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Introduction to Austrian and European Legal History

facultas

Introduction to Austrian and European Legal History

First Edition

by

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faculitas

Preface

With the beginning of the winter semester 2021/22, degree programmes in International Legal Studies (LLB/LLM) will be introduced at the University of Vienna alongside the traditional Law programme. Like the latter, they will offer a preparatory academic education for the legal professions but, in addition, will also provide a more profound introduction to the international aspects of the law. As part of this programme, the module "European and Global Legal History" will be offered in English. This course will also be more internationally oriented than its counterpart in the existing Law programme but will retain much of the content of the traditional course "Legal and Constitutional History of the Modern Era".

This book covers what could be described as the overlap of both courses, i.e. those aspects of legal history that are taught both in the existing Law programme and in the new programme in International Legal Studies. It is a translation of the relevant chapters from my book "Rechtsgeschichte. Einführung in die historischen Grundlagen des Rechts", which appeared for the first time in 2006 and most recently in its fifth edition in 2019, all with the same publisher as this book. Some minor adaptations and updates have been included in the English edition. It does not cover all of the material of the new course; for any new content that will be added, regarding non-European and global aspects of the law, in particular, additional resources will be made available.

Conversely, this book does not cover the entire content of the older course. This is because, if the number of course units remains the same, the addition of new content will only be possible at the expense of other things that used to be taught in the past. It is therefore with a heavy heart that I have decided to omit, in particular, a history of Austrian private law, at least of the kind that WERNER OGRIS, URSULA FLOSSMANN, and other Austrian legal historians have taught for decades, and that I myself continue to teach as part of the Law programme at the University of Vienna. The curricular reform of 1999 with its radical cutbacks to legal history already meant that, for example, the development of the Austrian law of obligations (including an overview of the current legal situation) could only be covered in a rather condensed form, in less than 20 pages. It would not be possible to accept further reductions without calling the concept of the book itself into question.

Considerable reductions also had to be made in regard to the history of public law. What remained was an introduction to the most general aspects of the development of the law, which seems quite reasonable given that the new course in "European and Global Legal History" will be taught at the very beginning of the LLB programme and should therefore really introduce students to the most fundamental concepts and problems of jurisprudence.

I was very fortunate to have found a qualified translator in Mag. RAMON PILS, Dip.Trans., who was previously also a researcher and lecturer at the Institute of Legal and Constitutional History at the University of Vienna,

and who was not least for this reason able to master the translation of complex legal and/or historical concepts. I would like to express my heartfelt thanks to him for his work. I would also like to thank Mag. CARMEN KLEINSZIG, Dr. STEFAN WEDRAC, MARTIN KRALL, MIA KRIEGHOFER, and MILENA LEPIR for their very valuable help in developing this book. My sincere thanks also go out to the publisher, facultas, and Mr. PETER WITTMANN, in particular, whose support for this project has made it possible to make this book available to our students in time for their first semester.

I dedicate this book to my wife.

Vienna, Summer 2021 THOMAS OLECHOWSKI

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List of Abbreviations

ABGB	Allgemeines bürgerliches Gesetzbuch (General Civil Code of Austria)
AD	anno Domini
ALR	Allgemeines Landrecht für die Preußischen Staaten (Prussian General State Laws)
BC	before Christ
BGB	Bürgerliches Gesetzbuch (German Civil Code)
B-VG	Bundes-Verfassungsgesetz (Federal Constitutional Law)
BZÖ	Bündnis Zukunft Österreich (Alliance for the Future of Austria)
CC	Code Civil
CCC	Constitutio Criminalis Carolina
CCTh	Constitutio Criminalis Theresiana
CDU	Christian Democratic Union
CMBC	Codex Maximilianeus Bavaricus Civilis
COMECON	Council for Mutual Economic Assistance
CPSU	Communist Party of the Soviet Union
CSCE	Conference on Security and Co-operation in Europe
CSFP	Common Foreign and Security Policy
CTher	Codex Theresianus
ČSR	Czechoslovakia
ČSSR	Czechoslovak Socialist Republic
D	Digest
EAEC	European Atomic Energy Community
EC	European Community
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
ECtHR	European Court of Human Rights
EEA	European Economic Area
EEC	European Economic Community
Emp; Empr	Emperor; Empress
EMU	Economic and Monetary Union
EPC	European Political Cooperation
EU	European Union
FPÖ	Freiheitliche Partei Österreichs (Freedom Party of Austria)
FRG	Federal Republic of Germany
GDR	German Democratic Republic
GG	Grundgesetz (German Basic Law)
Kg	King
KPD	Kommunistische Partei Deutschlands (German Communist Party)
KPÖ	Kommunistische Partei Österreichs (Communist Party of Austria)

KwEG	Kriegswirtschaftliches Ermächtigungsgesetz (War Economy Enabling Act)
LIF	Liberales Forum (Liberal Forum)
NS	Nationalsozialismus (National Socialism)
NSDAP	Nationalsozialistische Deutsche Arbeiterpartei (National Socialist German Workers' Party)
ÖVP	Österreichische Volkspartei (Austrian People's Party)
PNF	Partito Nazionale Fascista
Qu	Queen
SEA	Single European Act
SED	Sozialistische Einheitspartei Deutschlands (Socialist Unity Party of Germany)
SPD	Sozialdemokratische Partei Deutschlands (Social Democratic Party of Germany)
SPÖ	Sozialdemokratische (Sozialistische) Partei Österreichs (Social Democratic / Socialist Party of Austria)
StGB	Strafgesetzbuch (Criminal Code)
StPO	Strafprozessordnung (Code of Criminal Procedure)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom of Great Britain and (Northern) Ireland
VdU	Verband der Unabhängigen (Association of Independents)
WGGB	Westgalizisches Gesetzbuch (Civil Code for Western Galicia)

Introduction

0001 **Legal history** is an interdisciplinary academic endeavour that belongs to both the legal and historical disciplines. It is relevant to jurisprudence not least because it facilitates a better understanding of the legal system that is currently in place.

➢ The law, in its historical development, reflects the values of a civilisation. The purpose of legal history is to reveal the ideological, social, economic, and other political factors that "lead to the development of the law as the life-conditioning order of every community" (HEINRICH MITTEIS).

➢ Thereby, legal history provides a deeper insight into the law and sheds light on the conditions of its mutability. To what extent legal history can make a concrete contribution to legal policy is widely debated and ultimately leads to the more general question of the extent to which humans can learn from their history at all. Whatever the case, legal history can help to prevent the "delusion that the development of a legal order will always lead, almost automatically, to a higher degree of perfection. The opposite is the case: no era and no legal order is free of challenges and the risk of relapse" (WERNER OGRIS).

➢ The prerequisite for legal history as it is defined here is, of course, that the law "can be understood as a historical phenomenon at all" (MICHAEL STOLLEIS). Legal history thus sets out from a specific concept of the law. Determining this concept is not the task of legal historical *research*; rather, legal history must *choose* the concept of the law that seems most *useful* for it to be able to pursue its tasks. It is therefore a matter of definition and not open to falsification.

0002 This textbook is based on the insights of the **Vienna School of Legal Theory** (the "pure theory of law"), which tells us that the law is a "regulatory system which is created by humans for humans and is generally effective, and which may apply organised coercion" (ROBERT WALTER).

➢ Legal history studies the law as an interpretative framework for human behaviour; many events only make sense when they are understood as reactions to legal norms. Therefore, it makes sense to focus only on law that was indeed "lived" (i.e. effective). This does not mean that all of its norms were consistently followed, but there had to be at least the "chance" of "coercion being applied by a staff of people in order to bring about compliance or avenge violation" (MAX WEBER).

➢ This definition of the law is confined to positive law, i.e. norms posited by humans. However, there has also always been an assumption that, apart from positive law, there is also a legal order that cannot be influenced by humans. This order has been called *natural law* (⇨ par. 3129). Since this idea had an impact on the development of positive law, it is considered a driving force of positive law and thus, to a certain extent, also an object of legal historical research.

➢ This definition also disregards the notion of justice (which is otherwise often used to define positive law), not only because, in the author's opinion, this can only ever be a subjective standard, but also because even legal

systems that all "civilised nations" (cf. Article 7 ECHR) would perceive as unjust can, at least temporarily, achieve effectiveness (as evidenced by the example of National Socialist law, for instance), and legal scholars are also interested in understanding such legal systems.

0003 As HANS KELSEN has shown, all legal systems that are deemed valid are also interrelated. This textbook is based on the notion of a **universal international legal order** from which the various partial legal orders either directly or indirectly derive their validity. These partial orders include, in particular, states and religious communities.

➢ This means that a state is nothing more and nothing less than a (partial) legal order. The modern state is characterised by the fact that its legal order is relatively centralised and covers a relatively well-defined territory and group of people, which is conventionally described as the triad "state power – state territory – state people" (according to GEORG JELLINEK and others). Note, however, that this *three-element doctrine,* as a product of modern jurisprudence, is of limited use in relation to the partial legal orders of earlier periods. Whether one should also refer to these older entities as "states" or use a different term (for instance "regimes of normativity" or "feudal state of personal association" in the context of medieval feudal structures) depends on whether one wants to emphasise their resemblance or dissimilarity to modern states.

➢ A state that derives its existence directly from general international law is a *sovereign state.* State theory up to the 20th century has been based on a sharp distinction between national and international law, with sovereignty acting as the dividing membrane between them. More recent developments in international law and especially also in European law have increasingly called this dividing line into question.

➢ Religious communities differ from states in that they primarily pursue a religious purpose. The Catholic Church, in particular, likened itself to a state well into the 20th century. Since the Second Vatican Council, it has no longer embraced this view, but with the *Codex Iuris Canonici* of 1983, it has once again given itself a constitution that resembles that of a state, namely of an absolute monarchy. The law of a religious community can be derived either from the legal order of a state or directly from the international legal order; in the latter case, it is also sovereign (e.g. the legal order of the Holy See).

0004 This textbook focuses on the historical foundations of the legal order applicable in present-day **Austria**, which, however, can only be properly understood if they are embedded in the European context. On the other hand, many European tendencies can be demonstrated by using Austria as an example, which makes this textbook also an introduction to **European legal history**.

➢ The name "Austria" (in German: *Österreich*) originally referred only to the territory that emerged in the High Middle Ages (a duchy after 1156 and an archduchy after 1453) and was divided in the Late Middle Ages into "Austria above the Enns River" (after 1918: Upper Austria, in German:

Oberösterreich) and "Austria below the Enns River" (after 1918: Lower Austria, in German: *Niederösterreich,* ⇨ par. 1105).

➤ In 1282, the Habsburgs were enfeoffed with the land of Austria (⇨ par. 1110) and henceforth used "Austria" as the name of their dynasty (Spanish: *Casa de Austria*, French: *Maison d'Autriche*), which is why subsequently all other Habsburg lands were also referred to as "Austrian"; in the 19th century, the name "Austria" was used for the Habsburg-ruled state as a whole (⇨ par. 1133).

➤ The republic founded in 1918 was initially called "German-Austria" (*Deutschösterreich*) and only adopted the name "Austria" following the Treaty of Saint Germain in 1919 (⇨ par. 1304).

➤ The conceptual history of the name "Austria" demonstrates that an "Austrian legal history" does not deal with a stable geographical area and therefore demands a focus on larger geographical contexts.

➤ The term "Europe" needs to be understood in cultural-geographical terms and thus also does not have a stable meaning throughout the ages. In relation to the period from about the middle of the 8th to the middle of the 20th century, it can be defined as that part of Eurasia whose civilisations developed from the basis of Greco-Roman antiquity and were shaped to a greater extent by Christianity than by the other two Abrahamic world religions (Judaism, Islam).

➤ Given the secularisation of European society in the 20th century, a direct reference to religions does not seem useful for a definition of contemporary Europe. Instead, it can be defined as the collective of states that have signed the European Convention on Human Rights (ECHR) and have thereby – for whatever reason – committed themselves to the values on which it is based.

0005 Legal history applies both historiographical and jurisprudential methods. **Sub-disciplines** of legal history are the history of legal dogmas, the history of "law in action", the history of ideas in law, and the history of law-making.

➤ Every legally relevant event consists of an act that can be perceived by the senses (for instance: somebody kills another person) *and* its legal meaning (here: it is murder/it is the execution of a death sentence). Whether and under what circumstances (when? where? who? in what way? etc.) this act took place needs to be established using historiographical methods. Unlike the judge, the (legal) historian is not obliged to accept any given chain of events as facts but can locate his or her findings on a "scale of certainty" (CLEMENS JABLONER), which ranges from the greatest possible probability to vague presumption.

➤ Legal methods, on the other hand, need to be applied to determine the legal significance of these acts. However, adopting the methods used in the dogmatics of current law only makes sense when the legal historian is also dealing with a law that, although old, is still valid (more precisely: a law whose temporal scope of application has not yet ended). This may be the case, for example, when he or she acts as an expert witness in a court case involving historical circumstances (e.g. a dispute over old property rights, the restitution of property looted under the National Socialist regime, etc.).

➢ If, on the other hand, he or she wants to examine the law as an interpretative scheme of past human behaviour, he or she will – in contrast to the legal dogmatist, who explores the "objective meaning" of the relevant norms – primarily investigate the meaning that the people of the time attributed to a certain law, and thereby try to understand their actions. A *history of legal dogmas* undertaken in this way has many similarities with legal dogmatics, but the two are not the same.

➢ The study of "law in action" requires a completely different set of methods; here, the focus is on the extent to which law was "actually lived", and this is studied by evaluating individual legal acts (court rulings, contracts, wills) according to qualitative and quantitative criteria (in the latter case, by using statistical methods). Apart from important social-historical insights, the main concern in this context is the effectiveness of general legal norms.

➢ The history of ideas in law examines how legal scholars of past times conducted their work and the ideas that they developed in the process. Here, too, the interpretation of legal texts, which must be placed in their (legal) historical context, is of paramount importance.

➢ A properly pursued approach to the history of law-making should integrate all of these methods and thereby explain how the law developed from one stage to the next.

0006 Research in legal history begins with an examination of the **sources**. They are analysed according to certain rules and placed in a historical and thematic context, which then allows the researcher to evaluate them (*source criticism* or *exegesis*).

➢ Note that the term "source" in legal usage can have (at least) two different meanings! A *source of law* is every entity from which law emanates. Today, this includes primarily the *legislator* as the source of statutory law and the *judge* as the source of judicial law, but sometimes also *custom* (supported by *opinio iuris*) as the source of customary law. In some legal systems, *jurisprudence* itself can also be a source of law.

➢ In the context of legal historical methodology, however, the term "source" is used mainly to refer to a *source of legal cognition*. Thus defined, a source is anything that can provide us with knowledge about a (current or past) law; this includes printed collections of statutes such as the Imperial Law Gazette for the Austrian Empire as well as handwritten records of customary law in a medieval law book, or a legal database on the internet. Non-written material such as objects, pictures, or interviews with people who participated in or witnessed past events can also be used as sources.

Part I

Developments

First section

Austria and Europe until 1918

A The Middle Ages

1. The Early Middle Ages (c. 500–955)

1101 The foundations of the present European system of nations and states can be traced back to the **migration period** in the Early Middle Ages. It also marks the transition from antiquity to the Middle Ages.

➢ Migratory movements of Germanic tribes, in particular, towards the south and west had already been going on for several centuries but became much stronger around 375 AD as a result of the invasion of Europe by the Huns. The migrants mixed both among themselves and with the resident (autochthonous) population, laying the foundations for the development of the linguistic and cultural communities that still exist in Europe today.

➢ Until then, the Roman Empire had dominated the entire Mediterranean world and large parts of Europe. It was (permanently) divided into a Western Roman Empire and an Eastern Roman Empire in 395 AD. The boundary drawn at that time still has an effect on the cultural landscape of the present. The Roman Catholic Church and the Latin script culture developed in the West, whereas the Greek Orthodox Church and the Greek/Cyrillic script culture developed in the East.

➢ While the Western Roman Empire soon collapsed (the last Western Roman Emperor was deposed in 476), the Eastern Roman (or Byzantine) Empire with its capital Constantinople (Byzantium, today Istanbul) persisted through the period of migrations and almost until the end of the Middle Ages (until 1453, ⇨ par. 1113).

➢ Independently of the migration phenomenon in Europe, Islam began to spread across the Near East and North Africa in the 7th century (*Arab migration*), breaking up not only the political but also the religious unity of the Mediterranean world.

1102 The Germanic lords established their own kingdoms in the territory of the defunct Western Roman Empire, adopting both Christianity

and some aspects of the administrative structures of the *Imperium Romanum*. The most prominent of these kingdoms was the **Frankish Empire**, which at its height under CHARLEMAGNE (768–814) encompassed practically the whole of Central Europe. After his death, the Frankish empire disintegrated. In a lengthy process of division in the 9th and 10th centuries, two new states were formed: West Francia and East Francia. The former developed into *France*, the latter into *Germany*.

➢ CLOVIS I (481–511), who came from the Frankish tribe of the Salian Franks, is considered the founder of the Frankish Empire. He gained control over northern Gaul in 486 and converted to Catholic Christianity in 496.

➢ Earlier, the Visigoths had already established a kingdom in southern Gaul; in 507, the Franks drove them into Spain. In 711, the Arabs destroyed the Visigoth kingdom established there and conquered the Iberian Peninsula; a further advance of the Arabs in Europe was fought back by the Franks.

➢ In Italy, the Ostrogoths established a kingdom that was destroyed by the Byzantine Empire in 555. In 568, the Lombards invaded Italy and conquered the northern and central parts of the peninsula. The Lombard kingdom was conquered by CHARLEMAGNE in 774; Southern Italy still remained under Byzantine rule.

➢ The largest of the British Isles was settled by Angles and Saxons, which gave rise to the Kingdom of England in the 11th century. The Saxons who had remained on the mainland (the area of present-day Lower Saxony) were subjugated by CHARLEMAGNE in 772–802 and forcibly Christianised.

➢ Slavs migrated to the areas abandoned by the Germanic tribes, including present-day Austria. From the 7th century onwards, the Alpine Slavs became dependent on the Bavarians migrating from the north and west; both groups were incorporated into the Frankish Empire (the deposition of the last Bavarian Duke TASSILO III by CHARLEMAGNE took place in 788). While most of what is now Austria henceforth shared the fate of Bavaria, present-day Vorarlberg – as well as what is now south-western Germany and German-speaking Switzerland – was settled by Alemanni. They had already been subjugated by CLOVIS around 496 and incorporated into the Frankish Empire.

➢ Under the descendants of CHARLEMAGNE (the Carolingians), the Frankish Empire was repeatedly partitioned; however, this did not compromise the idea of the unity of the empire. Only over time did the separation turn out to be irreversible. From 888 onwards, non-Carolingians also attained kingship in parts of the empire, thereby breaking the dynastic bond.

➢ One reason for the disintegration of the Frankish Empire was the permanent threat from the Normans in the north, the Magyars in the east, and the Arabs in the south and west. These peoples also established their own states over time: the Normans in Normandy; the Magyars in the Pannonian Plain; and the Arabs in southern Italy.

1103 The Frankish kings entered into a close alliance with the pope, who at that time established his primacy over the Western Church. An important consequence of this development was the **coronation** in 800 of CHARLEMAGNE as **emperor** by the pope, (re-)establishing the tradition of the Western Roman Empire until the 19th century.

➢ After the fall of the Western Roman Empire in 476, the Eastern Roman (Byzantine) emperor had initially claimed the sole right to the imperial title and thus also supremacy over the Germanic kings, but he was unable to assert this claim.

➢ Instead, a power vacuum arose – particularly in Italy, where the Bishop of Rome (known as the *pope* since the 4th century) intervened to impose order and then claimed sovereignty over Italy himself. Battling the Lombards, he entered into a close alliance with the Franks and was granted secular rule over all of central Italy from Rome to Ravenna in 754. This Papal State existed until 1870 (⇨ par. 1157).

➢ The legal significance of CHARLEMAGNE's coronation in 800 was disputed. After initial hesitation, Byzantium acknowledged CHARLEMAGNE's emperorship in 812, and from then on, two emperors of equal status ruled in East and West. CHARLEMAGNE's coronation was therefore generally understood as the re-establishment of the Western Roman Empire (*renovatio imperii*).

➢ With the disintegration of the Frankish Empire, the imperial crown also temporarily lost some of its significance; it usually fell to the king who was currently in control of Italy.

2. The High Middle Ages (955–1214)

1104 Under OTTO I the Great (936–73), the German kings attained a hegemonic position over the Christian Occident. OTTO united (northern) Italy with Germany and was crowned Roman Emperor in 962, thereby establishing the **Holy Roman Empire** (*Sacrum Imperium Romanum; Roman-German Empire*). From then on, German kings regularly claimed the right to be crowned as emperors by the pope.

➢ In order to receive the imperial crown, every German king had to travel to Rome at least once during his reign, which diverted the monarch's political powers for a considerable time and gave the pope great political weight. Nevertheless, almost every German king of the High Middle Ages undertook this journey to Rome.

➢ With the imperial title, the idea of world domination, or at least domination of all Christianity, handed down from late antiquity, continued to persist, but in reality it could not be asserted, if only because a second emperor ruled in Byzantium (the "two-emperors-problem"). It was rather a primacy of honour of the Roman-German emperor over the other kings of the Occident, which, under powerful rulers (OTTO I, HENRY VI), could at least provide the legal title for hegemonic claims in Europe.

➢ From 1033, the Holy Roman Empire consisted of three kingdoms ruled by the Roman-German Emperor: Germany, (Northern) Italy, and Arelat

(located in what is now south-east France/western Switzerland). Bohemia also became a kingdom in the 12th century but remained a fiefdom of the German Kingdom until 1806. Until the 11th/12th centuries, Poland and Denmark were also fiefdoms of the empire.

➢ The heartland of the Holy Roman Empire, the German Kingdom, was originally structured along tribal lines (Franks, Saxons, Bavarians, Swabians/Alemanni), each ruled by a duke. From the 12th century onwards, it was reorganised into a union of (territorially defined) lands. The first such territory was the Duchy of Austria under the Babenberg dynasty in 1156 (⇨ par. 1105).

➢ Many territories were not ruled by a secular but by an ecclesiastical prince; for instance, Salzburg was ruled by its archbishop. The dispute over the right to appoint bishops (*Investiture Controversy*, 1075–1122) resulted in the first major crisis for the emperor's political power (⇨ par. 2122).

➢ The royal throne was not subject to hereditary succession; instead, any new accession to the throne required the consent of the princes. However, in the period in which the kings had an abundance of power, the crown usually remained with a dynasty until its male line died out and then passed to descendants of daughters of the respective dynasty (*daughter lineages*): Ottonians 919–1024; Salians 1024–1125; Hohenstaufen 1138–1208/1212–54.

➢ The election of the Swabian Hohenstaufen as German kings in 1138 was contested by the Welfs, who ruled in Bavaria and Saxony, which led to serious crises. An attempt at reconciliation in 1156 between the Hohenstaufen Emperor FREDERICK I "Barbarossa" (1152–90) and the Welf Duke HENRY "the Lion" was short-lived; in 1180, HENRY was stripped of his fiefs due to his renewed opposition to the emperor (⇨ par. 2108).

➢ Under Barbarossa's son Emperor HENRY VI, imperial power reached its final peak (conquest of Sicily and an oath of allegiance by the King of England, both in 1194), but his plan to transform the empire into a hereditary monarchy failed. When, after his death in 1198, a Hohenstaufen was elected by one faction of the electoral college and a Welf by another, this double election plunged the empire into its most serious crisis to that point (⇨ par. 1106, par. 1109).

1105 With the support of their close relatives, the Hohenstaufen, the **House of Babenberg** was able to transform the march of Austria into a duchy in 1156. They also acquired a second duchy, Styria, in 1192, which was henceforth linked to the land of Austria in a dynastic union.

➢ After his victory over the Hungarians in 955, OTTO I the Great had established a march on the eastern border of the empire, which was enfeoffed to LEOPOLD I of the House of Babenberg in 976. The oldest known document that refers to this march as *ostarrîchi* dates from 996.

➢ Although the Austrian margraves were legally subordinate to the Bavarian dukes, they subsequently succeeded in establishing a largely independent rule based on their margravial (especially military and judicial) powers.

➢ In the course of the Welf/Hohenstaufen conflict, the Babenbergs replaced the Welfs as rulers of Bavaria in 1139 and were thus themselves

elevated to the rank of dukes. Following the reconciliation between the Welfs and the Hohenstaufen in 1156 (⇨ par. 1104), the Babenberg Duke HENRY "Jasomirgott" (1141–76) was forced to give up Bavaria in favour of the Welfs. However, Austria was separated from Bavaria at this time as an independent duchy and granted several privileges (*Privilegium minus:* limits to the duties of providing troops to the emperor and attending the Reichstag, increased judicial sovereignty, etc.).

➢ After HENRY the Lion was permanently overthrown in 1180, Styria also became an independent duchy under OTTOKAR IV of Traungau. The latter appointed the Babenbergs as heirs to his extensive allodial possessions in Styria in an inheritance contract (documented in the *Georgenberg Compact* 1186). Thus, after the death of OTTOKAR IV in 1192, Emperor HENRY VI formally enfeoffed the Babenbergs with Styria.

1106 In contrast to the powerful position held by the German kings, the **French king** was initially characterised by a relative lack of power. In 1066, Duke WILLIAM "the Conqueror" of Normandy conquered the **Kingdom of England**, which meant that a vassal of the French king also became the king of a sovereign state. This unusual constellation gave rise to a series of conflicts.

➢ In France, there was initially also no hereditary claim to the throne. However, the Capetian dynasty, which ruled from 987 onwards, succeeded in transferring the crown from father to son twelve times in a row, thereby firmly establishing the hereditary nature of the crown. After the direct line of the Capetian dynasty had died out in 1328, the crown could be passed on to the Capetian collateral lines of Valois (1328–1589, ⇨ par. 1111) and Bourbon (1589–1792 and 1814–48, ⇨ par. 1117).

➢ The high aspirations of the French kings, who, like their German counterparts, saw themselves as the successors of CHARLEMAGNE, contrasted with their actual political power base, which in the High Middle Ages barely extended beyond the areas around Orléans and Paris, while the rest of France was firmly in the hands of powerful vassals.

➢ The Norman kings of England also saw themselves primarily as French princes after 1066 and steadily increased their possessions in mainland France; the "Anglo-Norman" King HENRY II of England (1154–89) ruled over more than half of the French kingdom and also initiated the subjugation of Ireland. The House of Plantagenet, which he founded, ruled in England until 1485.

➢ The ambitions of the House of Plantagenet, which was linked through marriage to the Welfs, ultimately resulted in conflict with the Hohenstaufen emperors. In 1192, the English King RICHARD I "Lionheart" (1189–99) fell into German captivity, from which he was only released in 1194 upon paying a high ransom and accepting England in fief from Emperor HENRY VI. Back in England, RICHARD I soon cast off this vassalage and, after the death of HENRY VI in 1198, helped the Welf OTTO IV to establish a German rival kingdom against the Hohenstaufen as an act of revenge.

1107 The Magyars settled in the Pannonian Plain in the 10th century and founded the Kingdom of **Hungary**, which encompassed all the peoples living within the Carpathian Arc. In the year 1000, King STEPHEN I "the Saint" (997–1038) became a Christian.

➤ In 906, the Magyars, from the Ural region, destroyed the Great Moravian State on the Danube and March and subsequently advanced deep into Western Europe; they were not defeated until 955 by OTTO I the Great, after which they retreated to the Pannonian Plain.

➤ The Crown of Saint Stephen, named after STEPHEN I, which he received from the pope on the occasion of his conversion to Christianity in 1000, henceforth served as the symbol of the Hungarian kingdom, with which every legitimate king had to be crowned.

➤ In 1102, Croatia was united with Hungary in a personal union and from then on shared Hungary's fate (until 1918).

1108 The **crusades** to the Holy Land (1095–1303) brought no lasting territorial gains for the Christians, but in the **Reconquista** (722–1492), they were able to reconquer the Iberian Peninsula from the Muslims. Europe's close contact with the (culturally far superior) Arab world led to flourishing trade relations and a significant transfer of knowledge (Arabic numerals, the reception of ARISTOTLE's philosophy through the work of Arab scholars, etc.).

➤ Since the destruction of the Visigoth kingdom by the Arabs in 711, only the far north of Spain had remained Christian, while most of the peninsula constituted the Muslim Emirate of Córdoba from 756. It disintegrated into several Muslim petty kingdoms in 1031, which had to assert their independence against both the Christians and their North African co-religionists.

➤ Christian efforts to reconquer Spain (*Reconquista*) began as early as 722. Several Christian kingdoms emerged (especially Castile, Aragon, Portugal), which in numerous wars subjugated almost the entire peninsula until the end of the 13th century. Only the extreme south – the Kingdom of Granada – remained under Muslim rule until 1492.

➤ The fight against the "infidels" had thus been long established as the central mission of Western chivalry when, from 1095, the popes called for crusades to the Holy Land, where the Byzantine Empire had until then tried on its own to regain the territories it had lost to the Muslims from the 7th century onwards. The "Latin" (i.e. Catholic) crusader armies managed to conquer a few areas but were unable to keep them permanently.

➤ Byzantium initially profited from the crusades, but in 1204, it was itself conquered and looted by crusaders, who established a "Latin Empire" (*Imperium Romaniae*) in its territory. This event in particular made the split between the Greek Orthodox and Roman Catholic Churches irreversible. The main beneficiary of the conquest of Constantinople was Venice, which became the dominant sea power in the eastern Mediterranean.

➤ At the beginning of the 11th century, the Normans conquered Southern Italy, which had been partly Arab and partly Byzantine. They established a modern state (the "Kingdom of Sicily"), which also included the Neapolitan

mainland. In 1194, the Roman-German Emperor HENRY VI conquered this kingdom, but the popes blocked the legal incorporation of Sicily into the Roman-German Empire, which effectively saved the Papal States from being encircled by the Empire and also prevented the unification of Italy.

➢ In later times, crusades were also launched against other non-Christian or "heretical" (⇨ par. 1112) targets, especially into the pagan Baltic region, where the Teutonic Order of Knights formed its own state in the 13th century.

3. The Late Middle Ages (1214–1492)

1109 Under Emperor FREDERICK II (1212–50), the **Holy Roman Empire** flourished once again, but his death marked the beginning of a period of decline. As the weaker party in the power struggle against the pope, the German ruler was unable to maintain his supremacy over other European monarchs and also lost many domestic powers to the German princes.

➢ Even FREDERICK II had only been able to prevail against the rival Emperor OTTO IV from the House of Welf (1198–1218) with the help of armed forces from France (Battle of Bouvines 1214, ⇨ par. 1111). He was opposed by the popes not only because of his affection for Arab culture and science but also because – like his father HENRY VI – he ruled over both Imperial Italy and Sicily and thus once again had the papacy in his grip from both the north and the south.

➢ In 1246, the Babenbergs died out, and Emperor FREDERICK II seized their territories. For some time, he considered elevating them to a kingdom *(Regnum Austriae)*, but this did not materialise. His own death in 1250 caused a new power vacuum throughout Central Europe, as the princes were unable to agree on a new German king.

➢ Although – or even because – several kings subsequently often ruled at the same time, their rule was so ineffective that the period 1250–73 came to be known as a kingless period (*"interregnum"*). It was not until the election of RUDOLF I of Habsburg as German king (1273–91) that the gravest ills in the empire came to an end. However, RUDOLF was unable to attain the level of power formerly held by the Hohenstaufen dynasty.

➢ Due to their weak position in the empire, the German kings of the Late Middle Ages focused on strengthening and increasing their own hereditary territories, which they held as princes of the empire (*dynastic power politics*). The electoral college sought to counter this strategy and elected kings from different dynasties (mainly Habsburgs, Luxembourgs, and Wittelsbachs) to prevent any of them from becoming too powerful.

➢ Coronations of emperors were rare during this period. Emperor LOUIS IV "the Bavarian" from the house of Wittelsbach (1314–47) attempted to detach the imperial title from the coronation by the pope and to link it directly to the election as German king (*constitutio licet iuris* 1338), but this failed.

➢ Gradually, a circle of seven imperial princes crystallised who claimed the right to elect the king for themselves alone (the electoral princes). The electoral law and procedure were thoroughly regulated in 1356 by Emperor

CHARLES IV from the House of Luxembourg (1347–78) in the *Golden Bull*. Membership in the electoral college was linked to the rule over a specific ecclesiastical (Mainz, Cologne, Trier) or secular (Bohemia, Rhenish Palatinate, Saxony, Brandenburg) electorate; the Golden Bull contained special succession rules and privileges for the electorates that made them largely independent of the empire.

1110 Over time, the **Habsburgs** were able to gain such a strong position that the electors could no longer deny them the kingship and from 1438 onwards regularly elected them as German kings (until 1740/1806, ⇨ par. 1127). However, German kingship was never made hereditary, and the election always remained a political issue.

➢ During the German Interregnum, King OTTOKAR II of Bohemia had acquired the former Babenberg territories of Austria and Styria, as well as Carinthia and Carniola (in present-day Slovenia), thereby creating a power bloc stretching from the Sudetes to the Adriatic Sea. However, his efforts to have these acquisitions recognised under imperial law were unsuccessful.

➢ After RUDOLF I had been elected German king, he demanded that OTTOKAR II surrender these illicitly acquired territories. He was able to enforce his claim by military force and in 1282 enfeoffed his sons with Austria, Styria, and Carniola (⇨ par. 2108). With this enfeoffment in 1282, the dynasty, which originated in the Alemannic region and had its ancestral seat in present-day Switzerland (Habsburg castle in Aargau), became one of the most powerful families of the empire and took on the name "House of Austria". Accordingly, the countries they ruled were also called "Austrian" (in the sense of belonging to the Habsburgs).

➢ RUDOLF I enfeoffed Carinthia to his comrade-in-arms MAYNARD II of Gorizia-Tyrol in 1286 and also gave him Carniola as a pledge to pay off his debts. The counts of Tyrol, who until then had only been indirectly subjected to the king (namely through their direct liege lords, the bishops of Brixen and Trento), were thus elevated to the status of imperial princes. They were able to retain this status when the Habsburgs annexed Carinthia and Carniola in 1335, following the extinction of the male line of the Maynardins.

➢ Unlike in Carinthia, the Tyrolean estates allowed female succession (*feudum femininum*), which is why the daughter of the last Maynardin, MARGARET (Margarete "Maultasch", 1335–63), was able to inherit her father's position. The Luxembourgs, Wittelsbachs, and Habsburgs tried, in turn, to gain the rule over Tyrol, until it finally fell to the Habsburgs in 1363.

➢ The increased political influence of the Habsburgs on the one hand and their exclusion from the circle of electors (⇨ par. 1109) on the other prompted the Austrian Duke RUDOLF IV "the Founder" (1358–65) to unilaterally lay claim to certain privileges and to justify them by falsifying older documents, including the Privilegium minus (*Privilegium maius* 1358/59). However, Emperor CHARLES IV forced him to renounce those claims.

➢ The Habsburgs also suffered a setback in the Alemannic region, where in 1291 the three territories of Uri, Schwyz, and Unterwalden, which were under the direct authority of the emperor, had united to form a confederation that was primarily directed against the Habsburgs' efforts to

increase their powers; later, other territories joined as well. In their struggle against the *Swiss Confederation*, most of the Habsburgs' ancestral lands were lost, including Habsburg castle itself in 1415.

➢ In 1453, the Habsburg Emperor FREDERICK III declared the forgeries of 1358/59 to be valid; the Habsburgs henceforth held the title of "Archduke of Austria" and enjoyed a series of privileges that further strengthened their dominion over their hereditary lands.

1111 The **King of France** was able to successively increase his political power and reduce the sphere of influence of the **King of England** within France.

➢ In the Battle of Bouvines in 1214 (⇨ par. 1109), PHILIP II of France (1180–1223) settled both the Anglo-French conflict and the dispute over the German throne between the Hohenstaufen FREDERICK II and the Welf OTTO IV, which was the first time that the King of France directly influenced German domestic affairs. After 1214, the English King JOHN "Lackland" (1199–1216) could only retain a few provinces in southern France. In a weak position, he was forced by his English vassals to sign the *Magna Charta* in 1215, which permanently limited the monarch's power and led to the establishment of the English Parliament (⇨ par. 2117).

➢ The burgeoning French crown came increasingly into conflict with the popes. PHILIP IV (1285–1314) not only succeeded in maintaining his position through a united effort of the French estates (1302: first assembly of the *états généraux*; ⇨ par. 2117), but also forced the pope to relocate his court into the sphere of French influence ("Babylonian captivity" of the popes in Avignon 1309–76).

➢ When the Capetian collateral line of Valois ascended the French throne in 1328 (until 1589, ⇨ par. 1117), competing claims by the House of Plantagenet led to the so-called *Hundred Years' War* with England (1339–1453). After some initial success by the English, the "Maid of Orleans" JOAN OF ARC led the French army to victory. England lost virtually all its possessions on the mainland.

➢ In the course of the Hundred Years' War, the mighty Burgundian state emerged from German and French fiefdoms, extending along almost the entire Franco-German border; it was a constant threat to the French kingdom even after the war with England had ended.

1112 The crises of the imperial and papal powers on the one hand and economic changes and epidemics on the other led to **religious and national unrest** as well as the persecution of heretics, Jews, and (alleged) "witches".

➢ The German word *"Ketzer"*, meaning "heretic", comes from the sect of the Cathars in southern France. By destroying this (Christian!) religious community in a formal crusade in 1226, the French king was able to strengthen his power in southern France, which until then had been marginal.

➢ In 1376, the popes returned to Rome (⇨ par. 1111), whereupon a counter-papacy was established in Avignon. This schism in the Church led to a temporary decline in papal power and several councils, of which only

the Council of Constance (1414–18) succeeded in ending the "Western Schism".

➢ Meanwhile, the attempts at religious reform by the Prague theology professor JAN HUS combined with Czech nationalist concerns. In 1415, HUS was executed as a heretic at the Council of Constance, and his followers were brutally persecuted (*Hussite Wars* 1419–34).

➢ Jews and "witches" were held responsible for the outbreak of the Black Death in 1347/48, which killed more than 50 percent of the European population. Persecutions (pogroms), mass executions, and expulsions ensued.

1113 After the decline of the Holy Roman Empire and the fall of Byzantium, Western European influence also became noticeable in **East-Central Europe** and **Italy**.

➢ The Byzantine Empire was restored in 1261 but could not regain its former position as a leading power. In 1453, the Turks conquered Constantinople, which meant the definitive end for Byzantium.

➢ After the death of the Hohenstaufen Emperor FREDERICK II in 1250, the French Prince CHARLES I of Anjou conquered Sicily (including Naples), which until then had been ruled by the Hohenstaufen dynasty. CHARLES founded his own kingdom there, which initially succeeded in gaining hegemony over the whole of Italy but from 1282 ("Sicilian Vespers") became involved in a conflict over Naples-Sicily with the Spanish House of Aragon. After the Anjous had died out in 1435, Naples-Sicily was eventually annexed to Aragon (or, later, Spain).

➢ A collateral line of the House of Anjou ascended the Hungarian throne in 1301 and the Polish one in 1370, making the empire of King LOUIS I the Great of Anjou (1342–82) stretch from the Adriatic to the Baltic and Black Seas. Following his death, this Hungarian-Polish empire disintegrated.

➢ Hungary then entered into a personal union with Bohemia, which lasted – with interruptions and under changing dynasties, eventually the Habsburgs – until 1918.

➢ In 1386, Poland formed a personal union with Lithuania; in 1569, the two countries were legally united to form a "Republic of Nobles" (*Rzeczpospolita szlachecka*). Political power lay with the parliament (*Sejm*); the king was elected by the parliament from 1572 onward and had only limited powers.

B The modern era

1. The early modern era (1492–1618)

1114 As the Middle Ages transitioned into the modern era, the **Habsburgs** succeeded in establishing a dynastic empire where "the sun never set". The legal bases for these territorial acquisitions were mostly marriage articles, but coincidence played at least as great a

role as the arranged marriages. Moreover, it was always also necessary to be able to sustain the acquisitions by military means. The equally common expression *bella gerant alii, tu felix Austria, nube* ("Wars may be waged by others, you, happy Austria, marry") is therefore misleading. Specifically, the Habsburgs acquired in the 15th and 16th centuries:

➤ 1. the Burgundian state (1477);

➤ 2. the Kingdoms of Castile and Aragon (united since 1479 = Spain with its other territories in Italy and colonies in America, 1506/16);

➤ 3. the united Kingdoms of Bohemia and Hungary with their other territories (1526);

➤ 4. the Kingdom of Portugal with its colonies in Africa, Asia, and America (1580).

➤ The Habsburg monarch CHARLES V (1516/19–56), by virtue of his dual position as Holy Roman Emperor and King of Spain, enjoyed unprecedented power, but the numerous problems associated with his roles drained his strength.

➤ In 1521/22, CHARLES V ceded the Austrian hereditary lands, i.e. the territories that had already belonged to Habsburg in the Middle Ages, to his brother FERDINAND I, who also became King of Bohemia and Hungary in 1526. However, the latter territory was, for the most part, lost to the Turks in 1529/41; only a narrow rim in the north and west of Hungary (approximately present-day Slovakia and Burgenland) remained with the Habsburgs.

➤ A Spanish line of the House of Habsburg descended from CHARLES V and an Austrian line from FERDINAND I; they remained closely connected through intermarriage (and incest!). The title of emperor passed to the Austrian line in 1556, but the Spanish line remained politically dominant for some time.

1115   The Kingdom of **Spain**, which had emerged from the union of the Kingdoms of Castile and Aragon, completed the Reconquista in 1492 and, in the same year, began to establish its colonial empire in America (voyages of discovery by CHRISTOBAL COLOMB). The Spanish Habsburgs thus became the most powerful monarchs in Europe.

➤ Castile and Aragon had been united in a personal union since 1479 but otherwise largely retained their independence. It was not until 1714 that the two kingdoms were also legally united (⇨ par. 1122).

➤ Portugal had already begun building a colonial empire in Africa and India in the 15th century. However, it subsequently fell behind Spain and was annexed by the latter in 1580, leading to a personal union.

➤ The once powerful Burgundian state, of which the Netherlands was the most important part, was governed as merely a constituent of Spain. In 1579, the northern (Protestant) Netherlands declared itself independent (which was not recognised by Spain until 1648); the southern (Catholic) Netherlands (present-day Belgium and Luxembourg) remained Spanish.

➤ France in 1604 and England in 1606 began to expand their own colonial empires in North America. At the same time, the influence of Spain, which

had been the hegemon in Europe in the 16th century, began to decline as a result of having exhausted its resources.

1116 In the Holy Roman Empire, an extensive **Imperial Reform** took place under Emperor MAXIMILIAN I (1493–1519), which, however, was soon overshadowed by the **Protestant Reformation**. The conflicts between Catholics and Protestants were temporarily ended by the Religious Peace of Augsburg in 1555.

➤ The Imperial Reform of 1495 created the *Reichstag (Imperial Diet)* as an institutional assembly of the imperial princes (⇨ par. 2116) and the *Imperial Chamber Court* (*"Reichskammergericht"*, ⇨ par. 3120), whose members were appointed in equal numbers by the Reichstag and the emperor, respectively. The emperor/king was left with only limited powers. These were enumerated exhaustively in *electoral capitulations* (binding promises to the electors); most of them he could only exercise jointly with the Reichstag *(iura Caesarea comitialia)*.

➤ From 1508 onwards, the German kings refrained from letting themselves be crowned as emperors by the pope, but with papal approval held the title of "Elected Roman Emperor". The last coronation of a Roman-German emperor by the pope took place in 1530 (CHARLES V). The notion of a supranational nature of the Holy Roman Empire, which still prevailed in the Middle Ages, had faded due to the decline in the emperor's actual importance. The empire turned into a state of the Germans, which from the 15th century onwards was also expressed in the state name: "Holy Roman Empire of the German Nation".

➤ Northern Italy formally remained part of the empire, but the German kings had almost entirely abandoned their policies in regard to Italian affairs. The Italian princes were not represented at the Reichstag, and Italy became the object of French and Spanish power struggles.

➤ Emperor CHARLES V initially tried to forcibly suppress the new theology spread by MARTIN LUTHER but failed due to the opposition of the imperial princes who sympathised with the latter. In the Religious Peace of Augsburg in 1555, the confessional unity of the empire was abandoned, and the princes of the empire were free to choose their own confession as well as to determine that of their subjects (principle of *cuius regio, eius religio*).

1117 In both **France** and **England**, confessional conflicts arose that were linked to matters of dynasty and succession to the throne and resulted in religious wars. While France remained Catholic, the Reformation prevailed in England.

➤ The English King HENRY VIII (1509–47) of the House of Tudor broke with the Catholic Church because the pope would not annul his marriage to a Spanish princess who until then had not borne him any sons. In 1534, HENRY VIII declared himself the head of the English Church after having unilaterally annulled his marriage in 1533 and married an English noblewoman, ANNE BOLEYN.

➤ When ELIZABETH I (1558–1603), a daughter of HENRY VIII from his marriage to ANNE BOLEYN, ascended the English throne, the Catholics did not acknowledge her because of her (from the Catholic point of view)