Martin P. Schennach, *Austria inventa? Zu den Anfängen der österreichischen Staatsrechtslehre*, Studien zur europäischen Rechtsgeschichte. Veröffentlichungen des Max-Planck-Instituts für europäische Rechtsgeschichte, Frankfurt am Main: Klostermann, vol. 324, 2020, 588 pp. [ISBN: 978-3-465-04414-7]

In this expansive monograph, the author leads the reader through a branch of *jus publicum* that has previously received little systematic research: *Territorialstaatsrecht*, that is, the *jus publicum particulare* of a territory of the Holy Roman Empire. The author discusses a particularly complex case of this kind of *Territorialstaatsrecht:* the constitutional law of what in the eighteenth century was called a *Staatenstaat* ("state of states"), or what modern historiography terms a "composite monarchy". The subject is *Österreichisches Staatsrecht* ("Austrian state law"), the constitutional law of the Habsburg unitary state that de facto emerged from the mid-eighteenth century onwards on the basis of Maria Theresa's administrative and legal reforms. The historical background for the emergence of *Österreichisches Staatsrecht* is the merging and unification of the Austrian *Länder* by means of a newly developed, centralised bureaucracy and the legal harmonisation of these territories. This "state law" legitimised the integration of the Habsburg *Länder* into the all-Austrian unitary state. The process was additionally, and not least, aimed at the forces that stood to suffer significant losses from unification and that sought to resist it: the estates in the individual *Länder* of the Monarchy.

The author initially seeks to locate *Territorialstaatsrecht* within the *Staatswissenschaften* ("sciences of the state") that had emerged during the eighteenth century in the German Empire: defined by the federal structure of the Holy Roman Empire, *Territorialstaatsrecht* represents a layer of legal norms in the three-tier structure of the Empire's *jus publicum*. At the top, the most abstract and general level, is the *Allgemeine Staatsrecht* ('General State Law') or *ius publicum universale.* The *Allgemeine Staatsrecht* was seen as part of natural law, because it was founded "in the nature of states". It applied equally to all states. Beneath the *Allgemeine Staatsrecht* was the concrete *Reichsstaatsrecht,* the "imperial state law", or *Ius Publicum Imperii Romano-Germanici*. This governed the complex constitutional structure of the Holy Roman Empire. Under the *Reichsstaatsrecht*, in turn, was the layer of legal norms of the territories, the various individual *Territorialstaatsrechte,* or *ius publicum particulare* (*Besonderes Staatsrecht*). Each of these legal systems related to a quite particular territory of the Holy Roman Empire, and each territory thus had its own *ius publicum particulare.* In Austria, the structure of the *ius publicum* was even more complicated. Here there was a *Territorialstaatsrecht* on two tiers: one at the level of the unitary state – the *Österreichische Staatsrecht* – to which this monograph is principally devoted and, alongside it, a *jus publicum* for each of the *Länder* from which the all-Austrian composite state was built. It was in particular those *Länder* that had only been integrated into the Habsburg composite state in the latter stages of the modern era, such as the territories of the Bohemian (Bohemia, Moravia, Silesia) and Hungarian (Hungary, Croatia, Transylvania) crowns, that had a richly developed *ius publicum specialissimum*; this too is discussed by the author (chapter IX). In the eighteenth century, this many-layered *jus*

publicum was seen as a sub-field of the *Staatswissenschaften*, which also included *Statistik, Policeywissenschaft* ("policy science") and *politische Gesetzeskunde*.

Schennach then presents the emergence and development of the new discipline of *Österreichisches Staatsrecht* in the eighteenth century. He rejects the thesis, widely held by historians of legal scholarship, that Johan Jakob Moser should be seen as the true "trailblazer, indeed founder" of *ius publicum particulare.* It was instead Johann Peter von Ludewig and Nikolaus Hieronymus Gundling, two essayists working at the University of Halle, who took on a "a certain pioneer role" (p. 76), even though the credit for the "establishment, theoretical groundwork and productive shaping" of the *ius publicum particulare* did indeed belong, in Schennach's view, to Moser (p. 76), who also proved himself in the years after 1740 "by far the most productive author". In any case, all three were already being mentioned in the eighteenth-century literature as authors who laid decisive foundations for *ius publicum particulare*. In the mid-eighteenth century, *Österreichisches Staatsrecht* was then also established as a separate discipline. Foremost among the important authors of this new field of study, according to the author, were Christian August Beck and Franz Ferdinand von Schrötter.

In the sixth chapter ("Main topics of Austrian *Staatsrecht* scholarship"), Schennach finally turns to a substantive analysis of *Österreichisches Staatsrecht* itself. For the constitutional historian, this is the most interesting part of the study. In it, the author describes how the integration of the Austrian *Länder* into the Habsburg unitary composite state was legally justified and legitimised – namely, by means of typically absolutist patterns of argument. Since it was not possible to take the whole integration process to its logical conclusion, by the end of the eighteenth century there was merely a transitional, intermediate stage between, on the one hand, a systematically centralised unitary state and, on the other, an only loosely integrated composite state. For this reason the *Länder* remained "historical-political individualities" even after their integration into the institutional framework of the unitary state in the eighteenth century. They also retained a core stock of competencies of self-government which were exercised autonomously by the estates. But these were gradually incorporated into the unitary state's new administrative structures, which were based entirely around the monarch. In the constitutional law of the nineteenth century, Austria (or Cisleithania) is then described as a "decentralised unitary state". However, this term does not quite fit the situation in the eighteenth century and the Age of Metternich, because the status quo then was the result not of a decentralisation process but, quite the reverse, of a stalled centralisation.

This intermediate state can also be seen illustrated in the literature that the author analyses on *Österreichisches Staatsrecht*. The Austrian monarchy appears here as a composite state, or *Staaten-Staat,* assembled from "many states" (the *Länder* are included within the term "states" here) that "are more or less different from each other in their constitutions". While the Habsburg regents were successful in creating, as Kopetz formulated it in 1807, "a desired homogeneity" between the various *Länder* of their monarchy, they "were nonetheless not able to remove all anomalies". These "anomalies" or "deviations", as Kopetz describes them, were based on old fundamental statutes and the *consuetudines* of the individual *Länder*. By this point, the Habsburgs had not

succeeded in fully smoothing over all these "anomalies" (p. 271). The constitutions of the various *Länder* still showed certain peculiarities.

The book's substantive analysis of *Österreichisches Staatsrecht* focuses on the "dogmatic construction of the unitary state". Such a construction was successful "above all thanks to the generalisation of a concept of unified *Land* sovereignty and to the far-reaching suppression of the different *Länder* constitutions": the constitutional figure of *Landeshoheit* ("*Land* sovereignty"), which originally related only to those *Länder* that were ruled by the Habsburgs as territorial princes, was "carried over to the totality of the Austrian *Länder*. It was released from its restriction to a single *Land* and, so to speak, projected to the unitary-state level". What this produced, in the core zone of the Habsburg territorial nexus, was a "generalised fullness of absolute monarchical power". (295). This "generalisation" of *Land* sovereignty was accompanied by the "emergence of an Austrian citizenship" (Chapter 4.3), which took place thanks to a transfer of the early modern "*Land* subjectship" to the totality of the Austrian *Länder*.

The sheer range of sources the author has consulted in this work is impressive. Most of this material exists only in unprinted form and had to be tracked down in the archives. This applies in particular to the many reports and pamphlets that were produced during the debates about Habsburg *Land* sovereignty. The book enters an area that has thus far hardly been researched; even though the development of the Austrian unitary state is one of the classic "master narratives" of Austrian historiography, the legal basis of this process has remained largely ignored. It also makes a significant contribution to the history of the legal scholarship on the emergence of the territorial *jus publicum particulare*. But Schennach's study does much more than this: the sources he has combed through make it possible to formulate fundamental statements about Austrian constitutional history. Here the author counters the view taken in particular by Grete Klingenstein that even in the eighteenth century there was still no solidly constructed unitary state but merely a "reign that unified multiple *Länder* and kingdoms under its sceptre". Accordingly, in this view, the expression "Austrian monarchy" was not a "constitutional, juridical term" even in the second half of the eighteenth century. By contrast, Schennach emphasises (p. 321) that the term *Austrian monarchy* was a designation for the unitary *state*, that is, a term no longer meant in a dynastic sense but already relating to the territory of an Austrian unitary state abstracted from the dynasty.

When, however, the author writes elsewhere that even after the levelling and integration of the *Länder*, there was nonetheless "*formally* still no Austrian unitary state", merely a "monarchical union of estatist states", this does not quite seem to fit the circumstances. The reader is prompted to ask: What does "formal" mean here? After all, Schennach takes it as read that this Austrian unitary state had been *de facto* instituted by the time of the Theresian administrative reform, if not earlier. Nor can the reason be the absence of a name for this unitary state, since the rich variety of sources the author draws on are full of mentions of the "Austrian state" or simply "Austria" and its "state law" (*Staatsrecht*).

Schennach might also have made some interventions in the history of political ideas; this applies in particular to the broad and prominent discussion around the term "absolutism". He compiles a wealth of evidence from his sources with which he is able to show that early modern history, by "deconstructing" the concept of absolutism, has thrown the baby out with the bathwater. Statements such as that by Wolfgang Reinhard that the "historiographic construct" of "absolutism" has today been "deconstructed such as to be no longer reconstructable" and that the term is therefore no longer necessary (Wolfgang Reinhard, *Geschichte der Staatsgewalt*, p. 51), interpret the word "absolutism" in a somewhat naive sense: as a purely descriptive category intended to express an *actual* status of constitutional development. But the sources on *Österreichisches Staatsrecht* that Schennach uses show how useful, indeed indispensable, the term "absolutism" actually is. It simply needs to be properly understood: initially it is a legal term that meets the reader at every turn in the *jus publicum* of the Austrian unitary state. While these sources seldom refer *expressis verbis* to "absolutism", they are all the more likely to mention "unbeschränkte Monarchie". And this term, meaning "unrestricted monarchy", expresses nothing less than the phenomenon that sources from the beginning of the nineteenth century onwards call "absolutism": a form of sovereignty that attempts to liberate itself from the traditional adherence to fundamental statutes and *consuetudines.* Even a brief look into the literature on *Österreichisches Staatsrecht* shows that the many scholars who seek to "deconstruct" absolutism have blithely ignored the legal and jurisprudential sources of the early modern period. This too is one of the valuable insights to be gained from a reading of the richly stimulating monograph by Martin Schennach.

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