

GÖDEL’S LOOPHOLE: A PREQUEL

F. E. Guerra-Pujol*

INTRODUCTION	613
I. PROLOGUE: INTERWAR EUROPE THROUGH THE EYES OF KURT GÖDEL	616
II. THE JANUARY 6 DICTATORSHIP	618
III. “THE SELF-ELIMINATION OF THE [AUSTRIAN] PARLIAMENT”	621
IV. KING CAROL’S COUP WITHIN A COUP.....	625
V. EPILOGUE: “DOZENT GÖDEL SHALL NOT LECTURE”.....	627
CONCLUSION	630

INTRODUCTION

One of the great unsolved mysteries of constitutional law is “Gödel’s loophole.”¹ In brief, Kurt Gödel, “the foremost mathematical logician of the twentieth century,”² reportedly discovered a hidden flaw in the United States Constitution, a deep logical contradiction that could lead to a constitutional dictatorship.³ In a previous work, I conjectured what the substance of this loophole might be.⁴ Here, by contrast, I will address a different constitutional question: how plausible is Gödel’s loophole as a practical matter? More to the point, how likely is it that a would-be dictator could exploit Gödel’s constitutional loophole in these turbulent times? It turns out, very likely, if

* Senior Instructor of Law & Ethics, University of Central Florida, Dixon School of Accounting; Associate Professor of Law, Pontifical Catholic University of Puerto Rico School of Law. J.D., Yale Law School; B.A., U.C. Santa Barbara. I am especially grateful to Professor John Linarelli for providing me the opportunity to present this paper at the 2024 annual meeting of the American Association of Law Schools (AALS) in Washington, DC, and to my discussant, Professor Jayanth K. Krishnan, for his many helpful comments and suggestions. Alas, any remaining mistakes or omissions are mine alone.

¹ See generally, F. E. Guerra-Pujol, *Gödel’s Loophole*, 41 CAP. U. L. REV. 637 (2013).

² Institute for Advanced Study, *Kurt Gödel, Past Faculty, School of Mathematics* (not dated), <https://www.ias.edu/scholars/godel> [<https://perma.cc/YUY9-KDHA>].

³ Guerra-Pujol, *supra* note 1, at 638.

⁴ *Id.*

the constitutional history of interwar Central Europe is any guide. By way of example, by the time Gödel was awarded the right to lecture at the University of Vienna in March 1933, democracy had died in at least nine or ten states in interbellum Europe, depending on whether Atatürk's Turkey is classified a dictatorship: Hungary under Admiral Horthy,⁵ Italy under "Il Duce" Benito Mussolini,⁶ Lithuania under President Smetona,⁷ Poland under First Marshal Piłsudski,⁸ Portugal under Prime Minister Salazar,⁹ Spain under Captain General Primo de Rivera,¹⁰ and Yugoslavia under King Aleksandar¹¹ had all become constitutional dictatorships.¹²

In summary, this work will survey three "self-coups" that occurred during the interwar period in Yugoslavia (1929), Austria (1933), and Romania (1938).¹³ The first of these self-coups unfolded on January 6, 1929, when King Aleksandar I of Yugoslavia took advantage of the turmoil caused by a political murder to assume dictatorial powers.¹⁴ The second self-coup happened in March of 1933, when Austrian Chancellor Engelbert Dollfuß used a legislative stalemate as a pretext to declare the "self-elimination" of Austria's parliament.¹⁵ The third took place in February 1938, when King Carol II of Romania seized emergency powers to preserve his country's neutrality in foreign affairs.¹⁶ In addition, this work will survey the demise

⁵ DENIS SINOR, *HISTORY OF HUNGARY* (1959).

⁶ CHRISTOPHER DUGGAN, *THE FORCE OF DESTINY: A HISTORY OF ITALY SINCE 1796* (2008). See also BENITO MUSSOLINI, *My Autobiography* (Dover 2006) (1928).

⁷ Janis Rogainis, *The Emergence of an Authoritarian Regime in Latvia, 1932–1934*, 17 LITUANUS: LITHUANIAN Q. J. ARTS & SCI. 65 (1971).

⁸ Joseph Rothschild, *The Ideological, Political, and Economic Background of Piłsudski's Coup d'Etat of 1926*, 78 POL. SCI. Q. 224 (1962).

⁹ Antonio Costa Pinto, *The Radical Right and the Military Dictatorship in Portugal: The National May 28 League (1928–1933)*, 23 LUSO-BRAZILIAN R. 1 (1986).

¹⁰ Ben-Ami Shlomo, *The Dictatorship of Primo de Rivera: A Political Reassessment*, 12 J. CONTEMP. HIST. 65 (1977).

¹¹ Brigit Farley, *King Aleksandar and the Royal Dictatorship in Yugoslavia*, in *BALKAN STRONGMEN: DICTATORS AND AUTHORITARIAN RULERS OF SOUTHEASTERN EUROPE* 51–86 (Bernd J. Fischer ed., 2007.)

¹² For geographical context, see *infra* the map of interbellum Central Europe.

¹³ See Parts II, III, and IV *infra*.

¹⁴ See, e.g., MARIE-JANINE CALIC, *A HISTORY OF YUGOSLAVIA* 104–106 (trans. Dona Geyer, 2019).

¹⁵ Ingeborg Bauer-Manhart, *4 March 1933: The Beginning of the End of Parliamentary Democracy in Austria*, CITY OF VIENNA (STADT WIEN), <https://www.wien.gv.at/english/history/commemoration/end-democracy.html>, [<https://perma.cc/23AH-EDDV>].

¹⁶ Stephen Fischer-Galati, *Romania: Crisis without Compromise*, in *CONDITIONS OF DEMOCRACY IN EUROPE, 1919–1939: SYSTEMATIC CASE STUDIES* 381–395 (Dirk Berg-Schlosser & Jeremy Mitchell eds., 2000). See also Library of Congress, Federal Research Division, *ROMANIA: A CASE STUDY* 40 (Ronald D. Bachman ed., 2nd ed. 1991).

of these Central European democracies through the eyes of Kurt Gödel,¹⁷ for all three of these self-coups not only occurred in Central Europe while Gödel was at the University of Vienna; these anti-constitutional moments may also shed light on the recursive nature of Gödel's loophole.



Figure 1: Map of Interwar Central Europe (c.1938)¹⁸

¹⁷ I am therefore excluding military coups (e.g. Poland in May 1926 and Lithuania in December 1926) from my survey as well as constitutional dictatorships that occurred before Gödel's arrival in Vienna in the fall of 1924 (e.g. Hungary, Italy, and Turkey) or that did not occur in Central Europe (e.g. Portugal and Spain). I am excluding from my survey coups that took place while Gödel was overseas, including those that unfolded during Gödel's first visit at the Institute for Advance Study in Princeton, New Jersey: Estonia in March 1934 and Latvia and Bulgaria in May 1934. Gödel was at the IAS from September 1933 to June 1934. See Institute for Advanced Study, *supra* note 2.

¹⁸ Figure 1: Map of Interwar Central Europe (c.1938), <https://www.pinterest.com>.

I. PROLOGUE: INTERWAR EUROPE THROUGH THE EYES OF KURT GÖDEL



Figure 2: Student I.D. Photo of Kurt Gödel (c.1926)¹⁹

Although the story of Gödel's discovery in late 1947 of a logical contradiction in the United States Constitution has been retold many times, the content of his discovery is often discounted as nonsense or as highly improbable.²⁰ This assessment, however, ignores Gödel's European background and the dramatic constitutional histories of several Central European states during the interbellum period, for during his formative years at the University Vienna, 1924-1940—first as a student and then as a lecturer—Gödel would have noticed that every constitutional democracy in Central Europe ended in dictatorship.²¹

Gödel lived only 15 years in Vienna, but in many ways those were the most formative and productive years of his life. Gödel had matriculated at

¹⁹ Figure 2: Student I.D. Photo of Kurt Gödel (c.1926), https://commons.wikimedia.org/wiki/File:Kurt_g%C3%B6del.jpg.

²⁰ See, e.g., Draft Memorandum from Oskar Morgenstern (Sept. 13, 1971), https://robert.accettura.com/wp-content/uploads/2010/10/Morgenstern_onGoedelcitizenship.pdf [<https://perma.cc/PF3F-FFFM>].

²¹ Cf. Joseph Rothschild, *The Military Background of Pilsudski's Coup d'Etat*, 21 *SLAVIC REV.* 241, 241 n.2 (1962) (“Eventually, all the states of this area [Central Europe], with the exception of Czechoslovakia, succumbed to royal or military or political dictatorships”).

the University of Vienna in the fall of 1924 (his university student identification photo is pictured above), and by the summer of 1929 he had completed 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 1929,²² and he was granted his Ph.D. on 6 February 1930.²³) After proving his now-famous "incompleteness theorem" in 1931, he obtained his *Habilitation* as well as the right to lecture in 1933.²⁴ In the words of fellow Austrian scholar Karl Sigmund, "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."²⁵

Simply put, 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, and where he made landmark contributions in the fields of logic and mathematics. In other words, Vienna was not only Gödel's primary residence from 1924 to 1940; it was also the grand 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 several constitutional democracies into constitutional dictatorships across Central Europe.

To sum up, when the young Gödel began his studies at the University of Vienna in the Fall of 1924, the vast majority of states in Europe were parliamentary democracies, but by the time Gödel and his wife Adele left their beloved Vienna fifteen years later in January 1940, every single constitutional democracy in Central Europe, Gödel's corner of the world, had become a constitutional dictatorship.²⁶ In the words of two eminent European historians, "Europe was strangled by various dictatorships: some fascist/Nazi dictatorships, some puppet, and a variety of semi-fascist or right-wing

²² JOHN W. DAWSON, JR., *LOGICAL DILEMMAS: THE LIFE AND WORK OF KURT GÖDEL* 93 (2005).

²³ *Id.* at 60.

²⁴ *Id.* at 86-89.

²⁵ Karl Sigmund, *Dozent Gödel will not lecture*, in *KURT GÖDEL AND THE FOUNDATION OF MATHEMATICS* 75–93 (Matthias Baaz et al. eds., 2011).

²⁶ Nancy Bermeo, *Getting Mad or Going Mad? Citizens, Scarcity, and the Breakdown of Democracy in Interwar Europe*, CENTER FOR THE STUDY OF DEMOCRACY (1997), <https://escholarship.org/uc/item/8xf4t3t0>.

nationalist and royalist authoritarian regimes.”²⁷

Did Gödel have the time or inclination to take notice of these dramatic anti-constitutional moments occurring across Europe during his tenure at the University of Vienna? How could he not have? Although “Gödel devoted himself intently on his studies ... he was not asocial,”²⁸ for “he spent a good deal of time in the coffeehouses that were then so central to Viennese intellectual and cultural life.”²⁹ So it is certainly possible, perhaps even probable, that Gödel perused some reports about these extra-constitutional coups in one of the Vienna’s many news periodicals or heard about them in one of his favorite coffeehouses.

II. THE JANUARY 6 DICTATORSHIP



Figure 3: Feb. 11, 1929, Cover of Time (King Alexander)³⁰

I will begin this survey of Central European self-coups with King Aleksandar of Yugoslavia (pictured above), who unilaterally abrogated his

²⁷ Antonio Costa Pinto & Stein Ugelvik Larsen, *Conclusion: Fascism, Dictators, and Charisma*, 7 *TOTALITARIAN MOVEMENTS AND POLITICAL RELIGIONS* 251 (2006).

²⁸ DAWSON, *supra* note 22, at 31.

²⁹ *Id.*

³⁰ Figure 3: Feb. 11, 1929, Cover of Time (King Alexander), <https://content.time.com/time/covers/0,16641,19290211,00.html>.

country's constitution and assumed full dictatorial powers on January 6, 1929. This self-coup provides an early interwar example of a “recursive” transfer of power in which a previous extraconstitutional act is declared to be constitutional by a future constitutional act. Also, aside from his native Austria, the other Central European country that Kurt Gödel may have been most familiar with was Yugoslavia: Austria not only shared a common border with Yugoslavia, during the summer of 1933 Gödel had visited there and vacationed in the resort town of Bled with his mother.³¹

Following World War I, Yugoslavia was officially called the Kingdom of Serbs, Croats, and Slovenes.³² This motley federation consisted of the crown provinces of Bosnia and Herzegovina, the formerly independent kingdoms of Serbia and Montenegro, and an assorted collection of territories that were once part of the Austro-Hungarian Empire, including Carniola, a portion of Styria, and most of Dalmatia (all from Austrian part of the former Austro-Hungarian Empire) as well as Croatia, Slavonia, and Vojvodina (all from the Hungarian part of the former empire).³³ Yugoslavia's first parliamentary constitution was enacted in June of 1921 and was called the Vidovdan Constitution after the feast of St. Vitus, a Serbian Orthodox holiday that takes place every June.³⁴ The Vidovdan Constitution established a constitutional monarchy, led by King Aleksandar I, also known as King Aleksandar the Unifier,³⁵ who assumed the throne in August of 1921 and ruled Yugoslavia—first as king, then as dictator—until his assassination in October 1934.

Alas, Yugoslavia's transition from democracy to dictatorship began as early as June 20, 1928, when the Croatian Peasant Party leader Stjepan Radić was shot by a Montenegrin Serb leader and People's Radical Party politician Puniša Račić during a tense argument on the floor of Yugoslavia's parliament.³⁶ Radić's assassination not only embroiled Yugoslavia in political turmoil; it also allowed King Aleksandar to take full advantage of the crisis. He carried out a self-coup on January 6, 1929, proroguing the parliament,³⁷ abrogating the Vidovdan Constitution, and assuming full

³¹ *Id.* at 93 (Bled is just across the border from Austria in Slovenia).

³² See generally CALIC, *supra* note 14, at 73-84.

³³ See *id.*; see also chapter 1 of DEJAN DJOKIC, *ELUSIVE COMPROMISE: A HISTORY OF INTERWAR YUGOSLAVIA* (2007).

³⁴ Robert J. Donia & John Van Antwerp Fine, *BOSNIA AND HERCEGOVINA: A TRADITION BETRAYED* (1995). The parliamentary vote on the constitution was held on St. Vitus Day or “Vidovdan” on June 28, 1921. See CALIC, *supra* note 14, at 74.

³⁵ See CALIC, *supra* note 14, at 74.

³⁶ John Paul Newman, *War Veterans, Fascism, and Para-Fascist Departures in the Kingdom of Yugoslavia, 1918–1941*, 6 *FASCISM: J. OF COMPAR. FASCIST STUD.* 42, 63 (2017).

³⁷ *Id.* As an aside, the last European monarch to prorogue a parliament (i.e. suspend parliament without dissolving it) was King James II in 1685.

dictatorial powers.³⁸ Two years later, Aleksandar formalized his dictatorship by promulgating a new constitution by decree on September 3, 1931.³⁹ Yugoslavia's new constitution, also known as the September Constitution or Octroic Constitution, remained in effect for another ten years until the invasion of Yugoslavia by the Axis powers in 1941.⁴⁰

Did Gödel take notice of these events in neighboring Yugoslavia? Although Gödel did cross the Austro-Yugoslav border once when he vacationed in Bled in 1933, it is unclear whether he took notice of any of these events. At the time of King Aleksandar's 6 January proclamation, for example, Gödel was in Vienna, beginning his work on his doctoral dissertation,⁴¹ and when Aleksandar later decreed a new constitution in September of 1931, Gödel was preparing to attend a meeting of the German Mathematical Union in the spa town of Bad Elster, located in the state of Saxony in Germany, to lecture on his incompleteness theorem.⁴²

Whether Gödel was aware of the Yugoslavian self-coup, King Aleksandar's decree of September 3, 1931—when he promulgated a new constitutional charter to replace the old one he had abrogated in 1929—poses an intriguing constitutional conundrum: was this decree itself constitutional? One could argue that King Aleksandar's abrogation of the Vidovdan Constitution was an extraconstitutional power transfer from parliament to the king, since Aleksandar acted outside his country's constitutional process when he abrogated his country's constitution. But at the same time, the king's subsequent decree poses a puzzle: was his September 3 decree also an unconstitutional act, or did it “legalize” his self-coup *ex post* by creating a new constitutional order?

³⁸ See Malborne W. Graham, Jr., *The “Dictatorship” in Yugoslavia*, 23 AM. POL. SCI. REV. 449, 445-456 (1929).

³⁹ See DAVID SHEPHERD, *THE ROYAL DICTATORSHIP IN YUGOSLAVIA, 1929-1934: AS SEEN FROM BRITISH SOURCES* (Thesis, Durham University 1975).

⁴⁰ *Id.*

⁴¹ DAWSON, *supra* note 22, at 53.

⁴² *Id.* at 75. (Gödel's lecture was delivered on the afternoon of September 15, 1931.)

III. THE SELF-ELIMINATION OF AUSTRIA'S PARLIAMENT



Figure 4: Sept. 25, 1933, Cover of *Time* (Chancellor Dollfuß)⁴³

Gödel's fate was inextricably intertwined in many ways with Austria's during the turbulent interwar period. Although Gödel became a "citizen by fiat"⁴⁴ of Czechoslovakia when the Czechs and the Slovaks declared their independence in 1918, Gödel was originally born in 1906 in the small town of Brünn (now Brno) in the Austrian part of the now-defunct Austro-Hungarian Empire, and one of his schoolmates once confirmed that "Gödel considered himself always Austrian"⁴⁵ In addition, Vienna was his primary residence from 1924 until early 1940.⁴⁶ During this span of time, the year 1933 is especially significant, not only for Gödel, but also for Austria as a whole, for it was in March of 1933 that Gödel was officially appointed *Privatdozent* or "private lecturer" at the School of Philosophy of the University of Vienna. Gödel held this position until 1938. As it happens, it was also in March 1933 that Austria's chancellor Engelbert Dollfuß (pictured

⁴³ Figure 4: Sept. 25, 1933, Cover of *Time* (Chancellor Dollfuß): <https://content.time.com/time/covers/0,16641,19330925,00.html>.

⁴⁴ *Id.* at 21.

⁴⁵ *Id.* at 15 (quoting Letter of Harry Klepetář to John Dawson, dated December 30, 1983. Gödel officially became a citizen of the Republic of Austria in 1929).

⁴⁶ *Id.* at 21.

above) orchestrated a cunning extra-constitutional self-coup when he declared the self-elimination of Austria's parliament.

Gödel's Austria began as a parliamentary democracy with the enactment of a new constitution in October 1920, a charter in which legal scholar Hans Kelsen played a large role.⁴⁷ In brief, the 1920 Austrian Constitution allocated legislative power in the *Bundesversammlung* or Federal Assembly, a body composed of two houses, the *Nationalrat* (National Council) and the *Bundesrat* (Federal Council). The Constitution also allocated executive power in a cabinet led by a chancellor, who in turn was appointed directly by the *Bundesrat*.⁴⁸ The president was elected by both houses of the Federal Assembly and served as head of state.⁴⁹ Austria's interbellum constitution was then amended on December 7, 1929, when the Federal Assembly approved a series of constitutional amendments creating a presidential system of democracy by providing for the direct or popular election of the president.⁵⁰

In March 1933, however, a national railway strike precipitated a dramatic constitutional crisis when a procedural snafu in the lower house of Austria's parliament (the National Council) created an unexpected constitutional vacuum or what two historians have referred to as a "formal error."⁵¹ In brief, Karl Renner, the president of the *Nationalrat* or National Council, strategically resigned from his presidency on March 4, 1933, in order to cast the deciding vote on a controversial proposal to deal with the railroad strike.⁵² That same day, the lower house's two vice-presidents, who represented Austria's other major political parties, Rudolf Ramek of the Christian Social Party and Sepp Straffner of the Greater German People's Party, also resigned for the same reason.⁵³ The National Council was thus left without a presiding officer due to the strategic resignations of Renner, Ramek, and Straffner.

Without a presiding officer, however, the National Council could not

⁴⁷ See Jenny Gesley, *100 Year Anniversary of the Austrian Constitution*, LIBR. CONG. OF BLOGS (Oct. 1, 2020), <https://blogs.loc.gov/law/2020/10/100-year-anniversary-of-the-austrian-constitution/>. See also Paolo Carrozza, *Kelsen and Contemporary Constitutionalism: The Continued Presence of Kelsenian Themes*, 67 ESTUDIOS DE DEUSTO: REVISTA DE DERECHO PÚBLICO 55, 56 (2019).

⁴⁸ See Gesley, *supra* note 47.

⁴⁹ *Id.*

⁵⁰ See OSKAR LEHNER, *ÖSTERREICHISCHE VERFASSUNGS-UND VERWALTUNGSGESCHICHTE. MIT GRUNDZÜGEN DER WIRTSCHAFTS-UND SOZIALGESCHICHTE* 393 (4th ed. 2007).

⁵¹ Peter Gerlich & David F.J. Campbell, *Austria: From Compromise to Authoritarianism*, in *CONDITIONS OF DEMOCRACY IN EUROPE (1919–1939)* 40, 47 (Dirk Berg-Schlösser & Jeremy Mitchell eds., 2000).

⁵² See Ingeborg Bauer-Manhart, *4 March 1933 - The Beginning of the End of Parliamentary Democracy in Austria*, STADT WIEN CITY OF VIENNA (not dated), <https://www.wien.gv.at/english/history/commemoration/end-democracy.html>.

⁵³ *Id.*

meet or enact legislation.⁵⁴ As a result, three days later (March 7, 1933), Chancellor Dollfuß declared the “self-elimination of Parliament” (*Selbstausschaltung des Parlaments*) and assumed full legislative powers.⁵⁵ After Dollfuß’s self-coup, the Austrian president Wilhelm Miklas adjourned the parliament indefinitely, and when members of Austria’s main opposition parties, the Greater German People’s Party and the Social Democrats, attempted to reconvene the National Council on March 15, they were physically prevented from entering the parliament building by the police on Dollfuß’s direct orders. In a matter of days—from March 4 to March 15—parliamentary democracy in Austria was dead.

Thirteen months later, Dollfuß convened a special parliamentary session in April 1934 with only the members of his political party present. The rump parliament retrospectively ratified all the chancellor’s decrees since the constitutional crisis of March 1933 and enacted a new constitution that swept away the last remnants of parliamentary democracy. Among other things, the new 1934 constitution abolished freedom of the press, established a one-party system, and created a state monopoly on employer-employee relations. It remained in force until Adolf Hitler’s annexation of Austria in March 1938. After the defeat of Nazi Germany in World War II, the original 1920 Constitution or BV-G was reinstated on May 1, 1945, and it remains in force to this day.⁵⁶

Was Dollfuß’s self-coup “unconstitutional”? On the one hand, one could argue that Dollfuß lacked the legal authority to fill the constitutional vacuum that arose when the lower house of Austria’s parliament was left without a presiding officer. On the other hand, one could argue that politics abhors a constitutional vacuum: in the absence of a functioning legislature, the executive branch must legislate by default. On this view, Austria’s constitutional crisis of March 1933 offers an instructive lesson on the dangers of constitutional vacuums.

⁵⁴ This scenario may sound familiar to some readers in light of what occurred in Washington, D.C. in October 2023, when the House of Representatives was unable to elect a speaker for several weeks. See Jacob Fischler & Jennifer Shutt, *How Does a ‘Frozen’ U.S. House Function without a Speaker? Everyone’s Got an Opinion*, MO. INDEP. (Oct. 5, 2023), <https://missouriindependent.com/2023/10/05/how-does-a-frozen-u-s-house-function-without-a-speaker-everyones-got-an-opinion/>. See also Ed Kilgore, *What If There’s No House Speaker for a Month? For a Year?!*, INTELLIGENCER (Oct. 21, 2023), <https://nymag.com/intelligencer/2023/10/what-if-theres-no-house-speaker-for-a-month-for-a-year.html>.

⁵⁵ At the time, Dollfuß invoked an emergency law enacted during World War I called the Economic War Powers Act (*Kriegswirtschaftliches Ermächtigungsgesetz*). See KRIEGSWIRTSCHAFTLICHES ERMÄCHTIGUNGSGESETZ [RGBL], No. 307/1917 (Austria).

⁵⁶ See *The Emergence of the Austrian Federal Constitutional Law of 1920*, AUSTRIAN ACAD. OF SCIENCES (not dated), <https://www.oeaw.ac.at/acdh/projects/the-emergence-of-the-austrian-federal-constitutional-law-of-1920>.

By way of comparison, on the same month as Dollfuß's self-coup in Austria, Adolf Hitler staged a self-coup in Germany when the Reichstag enacted a controversial constitutional amendment known as the Enabling Law of March 23, 1933.⁵⁷ From a purely legal or formal perspective, one could argue that Hitler's evil dictatorship was a constitutional one, since Germany's democratic Weimar Constitution was never formally suspended or abrogated during the Hitler years,⁵⁸ nor did the Austrian-born Führer stage a military coup or suspend his country's constitution when he assumed power in 1933. Instead, after being appointed chancellor in January of 1933, Hitler was able to subvert his country's constitutional system from within through his enabling-act self-coup.⁵⁹

In retrospect, March 1933 represents a symbolic turning point in the constitutional history of Central Europe during the interwar period—an anti-constitutional moment. In Austria, a legislative stalemate produced a constitutional vacuum that was filled by the chief executive Dollfuß, while in Germany the legislature effectively voted itself out of existence once it transferred its powers to Hitler. Other would-be dictators now had a new two-part playbook or legal model for taking power, the self-coup: first, play by the rules of the political game to win power; next, change the rules of the game to stay in power. It is the recursive nature of this model that Gödel may have had in mind years later when he reportedly discovered a logical contradiction in the U.S. Constitution.

⁵⁷ OTTO WELS, *THE THIRD REICH SOURCEBOOK* 52 (Anson Rabinbach et al. eds., 2013).

⁵⁸ See Karl Loewenstein, *Dictatorship and the German Constitution: 1933-1937*, 4 U. CHI. L. REV. 537, 542-43 (1937).

⁵⁹ Or in the words of historian 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." PETER PULZER, *GERMANY, 1870-1945: POLITICS, STATE FORMATION, AND WAR* 128 (1997).

IV. KING CAROL'S COUP WITHIN A COUP



Figure 5: Nov. 13, 1939, Cover of Time (King Carol II)⁶⁰

Romania went from a constitutional monarchy to a constitutional dictatorship on February 10, 1938, when King Carol II (pictured above) unilaterally suspended his country's interwar constitution (the Constitution of 1923), proclaimed martial law, and established a *de facto* royal dictatorship.⁶¹ As it happens, King Carol carried out a coup within a coup, for he had first assumed the throne in June of 1930 via a parliamentary *coup d'état*,⁶² when Romania's parliament proclaimed him the king of Greater Romania--then, a country consisting of 295,000 square kilometers and a population of over 18 million people.⁶³ The coup in 1930 was carried out

⁶⁰ Figure 5: Nov. 13, 1939, Cover of Time (King Carol II): <https://content.time.com/time/covers/0,16641,19391113,00.html>.

⁶¹ See Rebecca Ann Haynes, *Reluctant Allies? Iuliu Maniu and Corneliu Zelea Codreanu against King Carol II of Romania*, 85 THE SLAVONIC & E. EUR. REV. 105, 125 (2007). See also STEPHEN FISCHER-GALATI, ROMANIA: CRISIS WITHOUT COMPROMISE 390, Table 16.3 (Dirk Berg-Schlosser et al. eds., 2000).

⁶² See Emil Lengyel, *The Situation that Made Carol King of Rumania* 32 CURRENT HIST. (1916-1940) 1085 (1930).

⁶³ See Aaron O'Neill, *Population of Romania, by Gender 1889-2020*, STATISTA (June 21, 2022), <https://www.statista.com/statistics/1017626/population-romania-gender/#:~:text=With%20the%20collapse%20of%20the,to%2018.1%20million%20in%201930.Prior%20to%201918,Romania%20consisted%20of%20just%20137,000%20sq.%20km.%20and%20only%207.8%20million%20persons.> *Id.*

within the confines of the 1923 Constitution, since it was duly approved by the legislature.

King Carol's subsequent self-coup in 1938, however, poses a deep constitutional paradox: was his unilateral proclamation suspending the constitution itself constitutional? What about the new constitution that his government promulgated in the days after the self-coup? Was the new constitution unconstitutional? Does it matter that the new constitution was approved by the electorate in a constitutional referendum held on February 24, 1938,⁶⁴ just two weeks after King Carol's self-coup? One could argue that the king acted outside the constitutional order when he abrogated the 1923 constitution altogether on February 10, 1938, but one could also argue that the successor constitution—although drafted in secret and hastily approved two weeks later under dubious circumstances—created a new legal order that retroactively legitimized the king's previous actions.⁶⁵ The crux of this constitutional contradiction is thus this: does an action that occurs outside the constitutional process, such as King Carol's self-coup of February 10, 1938, become constitutional by a subsequent act, such as the popular plebiscite of February 24?

For his part, where was Kurt Gödel in February 1938, and was he aware of King Carol's self-coup in Romania? Although he would travel to the United States in the fall of 1938,⁶⁶ Gödel still lived in Vienna in February of 1938. 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."⁶⁷ In addition, "Gödel managed over the next three months [i.e. starting in December 1937] to fill three notebooks on the Continuum Hypothesis."⁶⁸

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 invited Gödel to join his circle.⁶⁹ "It was agreed the group would meet every other Saturday, and Zilsel suggested to Gödel that he report at an upcoming

⁶⁴ STANLEY G. PAYNE, *A HISTORY OF FASCISM, 1914-1945* 288 (1st ed. 1996). The 1938 Constitution would prove to be a short-lived one, however, when King Carol signed a decree dated September 5, 1940 suspending the 1938 Constitution and transferring his powers to General Ion Antonescu.

⁶⁵ See Rom. Const. Referendum (Feb. 24, 1938), <https://www.sudd.ch/event.php?lang=en&id=ro011938>.

⁶⁶ See John W. Dawson, Jr., *Kurt Gödel at Notre Dame*, MATHEMATICS DEPT. AT U. OF NOTRE DAME (not dated), <https://math.nd.edu/assets/13975/logicandweb.pdf>.

⁶⁷ DAWSON, *supra* note 22, at 126.

⁶⁸ *Id.*

⁶⁹ *Id.* at 124-25.

meeting on the status of consistency questions in logic ...”⁷⁰ Gödel eventually accepted Zisel’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 as fate would have it, “so far as is known his lecture to the Zisel circle [on Jan. 29] was his last presentation to a Viennese audience.”⁷¹

Was Gödel aware of the dramatic events unfolding in Romania in the winter of 1938? Perhaps, after his lecture on January 29, 1938, Gödel may have had extra time to reflect on the events unfolding in Central Europe. According to his biographer John Dawson, “Presumably, Gödel devoted the winter and spring of 1938 to the preparation of his manuscript and to making arrangement for his upcoming year abroad,”⁷² since with Hans Hahn and Karl Menger gone, “there was little in the way of seminars or colloquia for Gödel to take part in.”⁷³ Presumably, Gödel also read about the events unfolding in Greater Romania.

In any case, it was around this time that one of the most traumatic and unjust events in Kurt Gödel’s professional life was about to occur: his authorization to teach would officially lapse, and his academic position at the University of Vienna would be abolished. This ugly experience, perhaps more than any other, may shed the most light on Gödel’s loophole.

V. EPILOGUE: “DOZENT GÖDEL SHALL NOT LECTURE”

Following the *Anschluss*—Nazi Germany’s wholesale annexation of the Republic of Austria in March 1938—German law displaced Austrian law, and the position of *Privatdozent*—Gödel’s official position at the University of Vienna since March 1933—was officially abolished.⁷⁴ 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 the new regime.⁷⁵ This new requirement was not

⁷⁰ *Id.* at 125.

⁷¹ *Id.*

⁷² *Id.* at 127. (Gödel spent the entire 1938-39 academic year at the Institute for Advanced Studies (IAS) in the United States, i.e. October 1938 to June 1939.)

⁷³ *Id.* at 124.

⁷⁴ *See id.* at 127-128; Sigmund, *supra* note 25, at 86. *See also* HAO WANG, REFLECTIONS ON KURT GÖDEL 94 (MIT Press 1987).

⁷⁵ 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, *supra* note 25, at 85. Gödel himself, however, as a mere private lecturer, was not required to take the oath. *Id.*

directed at Gödel personally; instead, it was part of a general reorganization of educational institutions in the wake of Hitler's rise to power.

Additionally, it is worth mentioning, that the main reason why the Nazis abolished the position of *Privatdozent* was that, although the state had exercised administrative control of the universities in Germany and Austria even prior to Hitler's rise to power, it did not have any direct control over private lecturers.

Did the revocation of Gödel's lectureship inform his subsequent discovery of a loophole in the U.S. Constitution? In the case of the *Anschluss*, one country's laws and constitution swallowed up or displaced the laws and constitution of another country. For the mathematical logician, this meant the rules that applied to his lectureship were replaced wholesale with a new set of rules, and by all accounts, Gödel himself was "outraged" and "incensed" when university officials revoked his position in the spring of 1938.⁷⁶ 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 (one year after Gödel's position was abolished),⁷⁷ 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*.⁷⁸

Menger had tried to reason with Gödel, asking him: "How can one speak of rights in the present situation? ... And what practical value can even *rights* at the University of Vienna have for you under such circumstances',"⁷⁹ but to no avail. Although Gödel had requested a leave of absence for the 1938-1939 academic year—he visited the IAS in the fall of 1938 and then co-taught a course with Menger at the University of Notre Dame in the spring of 1939—he had every intention of returning to the University of Vienna and resuming his academic career there.⁸⁰

⁷⁶ See *id.* at 86. See also REBECCA GOLDSTEIN, *INCOMPLETENESS: THE PROOF AND PARADOX OF KURT GÖDEL* 226 (2005); WANG, *supra* note 74, at 94.

⁷⁷ See DAWSON, *supra* note 22, at 134-136.

⁷⁸ See KARL MENGER, *REMINISCENCES OF THE VIENNA CIRCLE AND THE MATHEMATICAL COLLOQUIA* 224 (1994).

⁷⁹ *Id.*

⁸⁰ See Sigmund, *supra* note 25, at 86-87 (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.).

As an aside, the handling of Gödel's leave of absence request represents an almost comic case of bureaucratic bungling and ineptitude. To begin with, Gödel had submitted his request for leave to the University of Vienna in a letter dated October 31, 1938.⁸¹ In response, the dean of the School of Philosophy forwarded Gödel's request to the Ministry of Instruction, which then forwarded the matter to the Ministry of Internal and Cultural Affairs.⁸² According to John Dawson, "no further action was taken [on Gödel's request for a leave of absence] until 4 July [1939]."⁸³ On that date, an official at the Ministry of Internal and Cultural Affairs wrote back to the rector of the University of Vienna to inquire about Gödel's reasons for requesting a leave of absence. In turn, the rector forwarded this matter 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."⁸⁴ The dean's harsh recommendation was sent back to the Ministry of Internal and Cultural Affairs, where yet another official 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*."⁸⁵

Although it is unclear whether Gödel himself was aware of this bureaucratic back-and-forth,⁸⁶ 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 October 1st deadline, for as it happens, Gödel not only returned to Austria in June 1939,⁸⁷ he apparently had every intention of remaining in his home country and continuing his scholarly work at the University of Vienna. In fact, according to his biographer John Dawson, Gödel still did not seriously expect to emigrate as late as November 1939!⁸⁸ Among other things, Gödel closed out his bank account in Princeton, New Jersey,⁸⁹ moved into a new apartment in the center of Vienna,⁹⁰ and signed a new lease on his old apartment in the suburb of Grinzing.⁹¹ In addition, Gödel finally applied for the new *Dozent neuer Ordnung* position

⁸¹ DAWSON, *supra* note 22, at 134-136.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 139; *see also* WANG, *supra* note 74, at 101.

⁸⁸ DAWSON, *supra* note 22, at 147.

⁸⁹ *Id.* at 140.

⁹⁰ *Id.* at 146.

⁹¹ GOLDSTEIN, *supra* note 76, at 228.

on September 25, 1939, less than one week before the October 1st deadline.⁹²

Political reality, however, would derail Gödel's Viennese dreams. Germany invaded Poland on September 1, 1939, and Gödel was declared fit for military service in the German Army shortly thereafter.⁹³ All the while, Gödel's academic status at the University of Vienna remained uncertain. His position as a private lecturer had been suspended, and his application to become a *Dozent neuer Ordnung* was still under review by the university and ministry officials. Faced with this uncertainty, Gödel and his wife Adele decided to leave their beloved Vienna in January 1940. They resettled in Princeton, New Jersey, where they would spend the remainder of their lives.⁹⁴

Ironically, Gödel was finally awarded the title of *Dozent neuer Ordnung* in June 1940,⁹⁵ and the University continued to keep his name in its records until 1945, accompanied by a terse announcement that "Dozent Gödel shall not lecture."⁹⁶

CONCLUSION

During his years at the University of Vienna, 1924 to 1940—first as a student and then as a lecturer—the logician Kurt Gödel would have noticed that every single constitutional democracy in Central Europe ended in dictatorship.⁹⁷ Did these anti-constitutional moments inform Gödel's discovery of a loophole in the U.S. Constitution that could lead to a constitutional dictatorship? If so, do the multiplicity of self-coups in interwar Central Europe, along with Gödel's own "troubled relationship"⁹⁸ with the University of Vienna—in particular, the revocation of his lectureship in 1938—provide clues about the nature of Gödel's constitutional loophole? As it happens, a common thread ties together Gödel's outrage at the revocation of his lectureship with the proliferation of self-coups and the general collapse of constitutional democracies across interbellum Europe. In both cases, Gödel may have noticed that the same person that is bound by certain rules often has the power to change those very same rules. Broadly speaking, this process of rule-change can occur in one of two ways:

⁹² DAWSON, *supra* note 22, at 147; WANG, *supra* note 74, at 102.

⁹³ See DAWSON, *supra* note 22, 101-102; GOLDSTEIN, *supra* note 76, at 229; Sigmund, *supra* note 25, at 88; WANG, *supra* note 74, at 29.

⁹⁴ See Sigmund, *supra* note 25, at 88. For reasons that are unclear, the rector of University, who had initially opposed Gödel's application, later had a change of heart and decided to support Gödel's appointment.

⁹⁵ See *id.* at 90. See also DAWSON, *supra* note 22, at 155.

⁹⁶ Sigmund, *supra* note 25.

⁹⁷ Rothschild, *supra* note 21, at 241 n.2.

⁹⁸ Sigmund, *supra* note 25, at 75.

1. **Inside the existing constitution:** the rule change giving X the power to make new rules occurs within a given system's existing constitutional framework; e.g. the German Enabling Act of March 1933.
2. **Outside the constitutional order:** the rule change occurs in an extraconstitutional manner but is then declared to be constitutional through some subsequent constitutional-level enactment, e.g. the self coups that occurred in Central Europe during the interwar period.

In conclusion, this article contributes to the literature on Gödel's loophole by exploring how the logical possibility of a self-coup may have informed Gödel's subsequent studies of the U.S. Constitution when he was preparing for his U.S. citizenship exam.