to 8 on 26 March; the Senate, by a vote of 137 to 2 on 27 March. See entry for “1923 Constitution of Romania” in Wikipedia.] The new constitution takes effect on 29 March. [Ibid.]

*Dec. 1925.* King Carol II renounces his right to the throne on 28 December 1925.

*June 1930.* King Carol II stages a coup d’état and returns to power on 8 June 1930.

*February 1938.* King Carol II suspends the Constitution of Union and proclaims a royal dictatorship on 10 February 1938. At the behest of the king, Istrate Micescu, a law professor, drafts in secret a new constitution consolidating the powers of the king. The draft constitution, consisting of eight titles and 100 articles, is made public on 20 February 1938 and is then ratified via plebiscite on 24 February. The king’s new constitution becomes law on 27 February, although it is not published in the official Gazette of Romania (*Monitorul Oficial al României*) until the next day.

*Postscript: September 1940.* King Carol II eventually suspends the Constitution of 1938 and invests “full powers” on General Ion Antonescu on 5 September 1940.

Again, assuming Gödel was aware of these events in Greater Romania’s constitutional history, what lessons might he have learned from them?

In brief, the royal proclamation of 10 February 1938 poses a constitutional conundrum: was King Carol’s proclamation suspending the constitution itself constitutional? There are at least two ways of answering this question in the affirmative. On the one hand, one could argue that the successor constitution--although drafted in secret by one man and hastily approved two weeks later under dubious circumstances--expressly, though retroactively, legitimized the king’s abrogation of the 1923 constitution. [Consider our discussion in Section C



above of the 1931 constitution of Yugoslavia and the 1933 constitution of Portugal.]

On the other hand, one could argue that the king's proclamation was inherently or impliedly constitutional because supreme power ultimately resides in the person of the king. By analogy, for example, one could also argue that the king's post-war decree of 5 September 1940 suspending the 1938 constitution and investing full powers on General Ion Antonescu was a constitutional act, since the 1938 constitution explicitly enshrines the supremacy of the king.

But in either case, this constitutional contradiction presents an important theoretical question: when a constitution confers supreme power on a given ruler--either by implication (as in the case of the 1923 constitution) or explicitly (as with the 1938 constitution)--does that ruler also have the power to disregard the constitution itself? [Refer back to "the paradox of the stone" in my Yugoslavia section]

\* \* \*

In any case, although we have no direct evidence whether Gödel was aware of King Carol's constitutional dictatorship in Greater Romania, it is hard to imagine anyone not taking notice of the great civil war that was taking place in Spain at this time ...

### **G. The Collapse of the Second Spanish Republic; General Franco's Dictatorship** (Spain, Spring of 1939)

In Spain, General Francisco Franco would defeat the Loyalist or pro-constitution forces by the spring of 1939 and rule by decree until his death in 1975.

For many intellectuals, the Spanish Civil War was constitutional democracy's last stand before the Second World War. Alas, the defeat of the Loyalists and the victory of the Nationalists in the spring of 1939 not only put an end to the Second Spanish Republic and the democratic Constitution of 1931, Spain's tenth constitution since 1808; it also led to General Franco's 37-year personal dictatorship, lasting from April 1939 to his death in November 1975, one of the longest-lasting dictatorships in Europe during the 20th Century, second only to Salazar's dictatorship in Portugal.

Did Gödel care about the outcome of the three-year civil war in Spain? We have no concrete or direct evidence to indicate whether he followed the dramatic events unfolding in Spain. But we do know that he generally "kept himself well-informed [and that] he was interested in events and spoke ... a good deal about politics." [Dawson, 1997, p. 90, quoting Menger, 1981, p. 12.]

One lesson from the Spanish Civil War and the dictatorships in Greece and Romania is the obvious and Hobbesian one of "might makes right." In Spain, for

example, although the 1931 Constitution was in force from 9 December 1931 until the Nationalist victory in the spring of 1939, in reality it became a dead letter in most of Spain after the outbreak of the Spanish Civil War. In fact, even the legitimate Loyalist government took many actions inconsistent with the 1931 Constitution (no doubt due to the exigencies of the civil war). [See, e.g., Payne, ch. 26. Also, mention the arrest and detention of the leaders of the POUM in Barcelona in 1937.]

In any case, what happened to the Spanish Constitution of 1931 after the collapse of the Second Spanish Republic in 1939? Did Gödel take notice of the lack of a formal or traditional constitution in Nationalist Spain?

Instead of drafting a new constitution, the Nationalists enacted a series of “fundamental laws” of *fueros* establishing the legal framework of General Franco’s dictatorship. [See entry for “Fundamental Laws of the Realm” in Wikipedia.] For example, General Franco promulgated the Fundamental Labor Law (*Fuero del Trabajo*) on 9 March 1938, the first of seven “fundamental laws” the Franco regime enacted during the dictatorship. These fundamental laws, promulgated between 1938 to 1967 and collectively referred to as the “Fundamental Laws of the Realm” (*Las leyes fundamentales del reino*), served as a *de facto* constitution during the dictatorship. [Ibid. The Fundamental Laws were not repealed until 1978, the year Spain adopted a new democratic constitution.]

[next, describe the *fueros* of 1942, 1945 (2), and 1947]

These *fueros* or fundamental laws pose a theoretical puzzle, the problem of self-reference in constitutional law. That is, the Fundamental Laws promulgated by General Franco were Spain’s *de facto* constitution during the Franco dictatorship, but they were drafted and promulgated under the authority of the dictatorship itself! In the case of a dictatorship, this self-reference problem is obvious, but notice that democracies are also not immune to this problem. Consider, for example,--as Gödel must have when he was engaged in his close study of the U.S. Constitution on the eve of his citizenship hearing--the Preamble to our Constitution.

In brief, the Preamble states: “We the People ... do ordain and establish this Constitution for the United States of America.” [U.S. Const., Preamble.] In other words, our constitution derives its legal force from the people themselves, a theory known as “popular sovereignty.” [See, e.g., [add Akhil Amar cite.](#)] Fine, but where do “the people” themselves derive their collective powers to ordain and establish the constitution?

The self-reference problem, in other words, applies equally to the seven fundamental laws of Franco’s dictatorship and to the Preamble of the U.S. Constitution. In both cases, a designated “meta-lawmaker”--either an individual ruler in the case of General Franco or a collective body in the case of “the People”-

-has the authority to enact higher law, i.e. law that self-applies to the meta-lawmaker himself or itself.

[By the time Gödel left Vienna for good in January 1940 to save his own skin, every single country in Central Europe, including Austria, had become a dictatorship. In the words of two eminent European historians, “[Central] Europe was strangled by various dictatorships: some fascist/Nazi dictatorships, some puppet, and a variety of semi-fascist or right-wing nationalist and royalist authoritarian regimes.” [Costa-Pinto & Larsen, 2006, p. 251.] Simply stated, “all the states of this area [Central Europe] ... succumbed to royal or military or political dictatorships.” [Rothschild, 1962, p. 241, n.2.]

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Of course, it is entirely possible that Gödel did not care a wit about the Spanish Civil War or the Nationalist victory in Spain. For example, Karl Menger--Gödel's colleague in South Bend, Indiana during the spring of 1939--reports that Gödel “‘remained his equanimous self,’ seemingly oblivious to what was happening in Europe except for his protestations about the violation of his own rights in the matter of his *Lehrbefugnis* [i.e. the lapsing of his authorization to teach at the University of Vienna].” [Dawson, 1997, p. 135, quoting Menger, 1981, p. 20.] This observation is a revealing one. For even if Gödel were “oblivious” to the ominous events occurring in interbellum Europe on the eve of the Second World War, he was nevertheless “outraged” that the University of Vienna had revoked his right to lecture at the University of Vienna. [See Sigmund, 2011, p. 86; Goldstein, 2005, p. 226; Wang, 1987, p. 94. (See also Guerra-Pujol, 2014.)] Ironically, despite Gödel's great intellect and his extraordinary contributions to the fields of mathematics and logic, his official academic position at the University of Vienna was suspended soon after the *Anschluss* between Austria and Germany in March 1938. We thus consider the infamous *Anschluss* and Gödel's response to the loss of his lectureship in part four below.

## VII. Postscript: Gödel's Lost Lectureship

[From my paper “Professor Gödel”] By all accounts, Kurt Gödel's 15-year association with the School of Philosophy of the University of Vienna--beginning in the fall of 1924 when he enrolled in the University--represents the most productive and fruitful years of his storied academic career. The University of Vienna is where Gödel received his doctoral degree and his *Habilitation*, where he attended the deep philosophical discussions of the Vienna Circle, where he did his most important and original work and made landmark contributions in the fields of logic and mathematics.<sup>1</sup> In short, the University of Vienna is where Kurt Gödel came of intellectual age.

Ironically, it is also the place where Gödel's academic career came to an abrupt and inglorious end. Following Germany's annexation of Austria in March 1938,

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<sup>1</sup> See generally Dawson, 1997, chapters 2-6.

university officials revoked Gödel's right to lecture.<sup>2</sup> By all accounts, Gödel was outraged at this violation of his vested rights and attempted to have academic status reinstated. But what deeper lessons might Gödel have learned from this shabby academic affair?

In brief, our thesis is this: the general lesson that Professor Gödel may have learned from the revocation of his lectureship is that a system of legal rules (such as a constitution) offers no protection against abuses of power or dictatorship if the rules of the game can be changed in the middle of the game.

### **A. Gödel obtains the right to lecture at the University of Vienna**

During the 1920s and 30s the University of Vienna was divided into four separate schools or "faculties": (i) the School of Philosophy, which included all subjects in the sciences and humanities, (ii) the School of Jurisprudence and Economics, (iii) the School of Medicine, and (iv) the School of Theology.<sup>3</sup> For his part, Gödel was attached to the School of Philosophy during his entire academic career, beginning in the fall of 1924 when he first matriculated at the University of Vienna as a student. Moreover, he received both his doctoral degree and his *Habilitation* or post-graduate degree from the School of Philosophy, and was appointed a *Privatdozent* or "private lecturer" at this school in March 1933, a position he held until the spring of 1938.<sup>4</sup> Although Gödel's academic position at the University of Vienna appears to be a "rather a lowly one,"<sup>5</sup> his position was actually a prestigious one. In fact, prior to Hitler's rise to power, the institution of the *Privatdozent* was the "cornerstone of academic freedom within the German [and Austrian] university system." [Dawson, 1997, p. 86.] Regular professors were appointees of the state; private lecturers or *Privatdozenten*, by contrast, were appointed by their fellow faculty. According to Dawson, "It was for that very reason that *Privatdozenten* received no salary: They were not appointees of the state, as the professors were." [Ibid., p. 87.]

As a private lecturer, Gödel was required to lecture for two hours per week during at least one semester every two years,<sup>6</sup> but according to university records, "Gödel held only three lecture courses at the University of Vienna and thus barely fulfilled the requirement to retain his title."<sup>7</sup> In all, then, Gödel taught three

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<sup>2</sup> Wang, 1987, p. 94; Dawson, 1997, pp. 127-128; Casti & DePauli, 2000, p. 82; Sigmund, 2011, p. 86.

<sup>3</sup> See Menger, 1994, p. 4. See also Dawson, 1994, p. 22. According to Dawson (ibid.), the subjects of engineering, education, and music were taught in separate *Hochschulen*.

<sup>4</sup> See generally Sigmund, 2011. See also Wang, 1987, p. 94; Casti & DePauli, 2000, pp. 81-83; Goldstein, 2005, pp. 220-228.

<sup>5</sup> Goldstein, 2005, pp. 220-221.

<sup>6</sup> Sigmund, 2011, p. 81.

<sup>7</sup> Ibid. Recall that Gödel had taught his first course during the summer semester of 1933, a second course during the summer semester of 1935, and a third course during the summer semester of 1937. See also Wang, 1987, p. 94.

courses at the School of Philosophy during his tenure as “private lecturer” at the University of Vienna: a course on the “Foundations of Arithmetic” during the summer semester of 1933,<sup>8</sup> a course on “Selected Chapters in Mathematical Logic” during the summer semester of 1935,<sup>9</sup> and a course on “axiomatic set theory during the summer semester of 1937.”<sup>10</sup>

How did Kurt Gödel obtain his academic position of private lecturer at the University of Vienna? To be appointed a private lecturer at the University at that time, one must not only have completed one’s PhD, one must also have completed the *Habilitation*, the equivalent of a post-graduate degree, the highest academic qualification a scholar could receive from the University.<sup>11</sup> According to Karl Sigmund, “An unofficial rule of the University of Vienna stated that the *Habilitation* could not be conferred sooner than four years after completion of a doctorate.”<sup>12</sup> Although this “unofficial rule” may sound somewhat arbitrary, one must consider that the *Habilitation* process is similar to, but even more rigorous than, the PhD dissertation process. To qualify for the *Habilitation*, the candidate must write a second dissertation, the *Habilitationsschrift*, and deliver a “probationary lecture,” and the entire faculty of one’s School must also vote on the candidate’s scientific merit and on his personal character.<sup>13</sup>

In Gödel’s case, he submitted his famous proof of the incompleteness of arithmetic for his *Habilitation*. [Gödel’s previous proof of the completeness of the predicate calculus had constituted his PhD dissertation.] In addition, the candidate must also give a probationary lecture. Gödel’s submitted his application for the *Habilitation* on 25 June 1932, requesting the right to teach in the field of mathematics at the Philosophical Faculty of the University of Vienna.<sup>14</sup> Gödel gave his probationary lecture on 3 February 1933, and the faculty of the School of Philosophy finally voted to recommend Gödel’s *Habilitation* on 11 Feb. 1933.<sup>15</sup> The University of Vienna formally awarded Gödel his *Habilitation* on 11 March 1933. Gödel was now officially a private lecturer (*Privatdozent*) at the University of Vienna.<sup>16</sup> But Gödel’s academic position would be abolished five

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<sup>8</sup> See Dawson, 1997, p. 93.

<sup>9</sup> Ibid. p. 108.

<sup>10</sup> Ibid., p. 113.

<sup>11</sup> Dawson, 1997, p. 60; Sigmund, 2011, p. 78.

<sup>12</sup> Sigmund, 2011, p. 78.

<sup>13</sup> Goldstein, p. 221; Sigmund, 2011, p. 78.

<sup>14</sup> As required, Gödel’s *Habilitation* application included his CV, a list of his publications, three possible topics for his probationary lecture, and a list of lecture courses in mathematics that he could give if he were conferred the *Habilitation*. Sigmund, p. 79.

<sup>15</sup> Ibid., p. 80. On the matter of Gödel’s personal character, the result of the faculty vote was 51 “yes” votes and one “no” vote, with no abstentions, while on the matter of Gödel’s scientific merit, the result was 42 “yes” votes and one “no” vote, with one abstention. Goldstein, pp. 221-222. Sigmund, pp. 80-81.

<sup>16</sup> See generally Sigmund, 2011. See also Dawson, 1997, pp. 87-89.

years later, following the *Anschluss*—Nazi Germany’s wholesale annexation of the Republic of Austria in March 1938 ...

### ***B. Gödel loses the right to lecture***

After the *Anschluss*, German law displaced Austrian law, and the title of *Privatdozent*—Gödel’s official position at the University of Vienna since March 1933—was officially abolished.<sup>17</sup> Former “private lecturers” like Gödel were now required to apply for the position of “Lecturer of the New Order” (*Dozent neuer Ordnung*) if they wished to maintain their academic careers under Hitler.<sup>18</sup> According to his biographer John Dawson, “His papers ... contain several documents from Nazi functionaries at the University of Vienna, which reveal that on 23 April [1938] his *Lehrbefugnis* (authorization to teach) officially lapsed.”<sup>19</sup>

This initial move was not directed at Gödel personally. Instead, it was part of a general reorganization of educational institutions in the wake of Hitler’s rise to power. Although the state had exercised administrative control of the universities in Germany and Austria, it did not have any direct control over private lecturers. This, then, is the main reason why the Nazis abolished the position of *Privatdozent* in the first place.

By all accounts, Gödel was “outraged” and “incensed” when his position was revoked by university officials in the spring of 1938.<sup>20</sup> Karl Menger, who knew Gödel personally from their days at the University of Vienna and who was co-teaching a course with Gödel at the University of Notre Dame during the spring of 1939, [See Dawson, 1997, pp. 134-136.] describes Gödel’s reaction to the revocation of his lectureship thus:

In the second half of the semester, Gödel also, who until then had been his usual dispassionate self, appeared to be restless. Remarks of his indicated longing for his family. For this and other reasons he wanted to return to Vienna at the end of the semester. Even earlier he had complained about the revocation of dozentship in the university by the Nazi regime and had spoken about *violated rights*.<sup>21</sup>

Although Menger tried to reason with Gödel--“How can one speak of rights in the present situation?” [Menger] had asked, ‘And what practical value can even *rights*

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<sup>17</sup> See, e.g., Sigmund, 2011, p. 86; Dawson, 1997, pp. 127-128; Wang, 1987, p. 94.

<sup>18</sup> Wang, 1987, p. 102. Existing professors were required to take an oath of personal loyalty to Adolf Hitler. In the Philosophical Faculty where Gödel taught, 38 out of 99 professors (or 13 out of 32 emeritus professors, 14 out of 45 full professors, and 11 out of 22 associate professors) and 56 out of 159 paid lecturers voluntarily “retired” from academia rather than take the required loyalty oath. See Sigmund, 2011, p. 85. Gödel himself, however, as a mere private lecturer, was not required to take the oath (*ibid.*).

<sup>19</sup> See Dawson, 1997, pp. 127-128.

<sup>20</sup> See Sigmund, 2011, p. 86; Goldstein, 2005, p. 226; Wang, 1987, p. 94.

<sup>21</sup> Menger, 1994, p. 224 (emphasis added).

at the University of Vienna have for you under such circumstances.”<sup>22</sup>--Gödel had every intention of returning to the University of Vienna and resuming his academic career there.

In fact, as we noted earlier, Gödel's lectureship had officially lapsed as early as April 1938. [Dawson, 1997, pp. 127-128.] Worse yet, his *Habilitation* itself was also in danger of revocation because Gödel still not applied for the new position of *Dozent neuer Ordnung* and his whereabouts were unknown.

Gödel had requested a leave of absence for the 1938-1939 academic year,<sup>23</sup> but the handling of Gödel's request represents a classic case of bureaucratic ineptitude, inefficiency, and downright idiocy.

To begin with, Gödel had submitted his request for a leave of absence to the University of Vienna in a letter dated 31 October 1938. Dawson, 1997, p. 141. In response, the dean of the School of Philosophy forwarded Gödel's request to the Ministry of Instruction, which in turn forwarded the matter to the Ministry of Internal and Cultural Affairs (MICA). [Ibid.] According to John Dawson, “no further action was taken [re: Gödel's request for a leave of absence] until 4 July [1939].” [Ibid.] On that date, an official of MICA wrote back to the rector of the University of Vienna to inquire about Gödel's reasons for requesting a leave of absence. The rector, in turn, forwarded this matter back to the dean (!), who “proposed that Gödel's *Lehrbefugnis* (his official authorization to teach) be rescinded since Gödel had not requested a leave of absence for the summer semester.” [Ibid.] The dean's harsh recommendation was sent back to the Ministry of Internal and Cultural Affairs, where yet another official then advised the rector that the dean's recommendation was moot because “Gödel's *Lehrbefugnis* ... was already in abeyance [since April 1938], and it would officially expire on 1 October unless Gödel submitted an application in the meantime to be named *Dozent neuer Ordnung*.” [Ibid.]

Although it is unclear whether Gödel himself was aware of this bureaucratic back-and-forth, [Ibid.] the evidence suggests that at a minimum he must have known that his lectureship had now lapsed and that he would lose the right to lecture permanently, unless he applied for the new position of *Dozent neuer Ordnung* before the 1 October deadline, a deadline he would just barely make.

Gödel had returned to Vienna in June 1939,<sup>24</sup> and apparently he had every intention of staying in Austria and continuing his academic career at the University of Vienna. [According to John Dawson, as late as November 1939, “Gödel still did not seriously expect to emigrate.” Dawson, 1997, p. 147.] For he

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<sup>22</sup> Menger, p. 224 (emphasis in original).

<sup>23</sup> Recall that private lecturers were required to teach a course at least one semester every two years ... Gödel had not taught a course at the University of Vienna since the summer semester of 1937. Sigmund, 2011, pp. 86-87.

<sup>24</sup> See Dawson, 1997, p. 139. See also Wang, 1987, p. 101.

not only “closed out” his bank account in Princeton, N.J.,<sup>25</sup> moved into a new apartment in the center of Vienna,<sup>26</sup> and signed a new lease on his old apartment in the suburb of Grinzing.<sup>27</sup> He also applied on 25 September 1939 for the new position of *Dozent neuer Ordnung* at the University of Vienna.<sup>28</sup>

Reality, however, ultimately up with Gödel. Hitler invaded Poland on 1 September 1939, and Gödel himself was declared fit for military service in the German Army shortly thereafter.<sup>29</sup> All the while, Gödel’s academic status at the University of Vienna remained in limbo. His previous position had been suspended, and his application to become a *Dozent neuer Ordnung* was still under review by the relevant university and ministry officials by the time Gödel and his wife Adele left Vienna for good in January 1940.<sup>30</sup>

Ironically, Gödel was finally awarded the title of *Dozent neuer Ordnung* in June 1940.<sup>31</sup> By then, however, Gödel and his wife Adele had left Vienna for good, resettling in Princeton, New Jersey, where they would live the rest of their quiet lives. Although Gödel would never return to his beloved Vienna, the University continued to keep his name in its records until 1945, accompanied by a terse announcement that “Dozent Gödel shall not lecture.”<sup>32</sup>

### ***C. Possible lessons from the revocation of Gödel’s lectureship***

What lessons might Professor Gödel have learned from the revocation of his lectureship?

One general lesson, no doubt, is that “life is not fair.” Here we have Gödel, today considered the greatest logician since Aristotle, denied an unpaid lectureship for unjust and arbitrary reasons. But we would also argue that there is a deeper and more important lesson to be learned from this sorry academic affair--the same entity that is bound by certain rules (such as the University) also has the power to change those rules, to substitute the old rules for new ones. After all, Gödel’s academic position was revoked, not because of any particular action or omission on Gödel’s part, but rather because the rules of the academic game had abruptly changed with Nazi Germany’s annexation of Austria in March 1938. University officials eliminated the position of private lecturer and created a new academic position in its place, all of which left Gödel in academic limbo until he applied for

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<sup>25</sup> Dawson, 1997, p. 140.

<sup>26</sup> Ibid., p. 146.

<sup>27</sup> Goldstein, 2005, p. 228.

<sup>28</sup> Dawson, 1997, p. 142. See also Wang, 1987, p. 102.

<sup>29</sup> Ibid., pp. 101-102. See also Wang, 1996, p. 29; Goldstein, 2005, p. 229; Sigmund, 2011, p. 88.

<sup>30</sup> For reasons that are unclear, the rector of the University, who had initially opposed Gödel’s application, later had a change of heart and decided to support Gödel’s appointment. Sigmund, 2011, pp. 89-90.

<sup>31</sup> Sigmund, 2011, p. 90. See also Dawson, 1997, p. 155.

<sup>32</sup> Sigmund, p. 91; Dawson, p. 155.



the new position.

Moreover, this episode thus illustrates a larger contradiction, one that plagues all forms of government, the contradiction between playing by the rules (the ideal of a “government of laws”) and the ability to change those rules in self-serving fashion in the middle of the game (the reality of a “government of men”).

None other than James Madison, revered as the Father of the U.S. Constitution,<sup>33</sup> recognizes this potential contradiction in perhaps the most famous passage in his celebrated essay, Federalist Paper #51:

“If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”<sup>34</sup>

Jakub Bożydar Wiśniewski (2013) has called this fundamental problem “the paradox of government.”<sup>35</sup> We would call it “the paradox of constitutional government,” since constitutions both empower [confer power on] governments and at the same time attempt to limit that power. In summary, the problem or “paradox” can be stated as follows: if the government—even a constitutional one--can always find a way of changing the constitution, then in reality there are no real or effective limits on government power. That is, although a constitutional form of government purports to be bound by certain ground rules (the rule of law), at the same time that same government also has the power to change the rules (rule of men). “In other words,” writes Wiśniewski, “when a legal monopoly of force devises a constitution aimed at constraining its own powers ..., the crucial problem to address is that of constitutional enforceability.”<sup>36</sup>

The suspension of Gödel’s lowly academic position thus serves as an Ivory Tower illustration of the paradox of constitutional government, representing in a microcosm not only the constitutional contradiction of self-government but also the actual pattern of constitutional change occurring throughout Central Europe during Gödel’s time in Vienna. Just as university officials made up new rules for private lecturers like Gödel and also had the legal authority to interpret and enforce those rules, a government writ large—even a constitutional one--can always find a way of changing the constitutional rules. Any limits on governmental power set forth in a constitution are self-imposed limits and can always be changed by simply amending the constitution or abolishing it

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<sup>33</sup> Rossiter, 1961, p. x.

<sup>34</sup> The Federalist, 1961, p. 322. Or as the economist Barry Weingast more succinctly puts it, “A government strong enough to protect property rights and enforce contracts is also strong enough to confiscate the wealth of its citizens” (Weingast, 1995, p. 1, quoted in Wiśniewski, 2013, p. 461).

<sup>35</sup> See generally Wiśniewski, 2013.

<sup>36</sup> Ibid., p. 462, footnote omitted.

altogether.<sup>37</sup>

The University's unjust and arbitrary suspension of Gödel's academic position in the spring of 1939 thus illustrates a larger and more fundamental lesson--the rules of the "constitutional game" are never fixed; those rules can change in the middle of the game--, a lesson that may even have informed Gödel's reported discovery in 1947 of a contradiction in the U.S. Constitution. We consider this possibility below:

#### *D. Possible relation to "Gödel's loophole"*

Ten years after the loss of his lectureship, Gödel was engaged in a close study of the U.S. Constitution in preparation for his U.S. citizenship hearing, and he reportedly discovered an "inconsistency" or loophole in the Constitution during his studies.<sup>38</sup> Although Gödel tried to explain his discovery to his character witnesses (none other than Albert Einstein and Oskar Morgenstern) and to the judge conducting his citizenship hearing, by all accounts no one at the time was interested in Gödel's discovery.<sup>39</sup> Everyone literally brushed aside Gödel's discovery.

As Wiśniewski notes, and as Gödel himself would later learn, "all too often this problem [i.e. Gödel's loophole or the paradox of government] is brushed aside, assumed to be self-solving, or taken to be neutralized by the existence of relevant historical evidence."<sup>40</sup> Most scholars thus end up neglecting this problem or dismissing it altogether for at least one of two reasons, either (i) because the problem is "self-solving" or (ii) because of the lessons of history.

To begin with, the most definitive statement of the "self-solving" argument appears in The Federalist Papers, especially Federalist Paper #51. In brief, The Federalist solution is to enact a constitution with checks and balances in which, in Madison's famous phrase, "ambition [is] made to counteract ambition."<sup>41</sup> But as here's the rub: a constitution is just a set of rules, and those rules can be changed. This ability to change the rules of the game during the game thus creates a constitutional contradiction: the same entity that is bound by certain

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<sup>37</sup> Moreover, it is worth noting that not even the courts--or the existence of an independent judiciary with the power of judicial review--are able to effectively solve this paradox, for in the words of one scholar, "the law is an amalgam of contradictory rules and counter-rules expressed in inherently vague language that can yield a legitimate legal argument for any desired conclusion." Hasnas, 1995, p. 233, quoted in Wiśniewski, 2013, p. 462.

<sup>38</sup> Dawson, 1997, p. 179. See generally Guerra-Pujol, 2013.

<sup>39</sup> See Dawson, 1997, pp. 179-180. See also Goldstein, 2005, pp. 232-344; Guerra-Pujol, 2013, pp. 644-650.

<sup>40</sup> Wiśniewski, 2013, p. 462. As an aside, Gödel's own citizenship hearing in December 1947 provides a perfect illustration of how "all too often this [paradox] is brushed aside." See sources in footnote \* above.

<sup>41</sup> The Federalist, 1961, p. 322.

rules (the government) also has the ultimate power to change those rules, to substitute the old rules for new ones.

What about history? Wiśniewski provides this example of the historical argument, quoting the following passage from the work of Geoffrey Brennan and James Buchanan: “We reject the Hobbesian presumption that the sovereign cannot be controlled by constitutional constraints. Historically, governments do seem to have been held in check by constitutional rules ... Our whole construction is based on the belief, or faith, that constitutions can work ...”<sup>42</sup>

The irony, however, is that history--especially European history during the interwar years--teaches us the opposite conclusion. By the time Kurt Gödel and his wife Adele left Vienna for good in January 1940, every single constitutional democracy in Central Europe had become a dictatorship. In the words of two eminent European historians, “[Central] Europe was strangled by various dictatorships: some fascist/Nazi dictatorships, some puppet, and a variety of semi-fascist or right-wing nationalist and royalist authoritarian regimes.”<sup>43</sup> Simply stated, “all the states of this area [Central Europe] ... succumbed to royal or military or political dictatorships.”<sup>44</sup> In brief, although most countries in Central Europe had adopted bona fide democratic constitutions during the interwar period between WWI and WWII, none of these *interbellum* constitutions prevented dictators from taking power.

Given this history of constitutional dictatorships in Central Europe during the interwar years as well as Gödel’s own shabby treatment by university officials, one can begin to understand why Professor Gödel himself refused to dismiss this paradox of government.

## Conclusion

Was Kurt Gödel right--is there really a logical contradiction in the U.S. Constitution--or were his witnesses and the judge right to dismiss, “brush aside,” Gödel’s discovery out of hand? This fascinating question we leave for another day. [See, e.g., Guerra-Pujol, 2013.] The point of this paper is to identify several possible sources of Gödel’s reported discovery: the collapse of constitutional rule across Europe during the interbellum as well as the unjust and arbitrary suspension of his lectureship at the University of Vienna.

Moreover, our conjecture is that there is a common thread tying together G’s outrage at the revocation of his lectureship with the collapse of constitutions across interbellum Europe. In both cases, Gödel must have noticed that the same person or legal entity that is bound by certain rules also has the power to change

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<sup>42</sup> Brennan and Buchanan, 2000, pp. 13–14, quoted in Wiśniewski, 2013, pp. 462–463.

<sup>43</sup> Costa-Pinto & Larsen, 2006, p. 251.

<sup>44</sup> Rothschild, 1962, p. 241, n.2.

those rules, to substitute the old rules for new ones--a simple observation, but one with important consequences for constitutional law and theory.

Thus the multiplicity of “anti-constitutional” moments in Europe along with Gödel’s own “troubled relationship” [Sigmund, 2011, p. 75] with the University of Vienna--in particular, the revocation of his lectureship in 1938--may provide us possible clues about the nature of Gödel’s discovery of a logical contradiction in the US Constitution.

[18,478]

## **Bibliography**

[*see attachment*]