Zeitschrift des Max-Planck-Instituts für europäische Rechtsgeschichte
Journal of the Max Planck Institute for European Legal History

Rechts Rg geschichte

Rechtsgeschichte
Legal History

www.rg.mpg.de

http://www.rg-rechtsgeschichte.de/rg28
Zitiervorschlag: Rechtsgeschichte – Legal History Rg 28 (2020)
http://dx.doi.org/10.12946/rg28/095-118

Rg 28 2020 95 – 118

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»There is no other European state whose constitution consists of so many anomalies.« The Austrian Doctrine of Public Law in the Second Half of the 18th Century

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Abstract

Austria's gradual emergence as a state is not only the result of reform projects driven forward by Habsburg rulers in the second half of the 18th century, but this process of internal integration of the early modern »union of corporative states« (O. Brunner) into an Austrian *Gesamtstaat* was also flanked and legitimised by legal science. The discipline of Austrian public law with representatives like Christian August Beck, Franz Ferdinand von Schrötter, Anton Wilhelm Gustermann or Ignaz de Luca dealt with the basic legal order of the Austrian monarchy. With regard to the method (especially the historical approach) and to the doctrine of legal sources, but also partly with regard to the contents covered, the science of Austrian public law in particular was shaped by the *Reichspublizistik*, id est by the legal science dealing with the public law of the empire. The discipline flourished for decades and was – at least until the mid-1790s – promoted by Habsburg rulers, although the relevant publications and university teaching were closely monitored by central authorities. Its leitmotifs were very Habsburg-friendly: Central issues were the legitimation of the *Gesamtstaat* described as a historically grown »composite state« and the legitimation of absolutism. The Austrian monarchy was unanimously classified as an absolutist state, whereas the privileges and rights of the provincial estates were marginalised or completely omitted. To a great extent, the science of the *ius publicum Austriacum* also shaped the history-based master narrative of Austria's gradual formation into a state and thus continues to have an impact to the present day.

Keywords: Austrian public law, legitimation of absolutism, composite state, historical method in public law, provincial estates, Austrian monarchy

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1 Introduction

»What is Austria?«[1] Such a seemingly banal question was of vital professional interest for legal scholars in the second half of the 18th century. Significantly, a treatise by the lawyer Franz Constantin von Kauz entitled »Observations on the word ›Austria‹«, dealing specifically with this topic, was published in 1760 and went through two new editions over the next twenty-five years.[2] Although the question was not even remotely initiated by historical-antiquarian interest, it was nevertheless of eminent legal significance: What should be the subject of Austrian jurisprudence in general and of Austrian public law in particular? Which space and which constitutional legal order should the doctrine of the Austrian *ius publicum* address?

Indeed, »Austria« as a state is not only the result of reform projects initiated by the Habsburg dynasty, but also the result of a discursive scientific construction. The 18th century marks the development of a specifically Austrian jurisprudential science, which in the case of public law – in contrast to legal scholars preoccupied with criminal or private law – could not tie in with the (interim) results of a codification process, but first had to discover and construct its object of investigation and its legal sources and had to define its spatial extension.

The science of Austrian public law obviously deals with the »constitution« in the sense of the basic legal order of the Austrian monarchy. In order to describe the concrete object of investigation, however, it goes without saying that modern concepts must not be used anachronistically as a basis. Just as the object of investigation »constitution« has to be outlined in accordance with contemporary understanding (and thus broadly),[3] the concept of »Austria« and hence the geographical area constituting our field of investigation also result from the definitions used in the second half of the 18th century.[4] As will be shown, these contemporary definitions are characterised by a considerable fluidity and ambiguity of the concept of »Austria«.

The Austrian doctrine of public law does not emerge in a vacuum; it is embedded in a specific scientific environment which has to be taken into account. This inevitably means that the Austrian doctrine of public law cannot be examined in isolation, but must be embedded in the general development of science and contextualised accordingly.

2 Object of research

2.1 General remarks

At first glance, the existence of an Austrian public law and its corresponding legal science appears to be a paradox in view of the absence of an Austrian »state«: In fact, in the mid-18th century, the Habsburg complex of rule presented itself as an accumulation of numerous geographically dispersed lands – some of which belonged to the Holy Roman Empire – in the hands of a Habsburg ruler.[5] They stretched from the Austrian Netherlands in the far west, through the Austrian heartlands and Bohemia and Moravia, to the Kingdom of Hungary and its *partes annexae* Croatia and Transylvania. Around 1750, the

1 This article summarises selected contents of the monograph »Austria inventa? Zu den Anfängen der österreichischen Staatsrechtslehre« (Schennach [2020]). The quotation preceding the title of the present paper is taken from Liechtenstern (1791b) 5.

2 Kauz (1760).

3 See Mohnhaupt / Grimm (2002).

4 See Walter-Klingenstein (1995).

5 See Vocelka (2001); Mazohl (2018).

Austrian monarchy was a »composite« state, a »monarchische Union von Ständestaaten«[6] (a monarchical union of corporative states) (Otto Brunner), as the individual parts were primarily linked by the person of the ruler and a uniform dynastic order of succession; in addition, the provinces not only had their own estates of varying composition, with different privileges and rights of participation, but also had their own legal systems and, in terms of the history of mentality, their own provincial identity in the absence of an »Austrian identity« detached from the dynasty. In the middle of the 18th century, »Austria« was primarily understood as the Archduchies of Austria above and below the Enns, today's Lower and Upper Austria.

The reforms of the second half of the 18th century, especially those by Maria Theresa and by Joseph II, pushed forward the process of internal integration of this heterogeneous union of corporative states under the target categories of »uniformity«, »unification« and »equalisation«, in order to forge them into a centralised state.[7] This was done, for example, by the consistent repression of the estates and their privileges, while at the same time increasing the ruler's absolutist power and strengthening the central administration. A further means of internal integration was the unification of law that was pursued from 1753 onwards.[8] This process was crowned with success as early as 1768 in the field of criminal law and, after the first interim results in the 1780s, finally led to the General Civil Code of 1811 in the field of private law.

This fundamental process of internal integration met with fierce resistance during the period under investigation and was not yet complete at the beginning of the 19th century. Even the adoption of the title and dignity of an Emperor of Austria in 1804 did not change this, as the patent of proclamation expressly stated that the »constitutions and conditions of the independent states should remain unchanged«.[9]

It would be quite surprising if jurisprudence did not comment on this process leading to the gradual formation of an Austrian state, as the current status of research in legal history seems to suggest. In fact, on closer analysis, the opposite is true: Legal scholars dealing with the *ius publicum Austriacum* were extremely productive during the period under study.[10] The beginnings of an Austrian doctrine of public law – which, unlike some of its predecessors, no longer primarily adhered to the rights of the ruling dynasty, but to the territorial substrate dominated by it[11] – can be seen in the work of Christian August Beck in the mid-18th century. In addition, and without going into detail, we should mention the work of Franz Ferdinand von Schrötter and the significant production peak at the beginning of the 1790s.

The monographic works just mentioned are not the only ones that (as the titles already indicate) deal with the *ius publicum Austriacum*. In addition, there have been numerous treatises on Austrian »statistics« in the sense of a comprehensive »study of the state«,[12] in which the basic legal order of the Austrian state was also discussed.[13] Furthermore, a large number of expert opinions on specific questions of public law have only been preserved as handwritten manuscripts in archives.[14] Moreover, numerous published writings and pamphlets on special problems of public law flanked every military and/or diplomatic conflict since the 17th century. They attempted to underpin the ruler's own legal standpoints and were sometimes written by prominent experts.[15] To illustrate the dimensions of this text genre, the War of Bavarian Succession in 1778/79 led to a veritable flood of more than 200 publications.[16]

2.2 *The fluidity of the concept of »Austria«*

The potential vagueness of the term »Austria« in the 18th century posed a theoretical problem for this branch of Austrian jurisprudence – one that

6 Brunner (1965) 447.
7 See Brauneder (2009) 79–107.
8 See, for instance, Máthé/Ogris (eds.) (1996); Brauneder (2014).
9 Cf. Politische Gesetzsammlung/Collection of administrative laws n. 20/1804; Brauneder (2008) 205–206.
10 Cf., in particular, Beck (1750); [Beck] (1752); Schrötter (1762–1766); Schrötter (1775); Klemens (1782).
11 See Schennach (2018) 4–5.
12 See Van der Zande (2010).
13 Cf. Liechtenstern (1791b); De Luca (1792); Gustermann (1793); Kropatschek (1794).
14 For manuscripts kept in the Austrian State Archives, see Böhm (1873) 369–370 (Index sub voce ›Österreich – Staatsrecht‹).
15 See Arndt (2013); Gestrich (1994) 194–200.
16 Cf. Nicolai (1779a); Nicolai (1779b); Anonymus (1779) 16–24.

at the very least had to be dealt with implicitly (through the systematics of its presentation) and in some cases even explicitly. Thus Anton Wilhelm Gustermann first of all explains: »In the political sphere, Austria is taken very broadly, namely for all hereditary lands that the archduke possesses both inside and outside of Germany.«[17] In his description of Austrian public law, he subsequently focuses on the Austrian hereditary lands; however, he does so without ignoring the other Habsburg dominions like the Kingdom of Hungary, which are instead repeatedly treated in a complementary and sometimes contrasting manner, although not with the same intensity.

The ambiguity in speaking of »Austrian public law« thus correlates with the polysemic character of the concept of »Austria«: First of all, »Austrian public law« can encompass the *ius publicum specialissimum* of the entire Habsburg complex, as can be seen, for instance, from the titles of Beck's works.[18] Consistent with this, the entirety of the Habsburg possessions, including Hungary, is regularly referred to by state law experts as the »Austrian Monarchy« or the »entire Austrian state« (*österreichischer Gesamtstaat*). In addition, Hungary can be separated from »Austrian public law«: Accordingly, a soon flourishing, independent Hungarian doctrine of public law developed in parallel.[19] By the way, this doctrine, too, was based on its Austrian counterpart in terms of method and content and thus also proves to be heavily influenced by the *Reichspublizistik*, that is, the science of public law of the Holy Roman Empire. Apart from Hungary, other parts of the *Monarchia Austriaca* could also be dealt with separately, for example, the Austrian Netherlands by Patrice-François de Nény.[20]

2.3 *The scientific context of the* ius publicum specialissimum Austriacum

Regardless of the object of analysis that is »Austria« – however fluid and diverse it may be – the scientific development remained embedded in the history of public law. First of all, and as previously mentioned, we cannot simply project our modern legal concepts and terminology anachronistically onto the 18th century. Even the German term *Staatsrecht*, which is central for us today, first came into use in the middle of the 18th century and is an expression of an inner-disciplinary differentiation of the *ius publicum* and of the corresponding legal science: The doctrine of public law specifically deals with the legal foundations of the state, with the »constitution«, which by no means can be equated with a constitution in a modern sense, a constitutional charter. In continental Europe, the modern phenomenon of »constitution« can only be observed in France and Poland from 1791 onwards.

The *Staatsrechtslehre* dealt with the constitutional basis of a state but was not a homogenous academic discipline.[21] The *Allgemeine Staatslehre* (*ius publicum generale*), the natural-law branch of the *ius publicum*, presented the coming into being, the essence and the purpose of the state, of state power and the relations between ruler and subjects in a general way, whereas the *Besondere Staatsrecht* (*ius publicum speciale* or *particulare*) treated the positive public law of an individual state. With regard to the Holy Roman Empire, the *Besondere Staatsrecht* dealt with the public law of the Holy Roman Empire itself, and this discipline, which had emerged at the beginning of the 17th century, was called *Reichspublizistik*. In addition to the *Reichspublizistik*, early on in the 18th century, legal science started to work on the public law of individual territories of the Holy Roman Empire.[22] In fact, »Austrian public law« was one of the so-called *Territorialstaatsrechte* of the Holy Roman Empire, i. e. the public law of a territory or, as in the case of the Habsburg Monarchy, of a complex of territories. In the first decades of the 18th century, the scientific preoccupation with these *iura publica specialissima* was largely based on the theory put forward by Johann Jacob Moser.[23] Moser's theoretical foundation led to a number of works on the *iura publica specialissima* of various territories in the Holy Roman Empire and

17 Gustermann (1793) XXXVI.
18 Beck (1750); [Beck] (1752).
19 See chapter 7 below.
20 Nény (1786).
21 See the standard work of Stolleis (1988); for a survey in English Stolleis (2017) 27–44; furthermore, Wyduckel (1984); Friedrich (1997) 11–142; Willoweit (1975).
22 See Willoweit (2011); Willoweit (1991) 109–112; Friedrich (1997) 133–135.
23 Cf. Moser (1739a); Moser (1739b); Moser (1738); a list of Moser's publications on the *iura publica specialissima* of various imperial estates can be found in Rürup (1965) 262–263; see also Stolleis (1988) 263–264; Willoweit (2011) 341.

especially in the Austrian provinces, since Austrian public law was by far the most thoroughly discussed *ius publicum specialissimum* throughout the Holy Roman Empire. Particularly with regard to the method (especially the historical approach) and the doctrine of legal sources, but also partly with regard to the contents covered, the doctrine of the *iura publica specialissima* and thus also of Austrian public law was shaped by the *Reichspublizistik*.

2.4 Status of research

For a variety of reasons, neither legal-historical nor historical research has so far addressed the topic of the beginnings of the science of Austrian public law. While this might come as a surprise given the sheer number of publications that deal with Austrian history in the second half of the 18th century from a wide variety of perspectives, the gap in the research literature has yet to be addressed.

While Michael Stolleis otherwise consistently includes Austrian developments up to the end of the Holy Roman Empire in his monograph, the Austrian science of public law is not mentioned at all in the first volume of his »History of Public Law«.[24] The same holds true for Willoweit's recent treatise on the *iura publica specialissima* in the Holy Roman Empire, which likewise does not pay any tribute to Austrian authors.[25] Even when these are mentioned in works of German legal history, they are classified as »scientifically insignificant«.[26] However, it must be taken into account that the *iura publica specialissima* have generally received little attention in legal historical research to date, whereas both early modern *Reichspublizistik* as well as the *Allgemeine Staatslehre* under the influence of Enlightenment ideas represent intensively cultivated fields of research.[27]

Representatives of Austrian legal history have not closed this gap: Even the leading representatives of Austrian public law are only sporadically and exceptionally mentioned.[28] There are several explanations for this state of affairs: The authors of the relevant works on public law at the time are almost always second- or even third-tier lawyers. Even if the names of some of the scientific protagonists such as Franz Ferdinand von Schrötter, Ignaz de Luca or Joseph Kropatschek are quite familiar, they are at any rate overshadowed by prominent legal scholars such as Karl Anton von Martini, Joseph von Sonnenfels or Franz von Zeiller, to whom the history of science has devoted sufficient attention.[29] In addition to the lesser known protagonists, the (albeit only at first glance) less appealing – legally speaking – contents are undoubtedly another reason for the neglect of the beginnings of the Austrian science of public law, whose authors, for example, sometimes spend page after page on the dynastic order of succession, the princely court and its composition, as well as on its titles and coats of arms. These texts have to be cross read in order not to dismiss them as uninteresting. The limited interest is also probably due to the discontinuity of the scientific discipline. After all, the beginnings of an Austrian doctrine of public law have not had any distant and lasting effects up to the present: The (although merely temporary) constitutionalisation of 1848/49 and finally the definite constitutionalisation in the year 1867 brought about a break in the history of science. Due to the radically changed constitutional framework, the newly emerging legal science of public law, which now dealt with the constitutional state, hardly resembled the discipline of the second half of the 18th century in any way.

3 Methods, doctrine of legal sources, contents: the influence of the *Reichspublizistik*

3.1 General remarks

In general, the science of the *ius publicum specialissimum* was nothing other than a derivative of the *Reichspublizistik*.[30] This finding also applies to the Austrian science of public law in the 18th century. It did not differ from its mother discipline with regard to the applied historical method and to the doctrine of legal sources, and only partially with regard to underlying structure

24 Stolleis (1988).
25 Willoweit (2011).
26 Friedrich (1997) 166.
27 See, for instance, Schelp (2001).
28 See, for instance, Brauneder (1996) 203, 207–210.
29 It is significant that of all legal scholars dealing with the »ius publicum Austriacum«, only Schrötter is mentioned in Brauneder (ed.) (1987).
30 See Willoweit (2011) 339; Wyduckel (1984) 171–174; Stolleis (1988) 186, 243, 301.

and content. In comparison to the exploding literature on imperial public law, however, jurists were very hesitant to turn their attention to the *Territorialstaatsrecht*: From the beginning of the 18th century till the end of the Holy Roman Empire in 1806, only about two dozen out of several hundred existing *Territorialstaatsrechten* had been monographically dealt with. Contemporaries attributed this reluctance above all to the resistance of the princely rulers: The legal description of the basic legal order of a territory could have made it possible to examine the conformity of theirs actions with the existing fundamental laws and thus set limits to the arbitrary rule of the princes.[31]

This was, however, not the case in Austria. Until the early 1790s, the Habsburgs vigorously promoted the study of Austrian public law, which had already been integrated into the curricula at Austrian law faculties as a teaching and examination subject in 1752.[32] Of all the *iura publica specialissima* of the territories of the Holy Roman Empire, the Austrian *ius publicum* was by far the most intensively dealt with, and this despite – or precisely because of – the increased demands arising from the character of the Habsburg dominion as a »composite state«. The Habsburg dynasty had great expectations with regard to the science of Austrian public law, and these expectations were not disappointed by most legal scholars during the period of investigation.

The influence of the *Reichspublizistik* is particularly evident with regard to the method (the historical approach to the object of investigation), the doctrine of legal sources, but also partly with regard to the contents dealt with. Moreover, the concept of »constitution« used by Austrian authors simply cannot be understood without the context of that time.

3.2 History as an auxiliary science of public law

Methodologically, history featured prominently in *Reichspublizistik* as well as in the science of the *iura publica specialissima*. Programmatically, for example, Schrötter stated in 1775, »That both the general history of the Empire and especially the history of the Austrian lands must be regarded as the key to public law is also beyond doubt everywhere.«[33] This sentence reflects the prevailing doctrine of the time, and this doctrine went on to shape the metaphor of history as the »eye of public law«.

The successive historicisation of imperial public law, which began in the 18th century at the universities of Halle and Göttingen and is associated with figures such as Johann Peter von Ludewig and Nikolaus Hieronymus Gundling, resulted in the establishment of *Reichshistorie* (»history of the empire«) as a new subject within the curricula of law faculties. *Reichshistorie* did not attempt to cover all aspects of historical events; instead, it focused only on those relevant to constitutional history, the so-called »pragmatic history« (*Pragmatische Geschichte*) or »special history« (*Spezialgeschichte*).[34]

Historical contextualisation had to be of central importance both for the interpretation of the *leges fundamentales* (the fundamental laws), which were, after all, usually centuries-old documents, and for identifying customary law in the field of public law. What applied to *Reichspublizistik* and to *Reichshistorie* applied equally to the *ius publicum* of a territory of the Holy Roman Empire and to the so-called »pragmatic« or »special history« of the respective territory. The »special history« of a territory was not to be seen in opposition to the *Reichshistorie*, but rather as having a complementary relationship to it. After all, the *Reichshistorie* was, to a considerable extent, the result of the totality of the »special histories« of the individual territories. Conversely, the developments at the level of the Holy Roman Empire had manifold repercussions on the »special histories«. Johann Stephan Pütter pointed out that this interweaving of territorial and imperial history was particularly important for Austrian history in view of the importance of the Habsburgs for imperial politics. The outstanding methodological significance of history as *ancilla jurispudentiae* explains why the president of the *Studienhofkommission* (court's commission on study affairs), Gottfried van Swieten, stated in 1790, »Actually the public law of the [Austrian]

31 See Willoweit (2011) 342–343.
32 See chapter 6 below.
33 Schrötter (1775) 14.
34 See Hammerstein (1972); Grothe (2006); Stolleis (1988) 302; Hammerstein (1992) 83.

Monarchy is nothing other than the completion or extension of the history of the Austrian states«.[35]

The relevant literary production was considerable,[36] whereby I would like to single out Schrötter to illustrate this point. In his »Abhandlungen aus dem österreichischen Staatsrecht« (»Treatises on Austrian Public Law«), which appeared in five volumes, historical proofs comprise more than half of the text. In addition to several works that have only been handed down in handwritten form,[37] he presented his »Österreichische Staatsgeschichte« (»Austrian State History«), which only covered the period up to 1156,[38] and initiated a journal »Österreichische Geschichte« (»Austrian History«), which appeared from 1779 to 1781.[39] Compared to Schrötter's opus, the purely quantitative share of historical explanations in later works on Austrian public law, such as those by Anton Wilhelm Gustermann or Ignaz de Lucas, declined; however, this was primarily due to the fact that one could essentially rely on Schrötter's preliminary work. Moreover, de Luca was the first to present a complete »pragmatic history« of Austria in 1797, a history that continued to the author's present day.[40]

The importance of the historical method is particularly evident in the discussion of the Pragmatic Sanction and, inseparably linked to it, of the dynastic succession in the Austrian lands. This subject was a central theme of Austrian experts in public law and was also dealt with in a large number of monographs on public law, as well as in disputes and pamphlets, whereby two peaks of literary production can be diagnosed:[41] The first falls into the years around 1732, when the Pragmatic Sanction was ratified by the Holy Roman Empire; the second covers the period after the death of Charles VI and the outbreak of the War of the Austrian Succession in 1740, when the alleged invalidity of the Pragmatic Sanction combined with the assertion of its own inheritance claims constituted one of the essential bases of justification of the anti-Habsburg coalition. Accordingly, for the Austrian side, the legal proof of Maria Theresa's undisputed right of succession provided the central argument for stigmatising the military opponents as aggressors. Therefore, the central task of Austrian legal scholars was to prove that the Pragmatic Sanction did not contain anything new, but only established and, if needed, clarified the dynastic inheritance law that was already in force.[42] The intention is clear: Even if the Pragmatic Sanction is questioned or not recognised, the principles of primogeniture, the indivisibility of the Austrian lands and female succession in the event of the extinction of the male line of succession are still valid due to the Austrian *leges fundamentales* and customary law.[43]

However, the Austrian »special history«, which is closely linked to the theory of public law, also had an impact far beyond the 18th century, far beyond individual questions of public law, in that it had a decisive influence on the master narrative of the historical genesis of the Austrian state as a whole.[44] It was a core task of the Austrian doctrine of public law and its historical method to fathom and present the circumstances of the acquisition of the individual Austrian lands by the Habsburg dynasty over the course of history in order to prove the legitimacy of the dynasty's rule. The *Gesamtstaat* thus originated from the nucleus of the Archduchy of Austria as, according to de Luca, »the actual mother state«, through gradual growth and the successive acquisition of further lands by the Habsburgs. It is thus the exact same master narrative that was continued in the 19th century under changed constitutional conditions, and which ultimately continues to have an effect up to the present day.

3.3 The doctrine of legal sources

3.3.1 *Leges fundamentales*

The classification of legal sources by the Austrian doctrine of public law essentially corresponds to the *Reichspublizistik*, although striking deviations and gaps can be identified in some areas.

35 Austrian States Archives (henceforth ÖStA = Österreichisches Staatsarchiv), Allgemeines Verwaltungsarchiv (henceforth AVA), Unterricht und Kultus, Studienhofkommission, Part 1, Carton 14, fol. 269r–270r.

36 See Mazohl / Wallnig (2009).

37 Cf., for instance, ÖStA, HHStA, Handschriften Weiß 37, 38, 41.

38 Cf. Schrötter (1771).

39 Schrötter (1779); the following two volumes were published by Adrian von Rauch.

40 Cf. De Luca (1797).

41 Cf. Pütter (1758) 125–130.

42 Gustermann (1793) 130.

43 Cf. among others Schrötter (1766) 247.

44 See Schennach (2015) 8–19.

The term *leges fundamentales*, which had been used throughout Europe since the 16th century to denote »fundamental laws«, was adopted for the written positive sources of Austrian public law. Irrespective of the term »lex«, these fundamental laws encompass a variety of legal forms of regulation such as privileges, international treaties or dynastic house rules.[45] These established, even if only in a selective and not in a comprehensive way, the basic legal order of a territory or reign, and they often aimed (for example, by specifying the rights of the estates) at limiting princely power. Yet this restriction of ruling power by means of the *leges fundamentals* is precisely what Austrian legal scholars were not seeking. On the contrary, they proved central to the legal legitimation of the absolutist power of the monarch.

In fact, one of the specific challenges confronting the Austrian theory of public law was that such *leges fundamentales* could be identified on two levels: There were *leges fundamentales* on the level of individual Habsburg territories like Styria or Lower Austria and there were *leges fundamentales* that applied to all or several Austrian lands, which were called, for example, the »main fundamental laws of the Empire«[46] and which, in addition to international treaties, dynastic rules and the last wills of rulers, included the Austrian *Freiheitsbriefe* – the »iura et libertates Austriae« – as a core element. These were a complex of five imperial charters from the 11th to the 13th centuries, forged or falsified during the rule of Rudolf IV in 1358/59, the most important element of which was the forged document of Frederick I from 1156.[47] Although the *Freiheitsbriefe* regulated above all the legal status of the Duchy of Austria as part of the Holy Roman Empire, they also became a central point of reference for the formation of an Austrian state and for the legitimation of absolutism. A provision within the most important document of 1156, stating that no order of the duke in his lands could be changed by any other authority, made it possible in a first step to define the *Landeshoheit*, the legal position of the princely ruler, as a comprehensive, unrestricted power. The interpretation turned this passage into the Austrian version of the Roman law »quod principi placuit, legis habet vigorem«. A confirmation by Emperor Charles V in 1530, which extended the territorial scope of the Austrian *Freiheitsbriefe* from the Archduchy to all Habsburg possessions, allowed in a second step the detachment of the so-defined *Landeshoheit*, conceived in an absolutist sense, from the Archduchy and its transfer to the whole Austrian monarchy. The only thing that then remained to be done was to set out the acquisition titles for the other lands, which was of course done in a strictly historical manner.[48]

In retrospect, the concept has two weaknesses: Since the 19th century, we definitely know that the Austrian *Freiheitsbriefe* were forged or falsified documents. However, given that they are the pivotal point of the argumentation, their authenticity, which was repeatedly called into doubt in the 18th century, was defended tooth and nail by Austrian legal scholars.[49] Moreover, their scope of application does not extend to Hungary, which is why Austrian legal scholars cannot simply ignore the *leges fundamentales* of the Hungarian estates.[50]

But besides Hungary, such an approach cannot take into account the wide range of *leges fundamentales* in the territories under Habsburg rule. After all, fundamental laws also existed at the level of the individual provinces of the Habsburg dominion; these were essentially princely privileges granted to the estates of the provinces from the 12th to 16th centuries – from the Styrian *Georgenberger Handfeste* to the Tyrolean *Landlibell* – which endowed the provincial estates with special privileges.[51] These so-called *Landesfreiheiten* represented a legally binding restriction of princely power and were interpreted as treaties by the estates. And from the contractual nature of these treaties it follows that they could not be changed or revoked without the consensus of both parties involved in their creation, namely the princely

45 See among others Mohnhaupt (2000b) 228–230; Mohnhaupt (2000c) 46–63; Mohnhaupt / Grimm (2002) 62–66.

46 De Luca (1792) 170 (»Hauptgrundgesetze des Reichs«).

47 See the most recent publication Just et al. (eds.) (2018).

48 These two steps were first outlined by Schrötter in his »Treatises«. At that time, however, he did not explicitly combine them. This only happened in his »Grundriß« (»Sketch of Austrian public law«) (Schrötter [1762]; Schrötter [1765]; Schrötter [1775] 81–86).

49 See Schennach (2014) 136–138.

50 See chapter 7.3 below.

51 With further literature references Schennach (2010) 638–640.

ruler and the estates.[52] Austrian legal scholars view this in quite different terms: The estates themselves are mentioned and occasionally their composition, differing from country to country, is discussed: However, the *leges fundamentales* of the individual territories are usually passed over tacitly and thus the participation rights of the estates remain untreated. When they are mentioned at all, as Schrötter does, their contractual character is denied: They are depicted in terms of privileges granted by grace and thus can be changed or even outright abolished by the ruler.[53] In the case of Hungary, however, the situation is different: Here even the most fervent adherents of absolutism among legal scholars cannot avoid pointing to the *leges fundamentales* of the Hungarian estates and their restrictive effect on the rule of the country.

3.3.2 Customary law (*Herkommen*)

The other positive source of public law besides the fundamental law was, according to the unanimous opinion, in analogy to the *Reichsherkommen* on the level of the Holy Roman Empire, the *Herkommen*. This term described the customary law in the field of public law. In this respect, the Austrian doctrine of public law did not differ from the rest of the German-speaking world and from the *Reichspublizistik*.[54] Since the *Herkommen* could be proven by appealing to historically verifiable legal acts (thus the importance of the historical method), it could therefore be used as a basis for decisions in matters of public law. It will be shown later that Austrian legal scholars were concerned with reconstructing the *Herkommen* in a prince-friendly sense. While they aimed – to use Strohmeyer's words – at »disciplining the past«,[55] the legal-discursive construction of the *Herkommen* never exceeded the limits of what could be positively proven in history. Apart from this, the difficulties in proving and interpreting the *Herkommen* and the resulting need for methodological precision were well known to all legal scholars. Thus Johann Jacob Moser underlined that »often the *Herkommen* was merely pretended, or what had happened and what had been omitted was twisted and interpreted according to a party's own advantage and intentions«.[56]

3.3.3 Other legal sources

As far as other possible sources of public law are concerned, fundamental divergences between Austrian authors and the doctrine of the *ius publicum* in the rest of the German-speaking world become apparent. These are not due to a lack of awareness of the relevant literature. Rather, the ignoring of other sources of public law is probably due to a fundamental rejection based on political grounds. Although these were considered »secondary sources« by most authors of the *Reichspublizistik* and were to be used in cases where the positive law was incomplete, Austrian authors consistently ignored »analogy« and »natural law« – in particular the *Allgemeines Staatsrecht*.[57]

The suppression of these sources could be seen as an expression of a deliberately positivist approach by Austrian legal scholars. It is more likely, however, that it is a deliberate decision made for political reasons: All experts in Austrian public law were aware of how politically explosive their statements could be and how meticulously they were reviewed by the central authorities to see if they were consistent with the positions of the Habsburg court. In comparison with the positive sources (fundamental laws and *Herkommen*), the use of analogy and *Allgemeines Staatsrecht* would have opened up potential gateways for interpretation contrary to the interests of the Habsburg ruler. The limitation of the sources of Austrian public law was thus aimed at limiting the possibilities of interpretation.

Therefore, it is not astonishing that over thousands of pages, works on Austrian public law hardly ever refer to the *Allgemeines Staatsrecht*. The only exception is Anton Wilhelm Gustermann.[58] Gustermann concedes that even in an unlimited, absolutist monarchy like Austria, the

52 See Dreitzel (1992) 45–46; Mohnhaupt (2000c) 47–63; Schennach (2010) 106–109.

53 Schrötter (1763) 69–70 (quotation 70). Schrötter clearly fits into the fervently absolutist tradition of German natural law (cf. Rolin [2005] 85–86).

54 Cf., for instance, Bachmann (1784) 11; Roth (1788) 19–20; Willoweit (1975) 351, 353; Schömbs (1968) 239–241.

55 Strohmeyer (2002); Strohmeyer (2006) 305–306.

56 Moser (1753) 13.

57 See Schelp (2001) 186–187; Klippel (2013) 429.

58 Cf. Gustermann (1793) 232, 234.

obligations and rights of the *Allgemeines Staatsrecht* would remain in place, but without this being further elaborated. When dealing with the protection of property, Gustermann refers, in the absence of a positive norm, to the *Allgemeines Staatsrecht*. According to him, expropriations were only permissible in an emergency if and to the extent that the common good required them, and only against compensation. This view corresponded to the teaching of natural law at that time.

4 Leitmotifs of the Austrian science of public law

4.1 The legitimation of absolutism

We have already heard how Austrian legal scholars conceived, in a first step and on the basis of the charter of 1156, the *Landeshoheit* in the Archduchy of Austria as unlimited and, in a second step and thanks to the charter of confirmation of 1530, transferred it to the level of the entire Habsburg dominion (as far as it belonged to the Holy Roman Empire). At the same time, as already shown, the privileges of the estates of the individual Austrian hereditary lands were consistently ignored.

This approach prepares the ground for the unanimous classification of the *Monarchia Austriaca* as an »unrestricted monarchy«, in which the monarchical authority is not subject to any legal restrictions. De Luca, for example, expresses this in an impressive fashion, while at the same time his remarks show how positively the concentration of state power in the hands of the monarch is perceived because of the peace-keeping function assigned to it:

> »All [...] fundamental laws declare Austria to be an absolute monarchy, in which the reigning Prince alone is entitled to make laws and to administer rights. This essential constitution has also until now [...] scared away all discord in the Austrian state, and maintained inner peace.«[59]

This basic orientation of Austrian science of public law corresponds to the fact that legal limitations of the ruler's power are either not discussed or, if more than one interpretation of a legal issue is possible, the interpretation that is most advantageous to the ruler's power is chosen without exception. Austrian legal scholars always maintain the presumption of unlimited monarchical power. Schrötter expresses this tendency as follows:

> »Since the law of reason grants a ruler alone all power and authority necessary for the government of the state, but on the other hand imposes on the subjects an unquestioning obedience in all respects, the clear consequence of this is that the estates and subjects, if in some cases they are to be entitled to the relaxation of obedience or to participation in the government, must clearly prove this as an exception to the general rule […].«[60]

Alleged exceptions, if they were claimed by the estates, therefore, had to be proven, e. g. by means of the legal source *Herkommen*, whereby very high requirements were set and thus obstacles were erected.[61] Liechtenstern expressly emphasises the advantages of an unlimited monarchy when he states that »the unlimited power of a single person is quite compatible with the best of the people, because the unlimited ruler finds less reason to exercise an arbitrary will than he has reasons to faithfully care for the general best.«[62]

Even apart from the previously mentioned privileges of the estates, which the authors deliberately omitted, limitations of the absolute monarchical power were hardly ever discussed. The few and very vague restrictions resulting from natural law have already been mentioned. Significant blank spaces are also present: The idea of the separation of powers, as developed in Montesquieu's »De l'esprit des lois« (1748), is not even mentioned due to its incompatibility with the concentration of state power in the person of the monarch. This is all the more noteworthy given that Montesquieu's text, unlike the »Lettres persanes«, had not even been banned by Austrian censors.[63]

59 de Luca (1798) 223.
60 Schrötter (1763) 33.
61 Cf., for instance, Gustermann (1793) 134–135.
62 Liechtenstern (1801) 392.
63 See Vierhaus (1987); see the database on https://www.univie.ac.at/censorship/.

Significantly, there is hardly any explanation of the legal status of subjects vis-à-vis the state, just as the term »citizen« is hardly used despite its popularisation in the 1790s in view of the emancipatory, even revolutionary potential attributed to it.[64] At best, the doctrine of public law emphasises the uniform submission of all subjects to the sovereign power. In this respect, all inhabitants of the Austrian lands are in fact legally equal: equal in their indiscriminate subordination to the Habsburg ruler. This is directed primarily against the nobility and the high clergy: Their function as landlords in the manorial system is recognised, but this does not change their subject status in relation to the Habsburg ruler.[65]

In the strictly absolutist Austrian doctrine of public law, there is no place for legally defined individual spheres of freedom that are exempt from state interventions, as they were developed in the 18th century in accordance with natural law, and which were called »human rights« or »fundamental rights« from the middle of the century on.[66] When such individual rights guaranteed by natural law are discussed in the Austrian lands, this has been done since the 1790s in the context of the work on the codification of private law, and these freedoms were strictly limited to the sphere of private law.

It is also striking that Austrian authors of public law do not even address abstract limits of monarchical power, which are broadly recognised by the doctrine of natural law and which result from the state purpose of the common good and the »happiness of the subjects«. The one exception here is Joseph von Sonnenfels. In his »Sätzen aus der Polizey, Handlung und Finanz« (»Principles from Police, Commerce and Finance«), first published in 1765, he develops, in accordance with contemporary natural law and following a long tradition, the concept of the state purpose of the »common good« and of »general happiness« as state purpose and at the same time as the theoretical limit of state powers.[67] Although the orientation towards the common good represents a theoretical barrier to state or princely action, it is of no significance in concrete terms. According to Sonnenfels, it remains exclusively reserved to the monarch as the »supreme authority« to concretise the »common best« in individual cases and to determine how it is to be realised. Sonnenfels, too, has no interest in the limitation of absolutist power. The same applies to Sonnenfels' use of the term »civil liberty«, which is based on natural law. The latter was used from the mid-18th century onward to designate the residual of individual freedom in the »status civilis« in the wake of the socialisation of man in the state after the conclusion of the social contract.[68] With him, »civil liberty« consists in the legal freedom to develop unhindered in areas that are neutral to the purpose of the state. According to Sonnenfels, however, this does not lead to the definition of constant and inviolable spheres of freedom of the citizen. For just as the state has a monopoly on the interpretation of the common good, so »apart from the regent, no one can determine whether the action is really indifferent [to the purpose of the state].«[69]

The provincial estates were well aware of the dangers of the suppression of their privileges by the Austrian doctrine of public law. Significantly, the estates of Lower Austria lodged a formal protest against de Luca's work »Vorlesungen über die österreichische Staatsverfassung« (»Lectures on the Austrian Constitution«) immediately after its publication. In particular, the estates complained that the author, by describing Austria as an »unrestricted monarchy«,[70] omitted the fundamental laws of the Austrian hereditary lands, although these had been confirmed by the emperor and his ancestors in uninterrupted order. In a reprint, therefore, the estates' *iura et libertates* should be presented as inviolable.[71]

64 Stolleis (2011) 92.
65 Cf., for instance, de Luca (1798) 248, 253; see also Willoweit (1975) 280.
66 See Klippel (1976); Schmale (1997).
67 See Simon (2001) 129–146; Simon (2004), esp. 508–524; Schennach (2010) 688–711.
68 Sonnenfels (1765) § 64; see Link (1979) 148; cf. also at Martini (1783) 47.
69 Sonnenfels (1765) § 66 footnote; very similar Franz von Zeiller, see Hofmeister (1982) 1026.
70 De Luca (1792) 187.
71 ÖStA, AVA, Unterricht und Kultus, Studienhofkommission, Part 2, Carton 878, Pos. 1, Zl. 275 ex 1793 (supplement).

4.2 The legal-dogmatic construction of the Gesamtstaat

In addition to the legitimation of absolutism, another crucial topic of the *ius publicum specialissimum Austriacum* requires consideration: the legal construction of the *Gesamtstaat*. At first glance, the dynasty is undoubtedly a suitable starting point for the development of Austrian public law. That was the path the forerunners of a *ius publicum Austriacum* in the 17th and in the early decades of the 18th century such as Raid, Inzaghi, Garb, Bell and Stein had taken:[72] They placed the Austrian *Freiheitsbriefe* at the centre of their analysis, interpreted them as privileges granted to the Habsburgs and, from this point of view, paid correspondingly little attention to the changing territorial substrate of Habsburg rule. This path ultimately proved to be a dead end: To define and write public law primarily as the right of the dynasty simply does not lead beyond the »monarchical union of corporative states« and in any case proves to be unsuitable to legally legitimise the Habsburgs' unification and reform project in the second half of the 18th century.

It has already been shown that the Austrian doctrine of public law was, within the framework of the »pragmatic historiography«, strongly involved in the formation of the master narrative of Austria's gradual becoming a centralised state by annexing more and more newly acquired territories to the original core area of Habsburg rule, the Archduchy of Austria.

But the unitary state thus created is also legally constructed and legitimised. The basic outlines of the legal narrative with the two steps »definition of monarchical power in an absolutist sense« and »projection of the monarchical power thus circumscribed onto the level of the *Gesamtstaat*« have already been explained.

But how was the unitary state dogmatically described? In this context, we must remember that the still common theories of confederations and state unions are only dogmatic constructions of the 19th century, which is why we cannot expect to encounter terms such as »federal state«, »confederation of states«, »personal union« and »real union«. During the first decades of the period under investigation, we remark a certain nonchalance by Austrian legal scholars in dealing with the problem of the *Gesamtstaat* versus historically grown »provinces«, whereby the latter – in accordance with the definition of a state under natural law – are also referred to as »states«. Moreover, a variety of denominations persist, both for the state as a whole and for the individual provinces. The countries can be addressed as »(hereditary) states«, »(hereditary) lands« or as »provinces«. Certain nuances can be grasped: By ›hereditary lands‹, especially the German hereditary lands, the territories belonging to the Holy Roman Empire are meant (and the Hungarian lands are excluded). The *Gesamtstaat* can be called either »Austrian monarchy«, »Austrian state« or simply »Austria«. Its baptism as »Empire of Austria« took place in 1848 by decree of the first constitution. Fundamental legal reflections on the relationship between the state as a whole and its parts are still missing until the end of the 18th century: One and the same work even speaks of the »Austrian state« in the singular and of the »Austrian states« in the plural.[73]

Ignaz de Luca first introduced the keyword of the »composite state« into the discussion in 1791, when he stated, »The Austrian state is composed of various countries, including the Archduchy of Austria, which is to be regarded as the actual mother state«.[74] A few years later he explained, »The Austrian Monarchy is composed of independent states and of German states belonging to the Holy Roman Empire«[75] (whereby »independent states« refers to the Habsburg territories lying outside the borders of the empire). Two years later, without reference to de Luca, Kropatschek also spoke of the »countries of which the Austrian state consists«.[76] This classification as a »composite state« had already become generally accepted in the first decade of the 19th century. Bisinger explained the situation as follows:

> »Austria is a hereditary monarchy consisting of many states and lands which, although very different from one another, united under the sceptre of a common ruler, only constitute a

72 Schennach (2018) 4–5.

73 Cf. among others Liechtenstern (1791a), for instance, 14, 282 (»östreichischer [*sic*] Staat«), 203, 276 (»östreichische [*sic*] Staaten«).

74 De Luca (1792) 98.

75 De Luca (1797) VI.

76 Kropatschek (1794) 1.

> large body of state which, according to the name of the original country, bears the title of an Empire.«[77]

The metaphor of the body of states symbolised the composite character and was also used in the patent which proclaimed the adoption of the title of »Emperor of Austria«.[78] This remained the prevailing view of the constitutional nature of the Austrian monarchy until the middle of the 19th century.[79]

Admittedly, the doctrine of the »composite state« and the »body of states« was not an original achievement of the Austrian science of public law, but had been adopted from the *Reichspublizistik*. The metaphor of the »body of states« and its application to the Austrian monarchy have a long tradition and were already used in a similar form by Philipp Wilhelm von Hörnigk in 1684.[80] Here, however, the body metaphor is not yet used in a legal sense, but serves as an illustration.

In the dogmatic sense, the doctrine of the »state composed of states« was essentially developed by academic followers of Christian Wolff to describe the legal character of the Holy Roman Empire. Later on, the theory was popularised by Johann Stephan Pütter.[81] In 1788 Johann Richard Roth, referring to Pütter, stated that »Germany [...] is an empire composed of many individual states and territories«.[82] Of course, there had been approaches to such a theory of divided statehood even before that, for example, by Paul Busius, Christoph Besold and Ludolph Hugo.[83] However, these approaches never gained general acceptance.

In the textbooks and manuals of the *ius publicum imperii* published from the 1790s onwards, the view of the Holy Roman Empire as a state composed of states already presented itself as *communis opinio*.[84] Significantly, it was also in the 1790s that Austrian legal scholars, when describing the legal character of the Austrian Monarchy, referred to this doctrine of the »composite state«, i. e. of a »state whose individual members are also states«.[85] Outside of scientific publications, this concept of Austria as a »composite body of states« had already been accepted by Austrian legal scholars in the past: Christian August Beck had already used this image in his lectures for Crown Prince Joseph, and the same applies to Franz von Zeiller in lectures for Archduke Franz.[86]

4.3 Other contents of Austrian public law

Other topics dealt with by the individual authors within the *ius publicum Austriacum* are highly standardised, which is by no means a coincidence. The range of content is always very similar, even outside of Austria, for instance, when we have a look at Christian Gottlieb Wabst or Carl Heinrich Römer (who both deal with the Electorate of Saxony).[87] This homogeneity results equally from the fact that the doctrine of the *iura publica specialissima* is based on the *Reichspublizistik* as well as from Moser's theoretical programme and practical example.[88] Already in his theoretical foundation of the doctrine of the *iura publica specialissima*, Moser had outlined its central contents: the root of the current prince's claim to power, his privileges in comparison to other princes of the empire, the dynastic order of succession, the ruler's rights, the relationship to the empire and to other imperial estates, the provincial estates and their rights.

5 The science of Austrian public law: between official support and control

In view of the key subjects of Austrian public law – the legitimation of absolutism and of the Austrian *Gesamtstaat*, which were all treated in a prince- and Habsburg-friendly manner – it comes

77 Bisinger (1808) 17.
78 See Mohnhaupt/Grimm (2002) 73.
79 Cf. Springer (1840) 220; Siemann (2016) 624.
80 Otruba (ed.) (1964) 51.
81 See Schlie (1961) 41–55; Willoweit (1975) 357; Wyduckel (1984) 172.
82 Roth (1788) 2.
83 See Schönberg (1977) 48–57; Friedrich (1997) 59–61; Brie (1874) 18–19; Wyduckel (1984) 172.
84 See Schönberg (1977) 69–71; Brie (1874) 28–29.
85 So Pütter (1758) III–IV; detailed on Pütter's theory of the Holy Roman Empire composite state Schlie (1961) 41–55.
86 Willoweit (1975) 358.
87 Cf. Römer (1787–1792); Wabst (1732).
88 Cf. Moser (1739a) 5–6.

as no surprise that the science of the *ius publicum Austriacum* was well received by the Habsburg monarchs and by the central bureaucratic offices, sometimes even actively promoted.

This is already suggested by an analysis of the biographies of the authors. It is generally acknowledged by the research community that activity in the field of the *ius publicum* was often encouraged by efforts to improve employment and promotion opportunities in the service of princes and in the civil service,[89] although the »connection between activity in the field of public law and a steep career«,[90] claimed by Wolfgang Burgdorf, will be questioned below, particularly for Austrian legal scholars.

The biography of Franz Ferdinand von Schrötter[91] definitely shows a close connection between his literary activity in the field of the *ius publicum* and an impressive career in public service. Just two years after completing his doctorate in law, the first volume of his »Abhandlungen aus dem österreichischen Staatsrechte« was published. In response to the request for support, which he combined with the promise to continue the »Abhandlungen« and then submitted, Maria Theresa granted an annual salary of 600 gulden.[92] In 1764, even before the completion of the »Abhandlungen«, he was appointed Court Secretary in the *Haus-, Hof- und Staatskanzlei* (House, Court and State Chancellery). This was followed by a remarkable career in civil service. The connection is not quite as evident in the case of Taulow von Rosenthal, who was appointed head of the house archives in 1749 and subsequently wrote numerous internal expert opinions in the field of Austrian public law.[93]

When it comes to other authors, the causal connection is unclear or even impossible to fathom, Christian August von Beck being a prime example.[94] The preoccupation with Austrian public law had no visible effect on the career paths of the two statisticians Ignaz de Luca and Joseph Marx von Liechtenstern, although it cannot be ruled out that it was at least useful. De Luca had essentially already completed his career path when he turned his attention to more intensive questions of public law. The authors Gustermann and Joseph Kropatschek, who also made contributions to Austrian public law in the 1790s, were not able to boost their careers via this pursuit.[95]

Given the contribution of the Austrian doctrine of the *ius publicum* to the legitimation of the internal integration of the Austrian state and of absolutism, the basically positive attitude of the rulers and of the central administration towards the subject is not surprising. This was also reflected in the early anchoring of the new discipline in the curricula of universities and academies of knights.[96] In contrast, critical voices like Franz Joseph von Heinke's were hardly heard. In the *Studienhofkommission*, the latter had drawn attention to the dangers of the *ius publicum Austriacum* and its treatment. According to him, »no public teaching [...] is more delicate, more carefully to examine, to determine and then to allow than this one, whereby the mutual rights and obligations between the sovereign prince and the people are to be judged and presented to the world from an authorised chair«.[97] With regard to the ruler's own population, it must be ensured that no subject may draw false conclusions that might undermine the ruler's rights. From the point of view of foreign policy, it must have appeared somewhat problematic: Foreign courts could derive claims from the statements or Austrian claims could be weakened.

The climax of the official promotion of the *ius publicum Austriacum* was the plan to establish a professorship specifically dedicated to Austrian public law, which became concrete in 1789/90.[98] The scholar who presented the best handbook on the subject should be appointed professor, which explains the wave of publications in the field of the *ius publicum Austriacum* at the beginning of the 1790s. The fact that the professorship was ultimately not established was due to the change in the perception of the subject by the authorities after the middle of the decade (see below).

The positive basic attitude towards the *ius publicum Austriacum* did not change the fact that both

89 See Burgdorf (1998) 28.
90 See Burgdorf (1998) 29.
91 See Hoke (1987); Kohl (2007); Wurzbach (ed.) (1876), vol. 32, 8–12.
92 ÖStA, HHStA, Staatsratsprotokoll 1762, IIb, n. 1784, 1762 June 19.
93 See Wurzbach (ed.) (1874), vol. 27, 32.
94 See Benna (1967) 163–169.
95 ÖBL, vol. 2, 1959, 110–111 (with regard to Gustermann); Wurzbach (ed.) (1885), vol. 13, 263 (concerning Kropatschek).
96 See the next chapter.
97 ÖStA, AVA, Unterricht und Kultus, Studienhofkommission, Part 1, Carton 14, fol. 299^{v}.
98 See Seifert (1973) 297–298; Wangermann (1978) 77–78.

monarchs and the central administration remained aware of the dangers of the profession as outlined by Heinke. All works on Austrian public law had to be submitted to the court, whereby the demands placed on textbooks for students were higher than those placed on publications addressing an exclusively academic audience.[99]

Very little archival material exists with regard to censorship cases, for instance, concerning Schrötter's »Abhandlungen aus dem österreichischen Staatsrecht«. The submission of the first volume met with Maria Theresa's approval, as was outlined above, and Schrötter was also awarded an annual grant to continue the project. At the same time, the monarch emphasised that it was in any case »necessary that the subsequent work will be thoroughly censored, so that nothing questionable may be included in such a delicate work published with my consent«.[100] We know more details about the events leading up to the publication of the fifth treatise, which was handed over to State Chancellor Kaunitz »for revision«.[101] For his part, Kaunitz asked Taulow von Rosenthal for a statement as to whether this opus contained »anything questionable or inconsistent with the principles of the Court«. Four months later, Taulow was able to report that, at his instigation, Schrötter had »partly changed, partly omitted« his remarks on dynastic succession and questions of guardianship; otherwise, he found »nothing dubious, nor anything else [...] that did not conform to the principles of the Court as already proclaimed in public writings« in the manuscript.[102]

In general, great care was taken in the 18th century in the selection of those persons who were not state officials but who were nevertheless allowed to consult archives. A prime example of this is Franz Ferdinand von Schrötter, to whom archival documents were made accessible as an employee of the Court and State Chancellery.[103] He makes several references in his works to the inspection of original charters.[104] He was thus able to base his work »not on later historians, not on fake reasoning, but on unobjectionable documents in the K. K. secret house archives«.[105] Some other scholars like Gottfried Philipp Spannagl, Heinrich Josef Watteroth and Joseph C. Bisinger were also given access to state archives and to the court library, whereas others like Joseph Marx von Liechtenstern remained dependent on published sources.[106] As late as 1856, Robert von Mohl still complained that, with regard to the sources of public law in states that lacked a modern constitution, »the old unreasonable secretiveness«[107] still dominated, which was particularly true in Austria.

A certain break connected with the changing political-intellectual framework is perceptible around the mid-1790s. From this point onwards, the previously dominant pro-absolutist orientation of Austrian public law was considered deficient in view of the developments in revolutionary France, the French constitutions of 1791, 1793 and 1795, and in view of the increasingly intensive discussion of »human rights« by legal scholars in the German-speaking world.[108] With regard to the altered European constellation, the gaps in Austrian public law, which had hitherto not only been intended but also accepted as genre-specific, had to catch the eye of every reader and stimulate reflection. This led to a change in the perception of the Austrian doctrine of public law by Francis II and by the central authorities: While the doctrine of public law had to this point been perceived benevolently as an instrument of internal integration and of the legal legitimation of absolutism, it was now seen more and more critically or even negatively as a gateway to revolutionary ideas. Symptomatic expression of this changed perception is an instruction issued by the local government to the professors of the law faculty in Innsbruck, who were ordered to avoid all discussion in their lectures on public law, and in any case not to speak

99 Ignaz de Luca's first volume of his »Lectures on Austrian public law« serves to demonstrate the veracity of this statement. See ÖStA, AVA, Unterricht und Kultus, Studienhofkommission, Part 2, Carton 878, Pos. 1, Zl. 275 ex 1793, 1793 January 18.

100 ÖStA, HHStA, Staatsratsprotokoll 1762, IIb, n. 1784, 1762 June 19.

101 ÖStA, HHStA, Sonderbestände B, Registratur des HHStA, Kurrentakten des HHStA, Carton 9, n. 8, 1765 February 24.

102 ÖStA, HHStA, Sonderbestände B, Registratur des HHStA, Kurrentakten des HHStA, Carton 9, n. 8, 1765 July 1.

103 See Mazohl / Wallnig (2009) 64.

104 Cf. Schrötter (1775) 6, 49, 55; Schrötter (1766) 56.

105 Cf. Schrötter (1766) preface (unpaginated).

106 See the hint in the Austrian National Library, Cod. 8383, vol. 2, 1197, footnote A (for Spannagl); Zeilner (2008) 52–53 (for Watteroth and Bisinger); Liechtenstern (1791a), preface (unpaginated).

107 Mohl (1856) 334.

108 Cf. Sonnenfels (1798) XII–XIV; Hochedlinger(1999) 73.

about human rights and formal constitutions. This would only cause »misunderstanding or misinterpretation« on the part of »many people who are not up to the task«, as well as useless »musing« and it would distract students from their work.[109]

6 Austrian public law in academic teaching

It is undisputed that the institutional anchoring of the *ius publicum* and its integration into the curricula of Austrian universities was delayed in comparison to the Protestant territories in the Holy Roman Empire.[110] After two unsuccessful attempts to create a professorship of public law at the University of Vienna in the 17th century (1635 and 1687/88),[111] a »professor codicis ac iuris publici« was appointed in Innsbruck in 1673,[112] and the first professorship specifically dedicated to *ius publicum* was established in Olomouc in 1732.[113] A chair for natural law and »pragmatic history« of the empire was created in 1733 in Innsbruck.[114] Such chairs had already been established in Freiburg in 1716 and Graz in 1728/29.[115] When the curriculum was reformed in 1752/53, public law and *Reichshistorie* were introduced, whereby the *ius publicum specialissimum* of the Austrian states should also be considered in this context.[116] In the 1770s, the Austrian *ius publicum* in particular was further upgraded in the course of studies.[117] In the 1790s, it was removed from its connection to *Reichspublizistik* and *Reichshistorie* and subsequently taught within the framework of »statistics«:[118] From this point onward, one semester was required to »explain the constitution, nature and institution of the Austrian hereditary lands«.[119] This remained the case until 1848. While the *ius publicum imperii* was eliminated from the curriculum as part of the reform of 1810,[120] Austrian public law and its connection with political science remained unaffected: It was expressly emphasised that »the teacher of statistics should also be aware that he was also a teacher of the positive public law of the Austrian lands.«[121]

7 The public law of Hungary, Bohemia, the Austrian Netherlands and the Habsburg possessions in Italy

7.1 General remarks

The academic treatment of *iura publica specialissima* such as Hungarian or Bohemian public law can be carried out in different contexts and with different objectives: The study of the particular public law of a province can be dealt with within the framework of Austrian public law (which is, as already mentioned, oriented towards the construction of an Austrian centralised state). Christian August Beck and Anton Wilhelm Gustermann provide examples of this, in which Bohemia and its neighbouring countries form nothing other than an integral, albeit separately treated, part of the Austrian *Gesamtstaat*. The same applies to the plans of Taulow von Rosenthal, who did not go beyond preliminary work, to write a comprehensive Bohemian public law.[122] A tension between Bohemian and Austrian public law is not discernible in these authors; rather, the former is a segment of the latter. With regard to Bohemian public law, it can also be treated from the perspective of the *Reichspublizistik*, for which Johann Stephan Pütter, Michael Conrad Curtius and Johann Friedrich Seyfart provide examples,[123] but there are no significant differences to Austrian authors in terms

109 University Archive Innsbruck, Faculty of Law, Carton 1 (1771–1817), fol. 181^{r}–181^{v}, 1795 March 7.
110 See Hammerstein (1977); Stolleis (1988) 248.
111 See Kink (1854) 392–394, 396–399.
112 See Huter (1968) 237.
113 See Slapnicka (1973) 222.
114 See Dickerhof (1995) 32; Seifert (1973) 72–78; Hammerstein (1977) 216–217.
115 Dickerhof (1995) 26–28; for Freiburg, see also Hammerstein (1977) 230, fn. 53.
116 See Lentze (1962) 45–53; Winkelbauer (2018) 30–34.
117 See, for instance, Seifert (1973) 170–172; Hammerstein (1977) 194–196.
118 See Ebert (1969) 29; Kink (1854) 577–579.
119 University Archive Innsbruck, Faculty of Law, Carton 1 (1771–1817), fol. 155–209, quotation fol. 173^{r}.
120 See Thun und Hohenstein (2015) 67–69; Ebert (1980).
121 Schnabel (1827) 157–167 (quotation 159); Lentze (1962) 55.
122 ÖStA, HHStA, Sonderbestände A, Archivalische Arbeiten, Carton 8, Pos. 4–5.
123 Cf. Pütter (1758) 144–176; Curtius (1780) 1–26 (concerning Bohemia); Seyfart (1757).

of content. The treatment of Hungarian public law shows, at best in nuances, that it is set apart from Austrian public law, thus emphasising Hungary's particularities and independence.

7.2 *The* ius publicum Bohemiae

All works published during the period of investigation that deal with Bohemian public law are entirely pro-Habsburg and aim at the legitimation of absolutism and the idea of the *Gesamtstaat*. This is not surprising given the practice of censorship. Differences arise basically only in the manner of presentation, namely whether Bohemia is dealt with separately or together with all other Austrian lands. In any case, all authors consider the Bohemian to be part of Austrian public law. There are, however, certain peculiarities that can be seen against the background of the Bohemian uprising in 1619/20 and Pavel Stránský's »De Republica Bojema« first published in 1634.[124] Stránský, in his remarks concerning Bohemian public law, had diametrically opposed the *communis opinio* of the second half of the 18th century and displayed an openly anti-Habsburg tendency. Precisely because it had been contested by the estates in the 17th century,[125] the character of Bohemia as a hereditary monarchy and as an unrestricted, absolutist monarchy was particularly emphasised in the 18th century.[126]

7.3 *The* ius publicum Hungariae

Hungarian public law and its treatment exhibit a number of peculiarities during the period of investigation; these do not concern the language of the relevant publications, which is regularly Latin, as (with the exception of a brief episode under Joseph II) this was the administrative language of the Kingdom of Hungary until 1848. Some publications were also published in German, probably to increase sales opportunities. Publications on Hungarian public law usually dealt with the same subjects, had the same structure and applied the same methods as the *Reichspublizistik* and Austrian legal scholars. Some authors like Gustermann and Beck wrote both on Austrian and on Hungarian public law.

But it is precisely the absence of characteristic features that constitutes a peculiarity. The fact that there are no significant differences to the *Reichspublizistik* and the doctrine of Austrian public law with regard to methods, contents and structure is anything but self-evident and raises the question of the causes for this parallelism.

One reason for this was the »peregrinatio hungarica«, the frequent visits of Hungarian students to universities and especially to law faculties in the Holy Roman Empire.[127] There was only one university in the Kingdom of Hungary, which was located in Tyrnau and founded in 1635. It did not receive a law faculty until 1667, and this faculty was transferred to Buda in 1777 and finally to Pest in 1784.[128] There were five royal academies founded in the 18th century. They offered two-year courses of legal education to meet the administration's need for legal expertise, but in order to obtain an academic degree, it was still necessary to attend a university.[129] Accordingly, enrolment at universities in the Holy Roman Empire was quite high. And not only Catholic universities, especially Austrian ones, enjoyed high enrolment numbers; universities in Protestant territories were also sought out, especially by Protestant Hungarians.[130] Initially, Halle was the preferred and most frequently attended place of education for Protestant students, but by the second half of the 18th century, the University of Göttingen had overtaken it.[131] The presence of many Hungarian students at the Faculty of Law in Vienna explains why in 1796 Georg Alois Belnay and Alois von Ehrlinger applied for the right to teach a »pragmatic history of Hungary« (Belnay) and Hungarian public law (Ehrlinger) at the University of Vienna

124 See for Stránský's biography Schamschula (1993) 114–115; here the extended second edition from 1643 is used: Stránský (1643).
125 Cf. Anonymus (1620); Strohmeyer (2006) 276–277.
126 Cf., for instance, Beck (1750) 190; De Luca (1798) 222; Schrötter (1763) 23–25.
127 See Fata et al. (eds.) (2006).
128 See Fata/Schindling (2006) 5, 26; Gönczi (2008) 21–24, 28, 36; Asche (2006) 137.
129 See Fata/Schindling (2006) 5–6.
130 See among others Gönczi (2008) 41, 56–66.
131 See Gönczi (2008) 56–66; Gönczi (2006) 175–183.

(Ehrlinger even presented a draft textbook),[132] but this was rejected in view of the explosive nature of the subject – as will be discussed later.

The familiarity with the *Reichspublizistik* subsequently led to the fact that Hungarian legal scholars could and wanted to approach Hungarian public law with the same methodological instruments. In short, the treatment of Hungarian public law is to a large extent influenced by the *Reichspublizistik* and the *iura publica specialissima* (among them especially Austrian public law). This impact is particularly clear in the case of authors such as Gustermann and Beck, who wrote books both on Austrian and on Hungarian public law.[133]

Another special feature of Hungarian public law is the remarkable quantity of literary production.[134] The first relevant works appeared as early as the 17th century, and publication activity continued in the 18th century, with a peak in the 1780s and 1790s in response to Josephinian reforms.[135] The number of publications on Hungarian public law from the beginning of the 19th century until the revolution of 1848 far exceeded the number of works published on the Austrian *ius publicum* during this period.[136]

Despite the undeniable influence of Austrian jurisprudence and of the *Reichspublizistik* on the science of the Hungarian *ius publicum*, considerable deviations and peculiarities can be identified.

It has already been explained in detail that the legitimation of absolutism was one of the central objectives of Austrian public law, which led to the marginalisation of the estates in works of public law and in particular to the suppression of estates' »rights and freedoms« as far as possible in order to define the Austrian Monarchy as an »unrestricted« one. The situation is different in the case of Hungary. In this case, even Habsburg-friendly authors – Virozsil calls them »the court's scholars« in 1865 with polemical connotations[137] – could not avoid paying attention to the estates, mentioning the *leges fundamentales* and discussing the rights of the Hungarian diet. From the point of view of the bureaucratic and political elite in Vienna, this tendency of Hungarian public law doctrine not simply to ignore the rights of estates (not to be able to ignore them either with regard to the political and the constitutional situation) resulted in a very specific uneasiness and mistrust that did not affect the science of Austrian public law.[138] This critical attitude explains, among other things, the rejection of Ehlinger's request to teach *ius publicum Hungariae* at the University of Vienna. Already in the Hungarian »Ratio educationis« of 1777, the teachers of public law were expressly instructed to proceed with great caution, in particular never to get involved in discussions of serious issues concerning the estates and to refrain from any kind of sophistry.[139]

The Hungarian doctrine of public law was not dominated by great opposing narratives, be they Habsburg-friendly or in favour of the estates. There was a broad consensus on most issues. The character of the hereditary monarchy – at least since the adoption of the Pragmatic Sanction –, the classification as a »monarchia limitata« as well as the existence of *leges fundamentales* and of participation rights of the estates was almost undisputed. While the authors did not draft grand narratives, the nuances that the different writers show in their statements is nevertheless quite revealing. These are expressed, for example, in their characterisation of Hungary as a hereditary monarchy. Neutral voices simply point out that the diet of 1687 fixed the succession in the male line, the Pragmatic Sanction the right of succession for women.[140] Habsburg-friendly voices diagnosed a dynastic right of inheritance as early as the Middle Ages, or at least for the period since the Habsburgs ascended the throne in 1526.[141]

132 Cf. ÖStA, HHStA, Kabinettsarchiv, Studienrevisionshofkommission, Carton 1, Pos. 17 (Belnay) ÖStA, HHStA, Kabinettsarchiv, Studienrevisionshofkommission, Carton 1, Pos. 6 (Ehrlinger).

133 Cf. Gustermann (1793); Gustermann (1818); Gustermann (1811).

134 Cf. the listings in Horváth (1786) 20–26; Schwartner (1798) 290–297; Virozsil (1865) 63–82.

135 Cf. among others Sirmiensis (1784); Grossing (1786); Horváth (1786); Petrovics (1790); Rosenmann (1792); Schwartner (1798).

136 Cf., for instance, Farkas (1818); Blaskovits (1834); Horváth (1802); Gustermann (1811); Gustermann (1818); Fényes (1844).

137 Virozsil (1865) 70, footnote.

138 ÖStA, HHStA, Kabinettsarchiv, Studienrevisionshofkommission, Carton 1, Pos. 6.

139 Cf. Anonymus (1777) 333.

140 Cf., for instance, Rosenmann (1792) 50–51; Springer (1840) 212.

141 Cf. Benczúr (1771) 61, 70–83, 154.

There was no discussion about the categorisation of the Kingdom of Hungary as a »monarchia limitata«,[142] which was based on the existence of the estates' *leges fundamentales*. These fundamental laws as well as the participation rights of the estates (for instance, in legislation) were – with the exception of an outsider's opinion such as that of Franz Rudolph Großing[143] – also recognised by all authors.[144] However, it is significant which legal rules are established for the demarcation between *iura reservata* (which the king can exercise alone) and *iura comitialia*, that is, those rights which the king can only exercise in cooperation with the estates. On the one side there is Schwartner, who establishes a legal presumption in favour of an exclusively royal right: He considers any right of majesty as a *ius reservatum*, as long as it is not expressly designated as a comitial right by fundamental laws or by customary law.[145] On the other side, we find Alexius of Fényes, who assigns all rights not clearly attributed to the king to the estates. *Iura reservata* are therefore only those »which are based on clear laws or on long uninterrupted habits that are tacitly accepted by the nation«.[146] Fine nuances between the representatives of Hungarian public law can also be seen in the discussion of the right of resistance of the Hungarian nobility, as laid down in Article 31 of the Golden Bull of 1222, in the event that the king violates the assurances contained in the document.[147]

7.4 The Austrian Netherlands and the Habsburg territories in Italy

The *iura et liberates* of the provinces of the Austrian Netherlands played a prominent role in political discourse and political conflicts in the early modern period and still toward the end of the 18th century.[148] The intensive instrumentalisation of the estates' *iura et libertates*, and in particular of the so-called »Joyeuse Entrée« – a solemn charter issued in 1356 by Duke Wenceslas and his wife Joanna for the Brabant Estates – can be seen in the 1790s in the writings of Hendrik Van der Noot and Charles Lambert d'Outrepont, although these are more political than legal in nature.[149] Nevertheless, even Habsburg-friendly legal scholars, who are committed to the guiding principle of levelling out the estates' privileges as far as possible, do not generally go so far as to describe the Austrian Netherlands as an unrestricted monarchy, or to omit the estates and the privileges of the estates altogether.[150] Admittedly, from the perspective of Austrian experts in public law, these Habsburg territories are treated in any case only marginally and superficially.[151] The literature on the public law of the Austrian Netherlands, even within the provinces, is modest, irrespective of the political significance and instrumentalisation of the estates' »rights and freedoms«.[152] This is also due to the fact that the permanent establishment of a chair for public law at the Provincial University of Leuven in the 18th century failed.[153]

Due to their peripheral location, the Austrian possessions on the Italian peninsula remained

142 See Péter (2012) 70–72, 125.
143 Cf. Grossing (1786).
144 Cf. [Beck] (1752) 27–28; Petrovics (1790) 11–58; Schwartner (1798) 285–288; Blaskovits (1834) 4–5; Fényes (1844) 1–2.
145 Cf. Schwartner (1798) 347–348; see Péter (2012) 72.
146 Fényes (1844) 44.
147 There are those authors who simply mention the *ius resistendi* and refer to its definitive abolition at the 1687 diet (for instance, Horváth [1802] 194; Springer [1840] 212). An obvious affinity to the ruler is indicated when the respective author negatively labelled the alleged right of resistance or declared it null and void from the outset (cf., for instance, Petrovics [1790] 49–57; Schwartner [1798] 287; Gustermann [1818] 64; [Beck] [1752] 28).
148 See with further literature references Schennach (2014) 139–144.
149 See Van den Bossche (2001) 85–103; Koll (2003) 288, 300–304.
150 Cf. e. g. De Luca (1792) 187–188; Liechtenstern (1791b) 222; Kropatschek (1794) 22.
151 Cf. Schrötter (1775) 29–35; Kropatschek (1794) 22, 74–77; quite detailed in comparison Pütter (1758) 66–89, 207–209.
152 Cf., for instance, Pape (1787); Nény (1786).
153 See Van den bossche (2001) 131–138.

largely outside the visual field of Austrian legal scholars.[154] Gottfried Ernst Fritsch was the only Austrian author to pay special attention to Italy during the period of investigation, although his work has only been handed down in manuscript form.[155] In response to a paper by Johann Jakob Schmauss published during the War of the Austrian Succession,[156] he emphasised the legitimacy of Habsburg rule in Italy.

8 Outlook and conclusion

The end of the promotion of the discipline by the Habsburg ruler at the end of the 1790s brought about a break. Although this did not mean that from then on legal scholars were no longer concerned with the *ius publicum Austriacum*, in the decades to come the discipline was limited to the static reproduction of what had been worked out in the second half of the 18th century. Furthermore, the public law in the Austrian *Vormärz* – in the years preceding the 1848 Revolution – was completely absorbed into statistics in the sense of a comprehensive study of the state. The modern developments of the doctrine of constitutional law in the Confederation of the Rhine and subsequently in individual liberal model states of the German Confederation were not dealt with, let alone absorbed, in Austria. Even the doctrine of legal sources and the historical method of dealing with public law remained unchanged until 1848, despite the fall of the Holy Roman Empire and the resulting loss of significance of the Austrian *Freiheitsbriefe*.[157] While the Austrian doctrine of public law was up to date in terms of methods and contents until the end of the 18th century (despite its Habsburg-friendly orientation), it now appeared completely antiquated, even reactionary. Even the leitmotifs of the science of public law – the legitimation of absolutism and of the Austrian *Gesamtstaat* – remained completely unchanged.

It may be surprising that neither in the second half of the 18th century nor in the *Vormärz* had the provincial estates of the Austrian hereditary lands tried to develop legal (counter)narratives to the consequent marginalisation of provinces and estates realised by legal scholars. Why didn't the estates of other lands such as the Tyrol or Styria – Hungary and the Austrian Netherlands were special cases – favour the legal study of their *iura et libertates* in order to strengthen their position? There were probably several reasons for this, including the lack of qualified personnel – there was simply no Austrian equivalent to a Johann Jacob Moser, who supported the estates of the Duchy of Wuerttemberg. Furthermore, the representatives of the estates probably realised that retreating to legal positions would simply not suffice in a conflict with a ruler such as Joseph II; in such a case, arguments had to be presented in a pragmatic and practical manner.

In a nutshell: The discipline of Austrian public law, which was strongly influenced by the *Reichspublizistik* and which flourished for decades, shows with its Habsburg-friendly leitmotifs (the legitimation of the *Gesamtstaat* and of absolutism) the blending of science and politics. However, the doctrine of the *ius publicum Austriacum* is by no means only of interest for the history of science: To a great extent, it shaped the history-based master narrative of Austria's gradual emergence as a state and thus continues to have an impact to the present day.

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154 The Habsburg territories in Italy are briefly mentioned, for example, by Schrötter in his »Grundriss« (Schrötter [1775] 38–41).

155 See Garms-Cornides (2006).

156 Schmauss (1743).

157 Cf., for instance, Bisinger (1808); Springer (1840).

Bibliography

- Anonymus (1620), Deduction So die Löblichen Stände des Ertzhertzogthumbs Oesterreich. Ob der Enß […] Datirt Lintz, den 3. Decembris, Anno 1619, s. l.
- Anonymus (1777), Ratio educationis totiusque rei literariæ per Regnum Hungariae et provincias eidem adnexas, vol. 1, Vienna
- Anonymus (1779), Abhandlungen und Materialien zum neuesten deutschen Staatsrechte und Reichsgeschichte des Jahres 1779 seit dem Absterben des letzten Churfürsten von Bayern Maximilian Josephs. Des fünften Theils drittes und viertes Stück, nebst einem Register, Berlin
- Arndt, Johannes (2013), Herrschaftskontrolle durch Öffentlichkeit. Die publizistische Darstellung politischer Konflikte im Heiligen Römischen Reich 1648–1750, Göttingen
- Asche, Matthias (2006), Studenten aus Ungarn und Siebenbügen an katholischen Universitäten des Heiligen Römischen Reiches deutscher Nation im 18. Jahrhundert, in: Fata et al. (eds.) 135–154
- Bachmann, Johann Henrich (1784), Pfalz Zweibrükisches [*sic*] Staats-Recht, Tübingen
- Beck, Christian August (1750), Specimen I. juris publici Austriaci […], Vienna
- [Beck, Christian August] (1752), Specimen II. juris publici Austriaci […] quod in collegio regio Theresiano nobilium S. J. propugnavit Nicolaus S. R. I. Liber Baro a Wallhorn, Vienna
- Benczúr, Joseph [Pseudonym Verinus, Eusebius] (1771), Commentatio iuridica critica, de hereditario iure serenissimae domus Austriacae in apostolicum regnum Hungariae, de iure eligendi regem […], Vienna
- Benna, Anna Hedwig (1967), Der Kronprinzenunterricht Josefs II. in der inneren Verfassung der Erbländer und die Wiener Zentralstellen, in: Mitteilungen des Österreichischen Staatsarchivs 20, 115–179
- Bisinger, Joseph Constantin (1808), General-Statistik des österreichischen Kaiserthumes. Ein Versuch, vol. 2, Vienna
- Blaskovits, Alexander (1834), Status politico-juridicus incliti regni Hungariae […], Pest
- Böhm, Constantin Edler von (1873), Die Handschriften des kaiserlichen und königlichen Haus-, Hof- und Staats-Archivs, Vienna
- Brauneder, Wilhelm (ed.) (1987), Juristen in Österreich 1200–1980, Vienna
- Brauneder, Wilhelm (1996), Die Habsburgermonarchie als zusammengesetzter Staat, in: Becker, Hans-Jürgen (ed.), Zusammengesetzte Staatlichkeit in der europäischen Verfassungsgeschichte, Berlin, 197–223
- Brauneder, Wilhelm (2008), Kaiserwürde durch Verwaltungsakt: Der österreichische Kaisertitel von 1804, in: Pelizaeus, Ludolf (ed.), Wahl und Krönung in Zeiten des Umbruchs, Frankfurt a. M., 207–220
- Brauneder, Wilhelm (2009), Österreichische Verfassungsgeschichte, 11th ed., Vienna
- Brauneder, Wilhelm (2014), Österreichs Allgemeines Bürgerliches Gesetzbuch (ABGB), vol. 1: Entstehung und Entwicklung des ABGB bis 1900, Berlin
- Brie, Siegfried (1874), Der Bundesstaat. Eine historisch-dogmatische Untersuchung. Erste Abtheilung: Geschichte der Lehre vom Bundesstaat, Leipzig
- Brunner, Otto (1965), Land und Herrschaft. Grundfragen der territorialen Verfassungsgeschichte Österreichs im Mittelalter, 5th ed., Vienna
- Burgdorf, Wolfgang (1998), Reichskonstitution und Nation. Verfassungsreformprojekte für das Heilige Römische Reich Deutscher Nation im politischen Schrifttum von 1648–1806, Mainz
- Curtius, Michael Conrad (1780), Die Geschichte und Staatistik [*sic*] der weltlichen Churfürstlichen und Altfürstlichen Häuser in Teutschland, Marburg
- De Luca, Ignaz (1792), Vorlesungen über die Oestreichische Staatsverfassung, vol. 1, Vienna
- De Luca, Ignaz (1797), Historisch-statistisches Lesebuch zur Kenntniß des Östreichischen Staates. Erster Theil: Staatsgeschichte von Östreich [*sic*], Vienna
- De Luca, Ignaz (1798), Historisch-statistisches Lesebuch zur Kenntniß des Östreichischen Staates. Zweyter Theil: Oestreichs Staatsverwaltungskunde, Vienna
- Dickerhof, Harald (1995), Die katholischen Universitäten im Heiligen Römischen Reich deutscher Nation des 18. Jahrhunderts, in: Hammerstein, Notker (ed.), Universitäten und Aufklärung, Göttingen, 21–47
- Dreitzel, Horst (1992), Absolutismus und ständische Verfassung in Deutschland. Ein Beitrag zu Kontinuität und Diskontinuität der politischen Theorie in der frühen Neuzeit, Mainz
- Ebert, Kurt (1969), Die Grazer Juristenfakultät im Vormärz. Rechtswissenschaft und Rechtslehre an der Grazer Hochschule zwischen 1810 und 1848, Graz
- Ebert, Kurt (1980), Der Einfluß Zeillers auf die Gestaltung des juristischen akademischen Unterrichts, in: Selb, Walter, Herbert Hofmeister (eds.), Forschungsband Franz von Zeiller (1751–1828). Beiträge zur Gesetzgebungs- und Wissenschaftsgeschichte, Vienna, 63–93
- Farkas, Constantin (1818), Principia juris publici regni Hungariæ, Zagreb
- Fata, Márta et al. (eds.) (2006), Peregrinatio Hungarica. Studenten aus Ungarn an deutschen und österreichischen Hochschulen vom 16. bis zum 20. Jahrhundert, Stuttgart
- Fata, Márta, Anton Schindling (2006), Peregrinatio Hungarica. Studenten aus Ungarn an deutschen und österreichischen Hochschulen vom 16. bis zum 20. Jahrhundert, in: Fata et al. (eds.) 3–8
- Fényes, Alexius von (1844), Statistik des Königreichs Ungarn, II. Theil: Ungarns Staatsverfassung, Pest
- Friedrich, Manfred (1997), Geschichte der deutschen Staatsrechtswissenschaft, Berlin
- Garms-Cornides, Elisabeth (2006), Reichsitalien in der habsburgischen Publizistik des 18. Jahrhunderts, in: Schnettger, Matthias (ed.), L'impero e l'Italia nella prima età moderna. Das Reich und Italien in der Frühen Neuzeit, Bologna, 461–497
- Gestrich, Andreas (1994), Absolutismus und Öffentlichkeit. Politische Kommunikation in Deutschland zu Beginn des 18. Jahrhunderts, Göttingen

- Gönczi, Katalin (2006), Juristischer Wissenstransfer von der Göttinger Universität in das Königreich Ungarn im späten 18. Jahrhundert, in: Fata et al (eds.) 175–196
- Gönczi, Katalin (2008), Die europäischen Fundamente der ungarischen Rechtskultur. Juristischer Wissenstransfer und nationale Rechtswissenschaft in Ungarn zur Zeit der Aufklärung und im Vormärz, Frankfurt a. M.
- Grossing, Franz Rudolf von (1786), Ungarisches allgemeines Staats- und Regiments-Recht, s. l.
- Grothe, Ewald (2006), Verfassungsgeschichte als Reichshistorie. Zur Vorgeschichte einer historischen und juristischen Teildisziplin im 18. Jahrhundert, in: Hentzschel-Fröhlings, Jörg (ed.), Gesellschaft – Region – Politik. Festschrift für Hermann de Buhr, Heinrich Küppers und Volkmar Wittmütz, Norderstedt, 295–304
- Gustermann, Anton Wilhelm (1793), Versuch eines vollständigen österreichischen Staatsrechtes. Erster Theil, Vienna
- Gustermann, Anton Wilhelm (1811), Die Ausbildung der Verfassung des Königreiches Ungern; aus der Geschichte, und den Gesezen dieses Reiches dargestellet, 2 vols., Vienna
- Gustermann, Anton Wilhelm (1818), Ungerisches [*sic*] Staatsrecht, vol. 1, Vienna
- Hammerstein, Notker (1972), Jus und Historie. Ein Beitrag zur Geschichte des politischen Denkens an deutschen Universitäten im späten 17. und 18. Jahrhundert, Göttingen
- Hammerstein, Notker (1977), Aufklärung und katholisches Reich. Untersuchungen zur Universitätsreform und Politik katholischer Territorien des Heiligen Römischen Reichs deutscher Nation im 18. Jahrhundert, Berlin
- Hammerstein, Notker (1992), Reichshistorie, in: Bödeker, Hans Erich et al. (eds.), Aufklärung und Geschichte. Studien zur deutschen Geschichtswissenschaft im 18. Jahrhundert, 2nd ed., Göttingen, 82–104
- Hochedlinger, Michael (1999), »… dass Aufklärung das sicherste Mittel ist, die Ruhe und Anhänglichkeit der Unterthanen zu befestigen«. Staatskanzler Kaunitz und die »franziszeische Reaktion« 1792–1794. Vorbemerkung, in: Aufklärung – Vormärz – Revolution. Jahrbuch der »Internationalen Forschungsstelle Demokratische Bewegungen in Mitteleuropa von 1770–1850« an der Universität Innsbruck 16/17, 62–79
- Hofmeister, Herbert (1982), Bürger und Staatsgewalt bei Franz v. Zeiller. Erörterungen zu Zeillers Staatsrechtslehre anhand einer Vorlesungsmitschrift aus 1802, in: Diritto e potere nella storia europea. Atti del quatro Congresso internazionale della Società Italiana di Storia del Diritto, in onore di Bruno Paradisi, vol. 2, Florence, 1007–1029
- Hoke, Rudolf (1987), Franz Ferdinand Schrötter, in: Brauneder (ed.) 87–91
- Horváth, Ignaz Stephan (1786), Institutionum juris publici particularis regni Hungariæ. Pars I: De Territorio Regni Hungariæ, Bratislava
- Horváth, Michael (1802), Statistica Regni Hungariae, et partium eidem adnexarum, 2nd ed., Bratislava
- Huter, Franz (1968), Die Anfänge der Innsbrucker Juristenfakultät (1671–1686), in: Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Germanistische Abteilung) 85, 223–247 (reprint in: ders., Ausgewählte Aufsätze zur Geschichte Tirols, ed. by Cescutti, Marjan, Josef Riedmann, Innsbruck 1997, 282–306)
- Just, Thomas et al. (eds.) (2018), Privilegium maius. Autopsie, Kontext und Karriere der Fälschungen Rudolfs IV. von Österreich, Vienna
- Kauz, Constantin Franz Florian Anton von (1760), Beobachtung über das Wort Oesterreich. Entgegengesetzet einer Beobachtung H. Prof. Gottscheds, Vienna
- Kink, Rudolf (1854), Geschichte der kaiserlichen Universität Wien, vol. 1, Vienna
- Klemens [first name not known] (1782), Grundriß der Staatsrechte der Habsburgisch-Oesterreich-Lotharingischen Erbmonarchie, Vienna
- Klippel, Diethelm (1976), Politische Freiheit und Freiheitsrechte im deutschen Naturrecht des 18. Jahrhunderts, Paderborn
- Klippel, Diethelm (2013), Die Allgemeine Staatslehre um 1800, in: Kiehnle, Arndt et al. (eds.), Festschrift für Jan Schröder zum 70. Geburtstag, Tübingen, 423–441
- Kohl, Gerald (2007), Art. »Schrötter, Franz Ferdinand Edler von« in: Neue Deutsche Biographie, vol. 23, Berlin, 593–594
- Koll, Johannes (2003), Habsburgische Niederlande und belgische Nation – konkurrierende Formen von Patriotismus, in: Dann, Otto et al. (eds.), Patriotismus und Nationsbildung am Ende des Heiligen Römischen Reiches, Cologne, 287–316
- Kropatschek, Josef (1794), Oestreichs Staatsverfassung, vereinbart mit den zusammengezogenen bestehenden Gesetzen, zum Gebrauche der Staatsbeamten, Advokaten, Oekonomen, Obrigkeiten, Magistraten, Geistlichen, Bürger und Bauern, zum Unterrichte, für angehende Geschäfftsmänner, vol. 1, Vienna
- Lentze, Hans (1962), Die Universitätsreform des Ministers Graf Leo Thun-Hohenstein, Graz
- Liechtenstern, Joseph Marx von (1791a), Beiträge zur genauen Kenntniß der östreichischen Staaten und Provinzen […], vol. 1: Statistisch-geographische Beschreibung des Erzherzogthums Oestreich unter der Ens, Vienna
- Liechtenstern, Joseph Marx von (1791b), Staatsverfassung der Oesterreichischen Monarchie im Grundrisse, Vienna
- Liechtenstern, Joseph Marx von (1801), Ueber das Studium der Statistik, in: Archiv für Geographie und Statistik, ihre Hilfswissenschaften und Litteratur 1, 1–15, 95–109, 149–170, 230–241, 273–298, 325–356
- Link, Christoph (1979), Herrschaftsordnung und bürgerliche Freiheit. Grenzen der Staatsgewalt in der älteren deutschen Staatslehre, Vienna
- Martini, Carl Anton von (1783), Lehrbegriff des Natur- Staats- und Völkerrechts, Bd. 3, welcher das allgemeine Staatsrecht enthält, Vienna
- Máthé, Gábor, Werner Ogris (eds.) (1996), Die Entwicklung der österreichisch-ungarischen Strafrechtskodifikation im XIX–XX. Jahrhundert, Budapest
- Mazohl, Brigitte (2018), Vom Tod Karls VI. bis zum Wiener Kongress (1740–1815), in: Winkelbauer, Thomas (ed.), Geschichte Österreichs, 3rd ed., Stuttgart, 290–358
- Mazohl, Brigitte, Thomas Wallnig (2009), (Kaiser)haus – Staat – Vaterland? Zur »österreichischen« Historiographie vor der »Nationalgeschichte«, in: Hye, Hans Peter et al. (eds.), Nationalgeschichte als Artefakt. Zum Paradigma »Nationalstaat« in den Historiographien Deutschlands, Italiens und Österreichs, Vienna, 43–72

- Mohl, Robert von (1856), Geschichte und Literatur der Staatswissenschaften. In Monographien dargestellt, vol. 2, Erlangen
- Mohnhaupt, Heinz (2000a), Historische Vergleichung im Bereich von Staat und Recht. Gesammelte Aufsätze, Frankfurt a. M.
- Mohnhaupt, Heinz (2000b), Potestas legislatoria und Gesetzesbegriff im Ancien Régime, in: Mohnhaupt (2000a) 221–273 (first published in 1972)
- Mohnhaupt, Heinz (2000c), Von den »leges fundamentales« zur modernen Verfassung in Europa. Zum begriffs- und dogmengeschichtlichen Befund (16.–18. Jahrhundert), in: Mohnhaupt (2000a) 35–72 (first published in 1998)
- Mohnhaupt, Heinz, Dieter Grimm (2002), Verfassung. Zur Geschichte des Begriffs von der Antike bis zur Gegenwart. Zwei Studien, 2nd ed., Berlin
- Moser, Johann Jacob (1738), Entwurff Eines Staats-Rechts Derer geistlichen Chur-Fürsten Des Heil. Röm. Reichs, Frankfurt
- Moser, Johann Jacob (1739a), Allgemeine Einleitung in die Lehre des besonderen Staats-Rechts aller einzelen [*sic*] Stände des Heil. Röm. Reichs, und in Sein von diesem Staats-Recht handlendes Werck, Frankfurt
- Moser, Johann Jacob (1739b), Nachricht von seinem unter Handen habenden besonderen Staats-Recht aller einzelen [*sic*] Stände des Heil. Römischen Reichs, s. l.
- Moser, Johann Jacob (1753), Kürzere Einleitung in das Teutsche Staats-Recht. Zum Gebrauch der Anfängere [*sic*] in diser [*sic*] Wissenschaft, Frankfurt
- Nény, Patrice François de (1786), Mémoires historiques et politiques sur les Pays-Bas autrichiens, et sur la constitution. Tant interne qu'externe des Provinces qui les composent, 2 vols., 4th ed., Brussels
- Nicolai, Friedrich (1779a), Allgemeine Deutsche Bibliothek, vol. 37, piece 1, 179–265
- Nicolai, Friedrich (1779b), Allgemeine Deutsche Bibliothek, vol. 39, piece 1, 408–462
- Otruba, Gustav (ed.) (1964), Österreich über alles wenn es nur will, von Philipp Wilhelm von Hörnigk. Erstausgabe von 1684 in Normalorthographie übertragen und mit der Auflage von 1753 kollationiert sowie mit einem Lebensbild des Autors versehen, Vienna
- Pape, Léon Jean de (1787), Traité de la Joyeuse Entrée. Traité dans lequel on voit à quoi le Souverain s'oblige par sa Joyeuse Entrée en Brabant, les changemens qui y ont été faits de temps à autre [...], Malines
- Péter, László (2012), Hungary's Long Nineteenth Century. Constitutional and Democratic Traditions in a European Perspective, Leiden
- Petrovics, József (1790), Introductio in ius publicum regni Hungariae, Vienna
- Pütter, Johann Stephan (1758), Historisch-politisches Handbuch von den besonderen Teutschen Staaten. Erster Theil von Oesterreich, Bayern und Pfalz, Göttingen
- Rolin, Jan (2005), Der Ursprung des Staates. Die naturrechtlich-rechtsphilosophische Legitimation von Staat und Staatsgewalt im Deutschland des 18. und 19. Jahrhunderts, Tübingen
- Römer, Carl Heinrich von (1787–1792), Staatsrecht und Statistik des Churfürstenthums Sachsen und der dabey befindlichen Lande, 3 vols., Halle (Saale) [vol. 1 and 2]/Wittenberg [vol. 3]
- Rosenmann, Stephan [id est József Ürményi and György Zsigmond Lakits] (1792), Staatsrecht des Königreichs Hungarn. Nach der heutigen Verfassung dieses Reichs bearbeitet, Vienna
- Roth, Johann Richard (1788), Staatsrecht deutscher Reichslande. Akademische Vorlesungen. Nebst einem Abdrucke der neuesten kaiserlichen Wahlkapitulation und des westphälischen Friedens nach den Originalien des Reichsarchivs. Erster Theil, Mainz
- Rürup, Reinhard (1965), Johann Jacob Moser. Pietismus und Reform, Göttingen
- Schamschula, Walter (1993), Pavel Stránskýs *Respublica Bohemiae* und die literarische Tradition, in: Harder, Hans-Bernd (ed.), Studien zum Humanismus in den böhmischen Ländern, Teil 3: Die Bedeutung der humanistischen Topographien und Reisebeschreibungen in der Kultur der böhmischen Länder bis zur Zeit Balbíns, Cologne, 113–126
- Schelp, Robert (2001), Das allgemeine Staatsrecht – Staatsrecht der Aufklärung. Eine Untersuchung zu Inhalt, Anspruch und Geltung des naturrechtlichen Staatsrechts im 17. und 18. Jahrhundert, Berlin
- Schennach, Martin P. (2010), Gesetz und Herrschaft. Die Entstehung des Gesetzgebungsstaates am Beispiel Tirols, Cologne
- Schennach, Martin P. (2014), Mittelalterliche Urkunden in Staatsrecht, politischer Kommunikation und Historiographie in der Neuzeit, in: Maleczek, Werner (ed.), Urkunden und ihre Erforschung. Zum Gedanken an Heinrich Appelt, Cologne, 111–160
- Schennach, Martin P. (2015), Die »österreichische Gesamtstaatsidee«. Das Verhältnis zwischen »Gesamtstaat« und Ländern als Gegenstand rechtshistorischer Forschung, in: Schennach, Martin P. (ed.), Rechtshistorische Aspekte des österreichischen Föderalismus. Beiträge zur Tagung an der Universität Innsbruck am 28. und 29. November 2013, Vienna, 1–29
- Schennach, Martin P. (2018), »weillen uns aber unverborgen, daß du von disen und andern dergleichen sachen vor andern guete und gewisse nachrichtung [...] geben khanst.« Reichart Strein von Schwarzenau und die Anfänge einer österreichischen Staatsrechtslehre, in: Zeitschrift für Neuere Rechtsgeschichte 40, 1–15
- Schennach, Martin P. (2020), Austria inventa? Zu den Anfängen der österreichischen Staatsrechtslehre, Frankfurt a. M.
- Schlie, Ulrich (1961), Johann Stephan Pütters Reichsbegriff, Göttingen
- Schmale, Wolfgang (1997), Archäologie der Grund- und Menschenrechte in der Frühen Neuzeit. Ein deutsch-französisches Paradigma, Munich
- Schmauss, Johann Jacob (1743), Von dem gegenwärtigen Zustand von Italien/in Ansehung des Teutschen Reichs, in: König, Johann Carl, Selecta juris publici novissima zum Behuf der Reichs-Historie und der Staats-Rechten. Fünfter Theil, Marburg, 428–443
- Schnabel, Georg Norbert (1827), Geschichte der juridischen Fakultät an der vereinigten Carl-Ferdinandeischen Hochschule zu Prag, vol. 3, Prague
- Schömbs, Erwin (1968), Das Staatsrecht Johann Jakob Mosers (1701–1785). Zur Entstehung des historischen Positivismus in der deutschen Reichspublizistik des 18. Jahrhunderts, Berlin

- Schönberg, Rüdiger Freiherr von (1977), Das Recht der Reichslehen im 18. Jahrhundert. Zugleich ein Beitrag zu den Grundlagen der bundesstaatlichen Ordnung, Heidelberg
- Schrötter, Franz Ferdinand von (1762), Erste Abhandlung aus dem österreichischen Staatsrechte: Von den Freyheitsbriefen des Durchläuchtigsten Erzhauses von Oesterreich, samt einer Einleitung in die österr. Geschichte und einem Anhange Beylagen, Vienna
- Schrötter, Franz Ferdinand von (1763), Dritte Abhandlung aus dem Oesterreichischen Staatsrechte: Von den Erbhuldigungen und Kleynodien der Erzherzoge von Oesterreich. Mit einem Anhange Beylagen versehen, Vienna
- Schrötter, Franz Ferdinand von (1765), Vierte Abhandlung aus dem österreichischen Staatsrechte: Von den vorzüglichen Rechten, welche den Erzherzogen mit und neben der Landeshoheit gebühren, Vienna
- Schrötter, Franz Ferdinand von (1766), Fünfte Abhandlung aus dem österreichischen Staatsrechte: Von der Erbfolgs-Ordnung wie auch der Vormundschaft der Durchlauchtigsten Erzherzoge. Mit Urkunden, Vienna
- Schrötter, Franz Ferdinand von (1771), Versuch einer Oesterreichischen Staats-Geschichte […], Vienna
- Schrötter, Franz Ferdinand von (1775), Grundriß des österreichischen Staatsrechtes, Vienna
- Schrötter, Franz Ferdinand von (1779), Oesterreichische Geschichte, vol. 1, Vienna
- Schwartner, Martin von (1798), Statistik des Königreichs Ungern. Ein Versuch, Pest
- Seifert, Eckhart (1973), Paul Joseph Riegger (1705–1775). Ein Beitrag zur theoretischen Grundlegung des josephinischen Staatskirchenrechts, Berlin
- Seyfart, Johan Friedrich (1757), Entwurf einer allerneuesten Beschreibung des Königreichs Böhmen […], Frankfurt
- Siemann, Wolfram (2016), Metternich. Stratege und Visionär, Munich
- Simon, Thomas (2001), Gemeinwohltopik in der mittelalterlichen und frühneuzeitlichen Politiktheorie, in: Bluhm, Harald, Herfried Münkler (eds.), Gemeinwohl und Gemeinsinn. Historische Semantiken politischer Leitbegriffe, Berlin, 129–146
- Simon, Thomas (2004), »Gute Policey«. Ordnungsleitbilder und Zielvorstellungen politischen Handelns in der Frühen Neuzeit, Frankfurt a. M.
- Sirmiensis, László (1784), Status publicus regni Hungariæ et ejus regiminis forma, Vienna
- Slapnicka, Helmut (1973), Lehre des öffentlichen Rechts an der Prager Karl-Ferdinands-Universität bis zu ihrer Teilung 1882, in: Bohemia 14, 222–242
- Sonnenfels, Joseph von (1765), Sätze aus der Polizey, Handlungs- und Finanz-Wissenschaft. Zum Leitfaden der akademischen Vorlesungen, vol. 1, Vienna
- Sonnenfels, Joseph von (1798), Handbuch der inneren Staatsverwaltung mit Rücksicht auf die Umstände und Begriffe der Zeit. Erster Band. Enthaltend: nebst der allgemeinen Einleitung, einen Theil der Staatspolizey, Vienna
- Springer, Johann (1840), Statistik des österreichischen Kaiserstaates, vol. 1, Vienna
- Stolleis, Michael (1988), Geschichte des öffentlichen Rechts in Deutschland, vol. 1: Reichspublizistik und Policeywissenschaft 1600–1800, Munich
- Stolleis, Michael (2011), Untertan – Bürger – Staatsbürger. Bemerkungen zur juristischen Terminologie im späten 18. Jahrhundert, in: ders., Ausgewählte Beiträge und Aufsätze, vol. 1, ed. by Ruppert, Stefan, Miloš Vec, Frankfurt a. M., 73–108 (first published in 1981)
- Stolleis, Michael (2017), Public Law in Germany. A Historical Introduction from the 16th to the 21st Century, Oxford
- Stránský, Pavel (1643), Respublica Bojema, 2nd ed., Leiden
- Strohmeyer, Arno (2002), Die Disziplinierung der Vergangenheit: Das »alte Herkommen« im politischen Denken der niederösterreichischen Stände im Zeitalter der Konfessionskonflikte (ca. 1570 bis 1630), in: Bahlcke, Johachim, Arno Strohmeyer (eds.), Die Konstruktion der Vergangenheit. Geschichtsdenken, Traditionsbildung und Selbstdarstellung im frühneuzeitlichen Ostmitteleuropa, Berlin, 99–127
- Strohmeyer, Arno (2006), Konfessionskonflikt und Herrschaftsordnung. Widerstandsrecht bei den österreichischen Ständen (1550–1650), Mainz
- Thun und Hohenstein, Lars Maximilian von (2015), Bildungspolitik im Kaiserreich. Die Thun-Hohenstein'sche Universitätsreform insbesondere am Beispiel der Juristenausbildung in Österreich, Frankfurt a. M.
- Van den Bossche, Geert (2001), Enlightened Innovation and the Ancient Constitution. The Intellectual Justifications of Revolution in Brabant (1787–1790), Brussels
- Van der Zande, Johan (2010), Statistik and History in the German Enlightenment, in: Journal of the History of Ideas 71,3, 411–432
- Vierhaus, Rudolf (1987), Montesquieu in Deutschland. Zur Geschichte seiner Wirkung als politischer Schriftsteller im 18. Jahrhundert, in: ders., Deutschland im 18. Jahrhundert. Politische Verfassung, soziales Gefüge, geistige Bewegungen. Ausgewählte Aufsätze, Göttingen, 9–32
- Virozsil, Anton von (1865), Das Staats-Recht des Königreichs Ungarn, vom Standpunkte der Geschichte, und der vom Beginn des Reiches bis zum Jahre 1848 bestandenen Landes-Verfassung, vol. 1, Pest
- Vocelka, Karl (2001), Österreichische Geschichte 1699–1815. Glanz und Untergang der höfischen Welt. Repräsentation, Reform und Reaktion im habsburgischen Vielvölkerstaat, Vienna
- Wabst, Christian Gottlob (1732), Historische Nachricht von des ChurFürstenthums Sachsen und derer dazu gehörigen Lande Jetziger Verfassung der Hohen und niederen Justitz, aus authentischen Urkunden abgefasset, Leipzig
- Walter-Klingenstein, Grete (1995), Was bedeuten »Österreich« und »österreichisch« im 18. Jahrhundert? Eine begriffsgeschichtliche Studie, in: Plaschka, Richard et al. (eds.), Was heißt Österreich? Inhalt und Umfang des Österreichbegriffs vom 10. Jahrhundert bis heute, Vienna, 149–220
- Wangermann, Ernst (1978), Aufklärung und staatsbürgerliche Erziehung. Gottfried van Swieten als Reformator des österreichischen Unterrichtswesens 1781–1791, Munich

- Willoweit, Dietmar (1975), Rechtsgrundlagen der Territorialgewalt. Landesobrigkeit, Herrschaftsrechte und Territorium in der Rechtswissenschaft der Neuzeit, Cologne
- Willoweit, Dietmar (1991), Das Staatsrecht Kreittmayrs, in: Bauer, Richard (ed.), Wiguläus Xaver Aloys Freiherr von Kreittmayr 1705–1790. Ein Leben für Recht, Staat und Politik. Festschrift zum 200. Todestag, Munich, 101–117
- Willoweit, Dietmar (2011), Landesstaatsrecht als Herrschaftsverfassung des 18. Jahrhunderts, in: Rechtsgeschichte 19, 333–353, http://dx.doi.org/10.12946/rg19/333-352
- Winkelbauer, Thomas (2018), Das Fach Geschichte an der Universität Wien. Von den Anfängen um 1500 bis etwa 1975, Göttingen
- Wurzbach, Constant von (ed.) (1865–1891), Biographisches Lexikon des Kaiserthums Oesterreich, 60 vols., Vienna
- Wyduckel, Dieter (1984), Ius Publicum. Grundlagen und Entwicklung des öffentlichen Rechts und der deutschen Staatsrechtswissenschaft, Berlin
- Zeilner, Franz (2008), Verfassung, Verfassungsrecht und Lehre des öffentlichen Rechts in Österreich bis 1848. Eine Darstellung der materiellen und formellen Verfassungssituation und der Lehre des öffentlichen Rechts. Die Vorgängerfächer des Verfassungsrechts, die bedeutendsten Universitätslehrer und die wesentliche Literatur im öffentlichen Recht, Frankfurt a. M.