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Morality and the Law of War

Thoughts on the Steps towards Insurgent Regularisation

Abstract

A fundamental characteristic of military life and war is that it is ruled by military law. In the 18th century, under the influence of the French Revolution, the drills that had been prevalent until then were gradually replaced by virtue-based training in all European armies. This trend can also be observed in the army of the Habsburg Empire. But a similar search for a new direction also took place in the self-defence forces of Natio Hungarica, in the institution of general insurrection. In my thesis, I use court records to try to define the modernisation efforts of the insurrection through regularisation. Can military law be a tool for moral education?

Keywords: general insurrection, military law, military ethics, regularisation

Introduction

The Peace of Westphalia, signed on 24 October 1648, ended the Thirty Years' War. But, it also had a much more significant result: it pacified Europe according to a new world order and ratified the legal relationships to which the old continent wished to adhere for a long time. The era of mercenary armies was coming to an end, and political manoeuvring was becoming increasingly important in the projection of power.² The economic strengthening of the European empires made it possible to establish fiscal-military states that maintained standing armies.³ By the end of the 18th century, the basis for demonstrations of power throughout Europe had become regularised

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² WESS 2020: 255.

³ KENYERES 2021: 763.

imperial armies. Their operation was the result of a long process, that led from the regimental *ownership system* to centralised *military councils*.⁴

The next military reform was brought about by the strict military laws of the French Revolution. At the end of the 18th century, France had a strong middle class that helped finance the creation of Europe's first mass army. There was a need for state laws that used the state not as an abstract concept but as a political base. Society expected the state to protect them in exchange for the taxes they paid. The state, in turn, demanded military service in exchange for protection. The political elite of the French Revolution also considered the reform of the army to be their task. The coalition wars that had been raging since 1792 forced the process to be accelerated. In 1793, the Law of the People's Uprising was passed. According to this law, every French citizen was also a soldier of France.

The Habsburg Empire could not ignore the idea of a state based on national consciousness. This was especially true given that Vienna had been working intensively since 1740 to forge an imperial consciousness among its ethnically diverse provinces. Joseph von Sonnenfels (1732–1817), advisor to Maria Theresa, wrote in his 1771 treatise *On the Love of Country*: "The happiness we enjoy in a land protected by such (unified) laws, through the government, in a society made up of such a diverse range of citizens – all this awakens a bond that forms the basis of our love for our homeland. However, this must be accompanied by our conviction that such happiness cannot be found anywhere else, under any other laws or form of government, or in the company of any other citizens. In every loss suffered by our homeland, we see our own loss; in every gain, we feel the increase of our own gain. The fear of losing these gains spurs us on to take up the fight to defend our homeland with great zeal."⁵ Although the term *Staatsbürger* (citizen) was not yet distinguished from the definition of *Untertanen* (imperial subject), in the last third of the 18th century, the increasing involvement of the "intellectual middle class" in political life can be recognised in the political theory and legislation of the Habsburg Empire. The result was the new Civil Code, the *Allgemeines Bürgerliches Gesetzbuch*, published in 1811, which laid new foundations for the imperial thinking of the Austrian Empire.⁶ Mihály Boda, in his monograph on the history of ideas, highlights the interaction between civil society and military life. He writes that the examination of military virtues cannot be limited exclusively to military life.⁷ Although military ethics primarily consists of a multitude of theses on military activities, general ethics can also influence its fundamentals. The result: the customs of civilian life influence military life and vice versa.⁸ At the beginning of the 19th century, changing military virtues posed a challenge to the armies of the time: personal initiative and openness to political expression were in stark contrast to the image of the soldier that had been customary in the 18th century. This was the wave of the French Revolution in the army. The roots of this phenomenon naturally go back to the educational process of the "Age of Enlightenment". This was a time when the

⁴ NAGY-L. 2013: 45.

⁵ JUDSON 2024: 65.

⁶ JUDSON 2024: 56.

⁷ BODA 2021: 10.

⁸ HAHNER 2021: 176.

power of reason questioned and re-evaluated the unconditional demand for loyalty that had prevailed in previous centuries. The third order, which was born in the 17th and 18th centuries, consciously formed its economic and political surroundings.⁹ “We do not differ from dogmatism in that we believe in the absolute. Rather, we differ in that we assert the absolute unity of thought and being in knowledge. Thus, the absolute exists in knowledge, and knowledge exists in the absolute”¹⁰ – said Schelling (1775–1854) in 1809, during the period when the intellectual foundations of German national consciousness were being laid. We can see that military service became part of bourgeois self-awareness. In the bourgeois transformation, national communities came to the fore and wanted to play an increasingly important role in shaping their own environment, state order and worldview. The strong religious and denominational divisions in society at the beginning of the 18th century had disappeared by the end of the century. National consciousness became popular, forcing the expansion of the *corpus politicus* of the state.

As a natural consequence of social change, slow changes in the armed forces of the state also became inevitable. In the early years of the 19th century, especially after the defeat of the Third Coalition in 1805, the states of Europe sought to reform their armed forces by studying the lessons of the French model. This raised a number of social and economic issues for them. During the French Coalition Wars (1792–1815), the European legal system did not have a comprehensive system of legislation that superseded the laws of individual states. There was nothing that prescribed the rights or obligations of the warring parties. Nevertheless, there was a moral or rather ethical order rooted in religion. This was manifested in the social loyalty shown by military officers from the same social class towards each other.¹¹ Officer training schools not only provided soldiers with unified professional knowledge, but also a unified framework. Here, they learned to serve the empire, the monarch and the society. The same regularisation also took place in the training of soldiers. As a result, officers – regardless of which unit they commanded in which area of operations – knew what their soldiers expected of them, as well as what they could expect from their soldiers. In my paper, I examine two inseparable pillars of the regularisation process. In the states of 18th- and 19th-century Europe, these pillars influenced the military mobilisation of society. They increased the state's self-defence capabilities, which in turn exerted an influence on their own military recruitment systems. These two pillars are the enforcement of military law and the requirement of uniform military virtues in the ranks of the mobilised regiments of territorial forces. At first glance, it seems that military law and virtues do not support the combat value of troops. However, law enforcement and social virtues have a long-term effect on the fighting soldier. The subject of the study is a court case involving insurgents in Heves County in 1801, which can be used to illustrate the efforts to regularise the units during the general insurrection. In my thesis, I seek answers to the following questions:

- Was the general enforcement of military law evident among the mobilised general insurrectionary troops?

⁹ SZÜCS 1983: 105.

¹⁰ HEIDEGGER 1993: 103.

¹¹ BODA 2021: 10.

- Did the document reveal any military virtues that were considered unified and whose observance was the duty of the insurgents?
- Can military law be a tool for moral education?

Rights to the warring parties

At the beginning of the 19th century, European legislation did not recognise any agreements between nations that could be invoked in the assessment of acts of war and military operations or in the ratification of peace treaties. The Peace of Westphalia, considered the first modern peace treaty, was only a precursor to the Congress of Vienna (1814–1815), which ended the Napoleonic Wars. The European states' "peace-making" that ended the Napoleonic Wars attempted to internationalise economic and social issues in a way that had never been seen before. State control of the changes in civilisation and bringing balance to the European economy were both important issues. "I repeat, the law is in Europe's interest" – according to Talleyrand's memoirs, this was the key phrase uttered during a meeting between the French diplomat and Tsar Alexander I of Russia. The remark was addressed to the great powers that signed the Paris Peace Treaty, who wanted to discuss issues affecting the entire continent without the involvement of committees. The essence of this criticism is that, in matters affecting everyone, it is only possible to make decisions after preparatory work by multinational committees.¹² This principle had a novel effect on the international legal order of "civilised states". However, losses incurred during coalition wars were only accounted for within states. Crimes committed by the military (e.g. terrorising the occupied population, looting, rape, genocide) were considered internal affairs of the state's armed forces, or even a natural consequence of war. As a result, the atrocities committed throughout Europe since 1792 (to highlight only the most striking examples: the genocide in the Vendée, the Spanish guerrilla war, the terror campaigns in Tyrol) did not come to the attention of international peacemaking lawmakers. In his work, French historian Reynald Secher (1955–) notes that every post-Thermidorian government felt compelled to justify the military actions in the Vendée, but generally dismissed the deliberate and planned massacres as a necessary evil-doing. Terrorist acts against the civilian population were present throughout the Napoleonic Wars, a fact that also reflects changes in military and war ethics.¹³ As part of military criminal law, the main purpose of military law enforcement is to enforce the sanctions imposed on soldiers who have been held accountable. Or rather, to educate soldiers in service so that they can properly fulfil their military duties after serving their sentences.¹⁴ In the Habsburg Empire, military law was first regulated by Maria Theresa's 1754 Code, which prohibited the use of torture to extract confessions and regulated the procedures for appeal. Meanwhile, the 1737 decree *Gerichtszwang der Regimente* specified that every regiment had to have officers with legal training in its officer corps who could perform the duties of military judges in the regiment's affairs. The Kingdom of Hungary had

¹² ZAMOYSKI 2015: 290.

¹³ SECHER 2023: 276.

¹⁴ HAUZINGER 2011: 14.

been providing regular regiments to the imperial-royal army since 1715, meaning that the Habsburg rulers' laws became an integral part of Hungarian military law.¹⁵

As is the case today, military training during the French coalition wars consisted of closely related activities, corresponding service duties, and activities beyond the daily training hours. This was the training process that turned recruits into soldiers. The training process was divided into easy-to-understand sections. The training modules were systematically built on each other, ensuring continuity between the different activities. During the training process in the 1800s, we can understand a specific, systematic and step-by-step order for covering the training, whereby knowledge was acquired, skills and abilities were developed, and the abilities and virtues necessary for military life and to do well-fighting on the battlefield were cultivated.¹⁶ This teaching method could only be successful if the recruit was fully engaged in learning with all his senses during his training to become a soldier. This made it easier for his imagination to prepare for the tasks and psychological stress awaiting him on the battlefield. The training system was developed on this basis during the 18th century. However, the drill system primarily focused on automating movements rather than teaching creativity. With the emergence of regular armies and line warfare, increasingly strict drills came to the fore: the soldier's primary task was to maintain formation and follow orders in a disciplined manner. This was also stipulated in the regulations that formed the basis of military life from the 17th century onwards. The regulations and drills became the basis for regularisation. The best example of drills is the *standing at attention* (auswache/vigyázás). These appeared as military virtues, the practice of which provided a framework for both soldiers and military leaders. The hierarchical social order of the 18th century was thus logically reflected in the organisation of the army.¹⁷ The French Revolutionary Wars changed not only the social hierarchy, but also the structure of the army and the composition of the officer corps. At the same time, the army's way of thinking also changed in terms of France's military principles. The other states of the old continent, even if they did not adopt the social restructuring of bourgeois France, certainly sought to incorporate its military innovations into their own armies. During the French Revolutionary Wars, military virtues such as courage, honour and loyalty took on new meaning, as they supported the idea of bourgeoisification: they were organised around the concepts of homeland and nation. The Care (Charitas) became a key virtue for officers. The army sought to mirror the social structure of a civil state. The officer became the caring father, while the common soldiers became the devoted sons. Of course, the theoretical model change was not the result of conscious transformation in the Eastern European states. The military reforms organised from above were not intended to change the structure of society, but only to increase the military resistance of the state. Similar reforms took place in the imperial army of the Habsburg Empire. It is worth noting the European regulations on the mobilisation of larger parts of the population. In states that followed the "French constitutional" model, the militia system became an extremely important part of national self-defence. In those states that continued to

¹⁵ HAUZINGER 2011: 33.

¹⁶ KOVÁCS et al. 2002: 35.

¹⁷ BODA 2023: 96.

be monarchies striving for central government, they were hesitant to mobilise their own populations. The Prussian Landsturm, the Austrian Landwehr and the Hungarian Insurrection were all attempts to broaden the self-defence systems of their states. The militias of the states called on members of the middle class, who possessed the elements of prosperity (private property, stable social conditions), that allowed the state to hope for their loyalty.¹⁸

New military virtues also came into being for the soldiers of the Hungarian Kingdom in the 18th century. In the wars against the Turks and for liberation, cleverness, watchfulness and personal courage became important military virtues in contrast to honour and loyalty.¹⁹ The military reforms introduced by Charles of Habsburg-Lorraine (1771–1847) from 1806 were based on the French-model and tried to transform the imperial-royal army. In 1809, the Austrian Empire's army remained the only opponent to the invincible Napoleon in the Danube Valley. That year, all the Habsburg Empire's organisational weaknesses became exposed, and the defeat had a long-term effect on the empire's military thinking. Radetzky, who had been wounded in the campaign, summed up his experiences as follows: "At the beginning of any war in Austria, the tools to achieve the goal are missing. The army marching to the battlefield is either not strong enough, not equipped enough, or its commander is a foreigner. During the war, it is temporarily able to perform excellently, but this is followed by exhaustion. It wins brilliant victories, but it is never able to start and finish an entire campaign with the same heroism. After every victory won with the courage of the troops, the army is too weak to finish off the enemy with the results of the battle. It is not capable of either pursuit or surrounding. After the final, crushing defeat on the battlefield, it attempts to save its surviving forces either by retreating or by agreeing to a ceasefire. Austria's military system has never focused on war, but always on peace. It is in the interest of the military leadership to enjoy the benefits of peace. War would disrupt its functioning."²⁰ Perhaps this is why, with the dawn of the 19th century, military science began to develop rapidly throughout the Habsburg Empire: dozens of analytical works were published in German and Hungarian with the aim of introducing French military experience into the imperial-royal army. These works clearly indicate the modernity and scientific nature of officer training in the imperial-royal armed forces.²¹

In 1808, the Diet sitting in Pozsony adopted new regulations for the insurgents. These were published in Pest. The new regulations deemed light infantry and hussar tactics suitable for the insurgents. For a complete overview of the training content of the 1808 insurgent regulations, we must compare them with certain points of Archduke Charles's military reforms and Palatine Joseph's edict on the insurrection. These three documents outline the training structure in which insurgent soldiers and officers were socialised for military service.

"It is therefore necessary to confront an enemy that has infantry with similar troops. The only important thing is to determine the correct balance. How strong should the

¹⁸ FORGÁCS 2020: 60.

¹⁹ BODA 2021: 34.

²⁰ Letter from Josef Radetzky to Prince Lichtenstein during the Coalition War of 1809 (BENCZE 2005: 192).

²¹ Ács 1995: 79.

units we use for skirmishing be? In the meantime, we can't ignore the basic principle that only a small part of our forces should be used as skirmishers, while the larger part should always remain in reserve for making decisions. Determining this balance depends on the strength and nature of our own and enemy forces, the terrain on which the battle takes place. All in a nutshell; everything about the situation we find ourselves in."²²

The regulations are in harmony with the "Hungarian national military virtues" expected at the beginning of the 19th century. At the same time, they are fully consistent with the military reforms of Archduke Charles. It was important to preserve Hungarian military virtue in order to shape national identity. This is particularly evident in the regulations governing cavalry training. These regulations included technical terms related to horse riding and horse keeping from the regulations of early modern Hungarian history. At the same time, they also included expressions from the folk language (e.g. farmatring, kúnhatas). Similarly, terms such as *elszéledve* (~fall apart) and *rajtahajtás* (~charge), which were used to train soldiers in new fighting techniques, also appeared in the field of infantry warfare. Many military terms that originated at this time are still in use today (e.g. igazodj).²³ The rules and regulations were intended to regularise the general insurrection in the service of the exercitus hungaricus, or Hungarian soldier. They attempted to assign new tasks to the centuries-old Hungarian institution of self-defence. Part of the process was moral education, through which the rules and regulations sought to affect the spirit and soul of the private soldier. Loyalty to God, Country, and King.²⁴ These were completely consistent with the military educational paradigm of the time. The results of regularisation are clearly described in the regulations. The task of officers is to keep order, enforce military virtues, and set an example in this matter. Military law and military moral education are inseparable in military pedagogy. Military virtues clearly mark the direction for the private soldier, while military law provides a framework for the realisation of those virtues. This duality is reflected in the military regulations, which embody the duties, rights and obligations of the mobilised social classes in the defence of the state.

Lessons from an insurgent trial

The documents²⁵ kept in the archives of Heves County are a collection of testimonies that may have survived from a longer trial. The surviving fragments were compiled

²² ERZHERZOG VON ÖSTERREICH 1806: 47.

²³ LÁZÁR 2024: 181.

²⁴ "A Tisztek példája, és a Nemzet dicsőségének nevelésére serkentő érzékeny biztatás, a maga üdejében csudákat tehet. Ha találhatna olyan ember, a ki rémülést okozó szókra fakadni merészelne, ez másoknak példájára ölettesen meg. Ha a föld fekvése megengedi, a dobszóra igen nagyon figyelmezní kell; az igazi Vitézség nem a kiabálásban vagy lármában áll; mert csak a nyugodt elszánás, a Commandó és a dobszóra való szoros figyelmezés vezethet győzedelemre. Minden Ezredes Fő és Altiszt arra vigyázzon, hogy minden rendetlenségnek azonnal eleje vetődjön. Az ütközet napja az a dicső szempillantás, amelyben a Hazának a legnagyobb szolgálatot lehet tenni. Nem kell a megtámadást várni, hanem azt elevenen meg kell előzni, sőt midőn a megtámadó ellenség közelget, egynehány jól intézett lövések után Bajonéttal kell azon rajta hajtani" (LÁZÁR 2009: 302).

²⁵ The documents are available in fragmentary form at the Heves County Archives of the Hungarian National Archives. MNL, HVM. Nemesi felkelés iratai (1800–1801). IV-1/g.2. No. 9–13.

by insurgent officials István Kiss (captain) and József Stroßer (second lieutenant) in connection with the corruption trial of an insurgent officer serving in the rank of captain. The details are unknown to us at this time, but the series of testimonies reveals a minor case of theft and the related court proceedings.

György Vitay, a private, was sentenced to prison for theft on 3 February 1801. He testified before a court of representatives of the insurgent regiment. The incident took place in one of the companies of the insurgent infantry regiment of Heves County, led by Captain Antal Csernovits. In connection with the investigation of the case, First Lieutenant András Tamásy, Mrs. György Győzőg, Juli Kotsis and György Vitay himself were called before the commander of the regiment on 7 February. The members of the court committee were First Lieutenant András Tamásy, Second Lieutenant János Kömerliny, Second Lieutenant Antal Mártonfy and Second Lieutenant Imre Balassy. The legal documents paint a simple picture. György Vitay, an insurgent soldier, stole a bread roll from Juli Kotsis, a baker, at the Pápa market at 11:45 a.m. on 3 February 1801. Mrs. György Győzőg, who was a neighbour of Kotsis and was also at the market, drew Kotsis's attention to the theft. Juli Kotsis ran after Vitay and pulled the stolen cake out of his coat sleeve. First Lieutenant András Tamásy, who was riding through the square at the time, rushed to the scene and took Vitay, the soldier accused of theft, into custody. Vitay was sentenced to prison based on witnesses' testimonies and his own voluntary confession. The surviving testimonies show that Captain Antal Csernovits acted incorrectly in the case, but the details and reasons for this are not included in the Vitay files. Based on this, it appears that the collection of testimonies is actually part of the corruption or conspiracy case against Antal Csernovits. Even in its fragmentary form, it provides insight into one of the most important self-defence institutions of 19th-century Hungary: the general insurrection's efforts at regularisation. "I, the undersigned, a guardmaster in the infantry insurgent army of the Honourable Noble Heves County, without any pressure, and motivated solely by my love for my commanders, which keeps me united with them, considered it my duty to inform the honourable captain that [...]"²⁶ These words mark the beginning of the testimony of Antal Friglez, a sergeant (*strázsamester*; ~guardmaster), who later testifies against Csernovits in another part of the trial. The wording reflects the military moral standard that was so characteristic of the regularisation work of the 18th century: the soldier's duty is to preserve the unity of the army and to be loyal to his superiors. A similar motivation can be found in an earlier part of the trial, in the testimony of Vitay, who was convicted of theft: "I [...] György Vitay, with a clear mind and without any pressure, testify now as I did before the entire division [...]"²⁷ The confession made in front of the entire unit serves, on the one hand, as an explanation for the punishment assigned and, on the other hand, as an example for the entire unit. In this way, it is a measure of the regularity of the unit, since the enforcement of military laws is no longer the grace of individual officers, but an option and responsibility given by uniformed frameworks. Military law is a powerful tool for enforcing morality, and it is not just "mischief and pranks" like this that are punished.²⁸ The insurgent trial that took

²⁶ MNL, HVM. Nemesi felkelés iratai (1800–1801). IV-1/g.2. No. 13.

²⁷ MNL, HVM. Nemesi felkelés iratai (1800–1801). IV-1/g.2. No. 12.

²⁸ MNL, HVM. Nemesi felkelés iratai (1800–1801). IV-1/g.2. No. 13.

place in 1801 highlights the importance of regularisation for *Natio Hungarica*. While the knowledge described in the rules and learnt during military training encourages insurgent soldiers to be creative, proactive and brave, the law severely punishes any breaches of discipline. The insurrection, as a second-line self-defence force, tried to mobilise the members of *Natio Hungarica* by reviving nationalist emotions. Therefore, the use of physical punishment was prohibited, and instead tried to increase the fighting spirit through centralised propaganda. Accordingly, the 1801 trial transcript emphasises in every confession that the person concerned is acting out of love for his country, honour and loyalty to his officers, without any pressure. It is clear that in Vitay's trial, as well as in the fragments of Csernovits's papers that have survived, the charges are based on violations of military virtues. Based on the line of thought of this paper and the case file considered to be the central source, we can draw the following conclusions:

1. Following the laws of 1715, the institution of general insurrection became a central topic of the *exercitus hungaricus*. After 1715, it remained the direct military defender of historical Hungarian constitution. Over the following century, the institution continuously sought its proper place between Habsburg and Hungarian laws, until the military reforms begun in 1806 showed a direction for its progress. Based on the 1801 court records, we can conclude that the general insurrection found the military laws applicable in the imperial-royal army to be valid in its own context as well. Accordingly, Vitay's trial was conducted lawfully: the witnesses gave their testimony without pressure before a court military tribunal, as required by law. In the case of the general insurrection, therefore, we can recognise the regularising nature of the 1801 trial, even before the modernisation laws of 1808.

2. The testimony of witnesses and officers contained in the official documents included statements that suggest a moral standard consistent with the military virtues of the age, applicable to both common soldiers and officers. The watchwords of loyalty, patriotism and bravery defined the thinking of the *Natio Hungarica* and those who took part in the general insurrection. Although the Vitay trial itself provides little proof of this, the rules and regulations published in 1808 make it clear that the military virtues of the age were present in Hungarian military thinking.

3. The purpose of military law is to establish a framework for warfare and the moral education of soldiers. The court records indicate that military virtues were considered morally valuable, in line with the social image that the insurrection sought to create. The convicted man, who served as guardian of the constitution of *Natio Hungarica*, brought shame upon the institution by stealing. Given his social status as a nobleman, Vitay could not commit theft, which was considered a moral crime in both military and criminal law, against his ignoble companion. The law of war, which was clearly manifested in the regulations for soldiers, thus became a tool for moral education, which was another sign of the regularisation process of the general insurrection.

It is worth further examining the military virtues required by the insurgent regulations issued in 1808. As well as their appearance in the structured training programme. The training period for insurgents was known to be short during both the 1800 and 1809 mobilisations. Therefore, it may be useful to compare the inculcation of military virtues mentioned in the indictment with the propaganda materials distributed

among the Natio Hungarica, insofar as they appeared widely before or even during the training period. I did not discuss this in my paper, as it did not directly relate to my subject. However, I consider it important to highlight Ágoston Nagy's work on literary history, in which he examined the effectiveness of propaganda literature in 1809.

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