REPUBLIC OF AUSTRIA
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The Republic of Austria, founded in 1918 with the political will of the constituent *Länder* and re-founded in 1945 at the end of the Second World War, belongs to the "old" European federal systems. This small state may, however, be classified among the most centralized federal systems worldwide. This is due to the highly centralized distribution of powers, which confers on the *Länder* both legislative and administrative competences, including residual power and constitutional autonomy, but which gives considerably more power to the centre. The concentration of power at the centre is mitigated to a degree by arrangements whereby many of the laws of the federal legislature are administered by the *Länder*, which exercises both direct and indirect administration, and by a system of financial equalization. The picture is further complicated by the facts that the second chamber of the federal legislature does not represent *Länder* interests sufficiently and that the strong instruments of formal and informal intergovernmental cooperation that have developed over time are only partial compensation for this insufficient representation. Reform of the federal system has been a political topic for decades and was discussed with particular fervour in the context and aftermath of Austria's accession to the European Union in 1995. Reform of the federal system was also deemed crucial by the Constitutional Convention, established in 2003, which, however, failed to effect a compromise. Reform discussion has now been entrusted to a parliamentary select committee, but it is doubtful whether it will be successful.

The Republic of Austria (*Republik Österreic*h) covers a territory of approximately 83,870 square kilometres and has 8.2 million inhabitants. It consists of nine constituent states, which are referred to as *Länder* (the singular is *Land*). These are Burgenland, Carinthia (*Kärnten*), Lower Austria (*Niederösterreich*), Salzburg, Styria (*Steiermark*), Tyrol (*Tirol*), Upper Austria (*Oberösterreich*), Vienna (*Wien*), and Vorarlberg. The largest *Land* geographically is Lower Austria, followed by Styria and Upper Austria. The *Land* with the least territory is Vienna, the capital, which is 45 times smaller than Lower Austria. Despite its small geographical area, Vienna shares with Lower Austria the status of the largest *Land* in terms of population.[1]

The civil-law system that is used in Austria has a hierarchic structure, with the federal Constitution as the supreme norm.[2] The Constitution comprises the federal Constitution itself (*Bundes-Verfassungsgesetz*, *B-VG*)[3] and some additional federal constitutional laws or provisions of a constitutional kind within ordinary federal laws. There are also several laws dating back to the former Austro-Hungarian monarchy, which ended in 1918. Together with certain international treaties, these also have the status of federal constitutional law. Apart from the period of Austro-fascism (1934-38) and the period of occupation (1938-45), the federal Constitution has been in force since 1920. It was re-enacted after the Second World War in 1945, with the support of the constituent *Länder*.[4]

Constitutional doctrine and jurisprudence recognize certain fundamental constitutional principles: democracy, federalism, the rule of law, republicanism, the separation of powers, and human rights. These principles are even better protected than are the so-called ordinary components of Austrian federal constitutional law. The latter can be amended by a qualified majority of two-thirds of the votes cast, in the presence of at least half the members. A referendum is compulsory, however, if the fundamental principles are significantly modified or abolished; this is understood as a "total revision" of the Constitution within the terms of Article 44, para. 3, B-VG. Such a referendum took place when Austria joined the European Union in 1995. Membership in the EU necessitated a wide range of modifications to Austria's legal system, including its fundamental principles.

The Austrian population is basically homogenous with regard to ethnicity and culture. There are only very slight differences in relation to language (which is German, although spoken in various dialects) and religion (mainly Roman Catholic). Six small ethnic groups, which mainly live in the south and east of Austria, enjoy particular legal recognition, but this has had no impact on the design of the system of Austrian federalism.[5] The boundaries of the *Länder* do not reflect the grouping of different peoples but, rather, correspond roughly to those of the former German-speaking Crown *Länder* of the Austro-Hungarian monarchy; hence, they are explicable mainly on historical grounds. The historic identity of the *Länder*, which, in most cases, may be traced back to the Middle Ages, is

still meaningful to citizens, although a strong sense of identity with one's *Land* is perhaps more typical of *Land* citizens in the west of Austria than of those in the east. Admittedly, in the nineteenth century the monarchy operated rather more as a decentralized unitary state than as a federal state, thus suggesting the source of some of the weak points of contemporary Austrian federalism. Nevertheless, most *Länder* formed part of the integrated framework of the monarchy a long time before the founding of the Republic of Austria.[6]

When the monarchy came to an end in 1918, a process of dual founding took place.[7] The republic was proclaimed by the interim National Assembly in Vienna on behalf of the new central power. Realization of the republic, however, required the cooperation of the *Länder*, which still effectively exercised state power within their respective territories. Following the proclamation of the republic, the *Länder* declared their willingness to join the embryonic federal state. They also participated in the drafting of the B-VG, which, ultimately, was a compromise between the two great political parties -- namely, the Social Democrats and the Conservatives.[8] Not all *Länder*, however, joined the republic from its very beginning. Burgenland had a short period of Hungarian occupation following the First World War and did not join Austria until 1921. Vienna was an integral part of the *Land* of Lower Austria until 1922, when it became a *Land* of its own. Finally, Vorarlberg, although it joined the republic prior to the enactment of the federal Constitution, did so only "for the time being," doubting whether it would remain permanently within the federal state (although in fact it has done so).[9]

The southern and eastern borders of Austria, which were drawn after the First World War and were redrawn after the Second World War, separated certain areas that had formerly belonged to the Crown *Länder* (under the monarchy) from the new Austrian *Länder.* One notable example is the South Tyrol, which now belongs to Italy. Friendly relations now exist, however, between those neighbouring regions that, historically, had been one. In the case of the *Europaregion Tirol,* these have politically received a form of transnational status.[10]

FEDERAL INSTITUTIONS

The Federal Legislature

General

The federal legislature consists of two houses: the National Council (*Nationalrat*) and the Federal Council (*Bundesrat*). Both houses form the Federal Assembly (*Bundesversammlung*). The Assembly has a few formal functions, most of which have never been exercised. The powers to declare war or to impeach the federal president are examples. The main function of the federal legislature is the enactment of legislation, but it has several administrative functions as well, including appointing certain administrative functionaries or, in certain cases, approving secondary legislation. The legislature is also responsible for the legal, political, and financial control of the executive.

Bills may be introduced into the legislature by the federal government, by a certain number of members of the National Council (five) or of the Federal Council (one-third), or by an initiative supported by a prescribed number of voters.[11] In practice, however, it is the federal government that introduces draft laws, usually after an informal, non-binding consultation with experts or representatives of those groups or entities that may be affected by a particular proposal. As a rule, a coalition government has a majority in Parliament, which makes it easy to obtain parliamentary consent. From 1945 to 1966, and again from 1986 to 2000, Austria had a coalition government that commanded a constitutional majority, which made it easy to secure the passage of constitutional amendments through both houses. In the 1980s and 1990s, in particular, this was done frequently and gave rise to much criticism.

With few exceptions, bills have to pass both houses, starting with the National Council and passing on to the Federal Council.[12] If both houses give their consent – usually, one-third of the members of each house must be present and the majority must vote for the bill – the bill is passed to the federal chancellor who submits it to the federal president for his/her signature. According to prevailing opinion, the federal president may refuse to sign a bill only if there have been formal irregularities in the legislative procedure; however, in practice, no such refusal has ever been

forthcoming. After the federal president signs a bill, it must be counter-signed by the federal chancellor and then published in the federal Law Gazette in order to enter into force.

Special rules apply when the Federal Council withholds its consent to a bill. Usually, the objection may be overruled by the National Council with a qualified quorum of at least one-half of its members.[13] The Federal Council has the right of absolute veto in some matters (e.g., a bill to amend the Constitution that would turn *Länder* competences into federal competences).[14] However, neither the right of veto nor, with very few exceptions, the right of objection have been exercised so far. Typically, the members of the Federal Council are closely linked to their political allies in the National Council, which makes it unlikely that they will withhold consent to a bill that has been approved by a majority of the National Council.

The politics of this are as follows. Traditionally, the Conservative party has held a majority in most of the *Länder* parliaments and, thus, has also enjoyed a relative majority in the Federal Council. In addition, the Conservatives have been part of the governing coalition in the federal government for almost 20 years. It is natural in these circumstances for Conservative delegates in both the National Council and the Federal Council to vote for bills that have been initiated by the federal government. Paradoxically, federalism is a principle that receives particular support from the Conservatives. Far from serving as protector of *Länder* interests, however, these delegates prefer central-party politics, being enabled to do so by a "free mandate" in the sense that they are not bound by the instructions of *Länder* parliaments or governments. There are some differences in this respect between the delegates of different *Länder.* Usually, for instance, those of Vorarlberg in the very west of Austria are strong advocates of federalism. They carry little suasion, however, as long as the other *Länder*, which have more delegates, fail to join their endeavours. In recent years, coalition pacts have even included a provision to the effect that members of the Federal Council who belong to the political parties that form the government ought not to vote against a resolution passed by the National Council.[15]

Most recently, following *Land* parliament elections of 2005, the Social Democrats and the Greens have achieved a narrow majority in the Federal Council. As both are highly centralist parties, their delegates are not likely to be naturally inclined to fight for *Länder* interests. Nevertheless, since assuming control of the Federal Council, they have obstructed the first chamber to a much greater degree than has been done hitherto. In truth, however, this is not an exercise in serving *Länder* interests but, rather, in opposing the Conservative government, which perverts the role of the Federal Council in another way.

The standing orders of both houses provide detailed rules on how bills are to be handled, the numbers of readings and committee stages, and the parliamentary rights of members or certain groups of members. The standing orders of neither the National Council nor the Federal Council, however, stipulate specific representation of the *Länder* representatives within committees or in relation to the exercise of rights of parliamentary control.

The National Council

The National Council consists of 183 members and is chaired by a president and two vice-presidents. According to Article 26 B-VG, elections must be general, free, proportional, secret, personal, equal, and direct. These principles govern the electoral rules of the National Council, which are laid down in a very detailed (ordinary) federal law.[16] The members of the National Council, who must be at least 19 years of age, are elected directly by federal citizens over the age of 18, subject to some exclusions from the franchise. For the purpose of the election, the federal territory is divided into nine *Länder* constituencies, corresponding to the respective *Länder* territories, which are further subdivided into 43 regional election districts. The 183 seats, or mandates, are distributed first among the *Länder* multimember constituencies and then among the regional election districts of each *Land* by reference to citizen population numbers. A by-product of this arrangement is that it tends to over-represent the electorates in constituencies that have a higher proportion of citizens that have not reached the voting age. There is a complicated procedure for counting votes in order to determine the proportional allocation of mandates at the level of regional election districts and *Länder* constituencies and, finally, at the federal level. There are electoral authorities at each level, which represent the political parties in proportion to their existing representation. The Constitutional Court has jurisdiction to review electoral irregularities.

The rationale for the manner in which the National Council is elected, therefore, concerns the direct representation of the federal citizens and not the representation of the constituent units. One result of the use of the *Länder* as constituencies between which mandates are allocated in proportion to the number of citizens of each *Land* is that *Länder* with larger populations have more seats, with the result that their citizens are represented by a larger number of delegates in the National Council. This offers the *Länder* in question no particular channel of influence, however, because National Council members do not represent their *Länder* but, rather, the federal citizens in general, even though their election districts have a territorial basis.

The National Council is elected for a four-year term. Early termination is possible either on the initiative of the federal president[17] - which, in practice, does not occur - or if the National Council passes a law to dissolve itself.

The Federal Council

The Federal Council is constituted quite differently from the National Council.[18] Its members represent the *Länder* and are not elected directly by the federal citizens. Nor are they directly elected by the citizens of the respective *Länder* (which, as worldwide comparison shows, would be a possible way of selecting the second chamber).[19] Instead, the parliament of each *Land* elects its delegates, who do not have to be members of the *Land* parliament but who do have to be eligible to be elected to it. The representatives of each *Land* in the Federal Council, therefore, reflect the proportion of the political parties as represented in the respective *Land* parliament. This linkage between *Land* parliament and Federal Council is the reason for the continuity of the Federal Council, with what, in effect, amounts to a permanent term. After the election of a new *Land* parliament (usually every five or six years, depending on the respective *Land* constitution), the delegates of the *Land* in the Federal Council may change but the council itself continues.

There is a theoretical question concerning whether constituent units should be entitled to equal representation, or arithmetic equality, in a federal chamber or whether allowance should be made for difference in, for example, population size, in order to deliver geometric equality.[20] In Austria, as in many other federal systems, a "geometric" system prevails, so that the number of *Land* representatives in the Federal Council differs according to *Land* population. Article 34 B-VG provides that the *Land* with the largest population is to be represented by 12 members and that the other *Länder* are to be represented by the appropriate ratio of members when their respective populations are compared to that of the most populous *Land*. As population numbers change from time to time, the Constitution provides that the number of representatives of each *Land* in the Federal Council must be determined by an order of the federal president every ten years, following the national census. Currently, the Federal Council consists of 62 members allocated among the *Länder* as follows: 12 members from Lower Austria, 11 from Vienna, 11 from Upper Austria, 9 from Styria, 5 from the Tyrol, 4 from Carinthia, 4 from Salzburg, 3 from Vorarlberg, and 3 from Burgenland.

With good reason, the question might be asked whether this type of proportional representation does not reflect too closely the composition of the membership of the National Council and whether the principle of federalism would not be better served by a system of equal, or arithmetic, representation. It is inherent in the concept of classical federalism that the constituent units of a federal system are basically equal, irrespective of population size. Similarly, it is the rationale of a federal chamber – in contrast to the national chamber of a federal parliament – that it must represent the constituent units and not the federal citizens. A purely "arithmetic" model is somewhat closer to the concept of confederalism, behind which stands the idea of independent states that must be represented equally, even though they differ significantly in size, population, or in other ways. Within a federal system, however, an arithmetic model must accept the fact that, even if represented by equal numbers of representatives, the members of one constituent unit may be overruled by a majority of the members of other such units.

There is one way in which a geometric system might be compatible with the concept of federal equality. Even though the number of members from the respective *Länder* depends on the population shares of the *Länder*, the rules about voting procedure in the Federal Council can

determine whether voting depends on a majority of representatives or on a majority of the *Länder*. The Austrian Federal Constitution seeks to combine the geometric model with the arithmetic equality model in at least one respect. The prevailing model is the geometric one, as the *Länder* are represented by different numbers of delegates and as the outcome of voting usually depends on a majority of representatives, irrespective of the number of *Länder* represented by them. According to Article 35 B-VG, however, the provisions that determine the selection and composition of the Federal Council[21] must not be amended without the consent of the majority of the representatives of at least four *Länder*. In this case, therefore, double majorities are required: a majority of representatives overall and a majority of representatives that are delegates from a certain number of *Länder*. In other words, amendments of this kind need the indirect consent of a certain number of *Länder*, which is given via the *Länder* representatives in the Federal Council.

The direct consent of the *Länder* (usually, the *Länder* governments) is required, in addition to the participation of the Federal Council, for certain federal bills that affect the administrative competences of the *Länder* under the Constitution by authorizing an Independent Administrative Tribunal[22] to hear appeals at second instance or by allocating the task indirectly[23] to a federal agency without explicit authorization in the Federal Constitution. Moreover, most recently, Article 14b B-VG imposed a requirement for the direct consent of the *Länder* to all federal procurement laws that regulate procurement matters falling within the *Länder* administration. The governments of the *Länder* decide whether or not to give consent, in accordance with the *Länder* constitutions.

As noted earlier, the Federal Council is usually only entitled to object to a bill that is passed by the National Council, and the council may, in turn, overrule the objection (thus preventing a possible deadlock) in the presence of a quorum of half of its members.[24] In a few cases, however, the Federal Council enjoys the right of absolute veto, which means that the bill cannot be overruled by the National Council and, thereby, becomes law without the consent of the Federal Council.[25] The main example of this derives from Article 44, para. 2 B-VG, which requires the consent of the Federal Council (with a quorum of half of its members and a two-thirds majority of the members voting) if legislative or administrative competences of the *Länder* are curtailed by a federal constitutional law. So far, however, the Federal Council has never withheld its consent; in other words, it has never vetoed a bill that reduces *Länder* power. From a constitutional standpoint, no legal instrument could force the Federal Council to approve of such a bill - at least not so long as Article 44 remains in force. Politically, however, it is difficult to imagine the Federal Council blocking legislation in this way.

There are other matters over which the Constitution provides the Federal Council with an absolute veto. The council has a veto if *Länder* competences are affected by an international treaty that requires parliamentary consent or if a state treaty reduces *Länder* competences;[26] if a *Land* parliament is to be dissolved by the federal president, pursuant to Article 100 B-VG (although this has never happened); or if a federal framework law obliges the *Länder* to enact implementation laws before the expiry of a period of six months or later than a year.[27] Finally, as noted earlier, Article 35 B-VG entitles the Federal Council to veto a bill that would alter the constitutional rules regarding the selection and composition of the Federal Council itself.[28]

The Federal Council is allowed neither to object to nor to veto bills that concern the federal budget and assets or the standing orders of the National Council. In these cases, the Federal Council's involvement in the federal law-making procedure is restricted to the right to be informed about those laws. The National Council, for its part, is excluded from determining the standing orders of the Federal Council, which may be done solely by the latter with a qualified quorum and majority.[29]

The federal Constitution nowhere explicitly describes the Federal Council as a "federal house," although, organizationally, Article 34 B-VG provides that the *Länder* are represented in the Federal Council. Given that its members are representatives of the *Länder* parliaments, however, and that its functions are directed towards protecting the *Länder* from various kinds of federal interference (at least to the extent that it has an absolute veto), the Federal Council is clearly a federal house. Or, rather, this is the intention of the Constitution, although, as noted earlier, the practice is rather different.

Politically, therefore, the Federal Council does not operate as a federal house might be supposed to operate. In 2003 a very controversial bill was passed to the Federal Council after approval by the National Council, but there were neither sufficient members to support it nor sufficient members to support the motion to object to it. A dispute[30] arose over whether a bill could

become a law under these circumstances. In the end, the Constitutional Court held that it could.[31] The behaviour of the Federal Council, however, gave rise to harsh criticism, and the institution itself was challenged. This is not the first time that the very existence of the Federal Council has been questioned, and the issue was subsequently raised again, in the Constitutional Convention.[32] So far, however, there is no agreement. Some people want to abolish the Federal Council because it does not seem to represent *Länder* interests; others want to dispose of it, together with the entire federal system; some want only to replace the method of its selection and composition by one that is more suitable for the representation of *Länder* interests (e.g., by providing that *Länder* governors be members of the Federal Council).

One point at least seems to be clear, however. Unless the *Länder* are compensated with more general rights of direct consent through their parliaments or governments, the federal system must retain a federal house in which the constituent units can be represented in the enactment of federal legislation. Without such a house, the federal system could not be maintained. This would be regarded as a "total revision" of the Constitution and would therefore require a referendum. It is unlikely that such an extreme step will be taken.

The Federal Executive

Federal President and Federal Government

From 1920 to 1929 Austria was a parliamentary republic in which the federal president was elected by Parliament. The system was transformed into a moderately presidential form, however, by the constitutional amendment of 1929.[33] The federal president is invested with a range of important executive powers and is elected directly by the federal citizens.

The federal executive consists not only of the federal president but also of the federal government as a whole and of individual federal ministers and state secretaries, respectively. None is selected in a way that is influenced by federalism.[34] The federal president, who is directly elected by the citizens, appoints the federal chancellor. On the advice of the federal chancellor, the president also appoints the federal ministers and the state secretaries that assist the ministers. In addition, the federal president may dismiss the federal chancellor or the federal government as a whole, although dismissal of an individual member of the government requires the proposal of the federal chancellor. If the National Council were to pass a vote of no confidence in the government or one of its members, Article 74 B-VG would require the government or the member, as the case may be, to be removed from office unless, perhaps, the president were prepared to take the step of dissolving the council. These limitations apart, the president is subject to no formal legal constraints in exercising his or her powers of appointment and dismissal.

In theory, therefore, the federal president has considerable discretionary power, but in practice, appointment of a government is effectively controlled by the results of the elections to the National Council. No president has yet dismissed a government on his or her own account.

The president, in turn, can be removed from office by a referendum, following a decision of the Federal Assembly, although this has never happened.[35] For this purpose, the Federal Assembly would have to be summoned by the federal chancellor on the basis of a proposal from the National Council, proceeding with a qualified quorum and majority. Moreover, the federal president may be accused of violating the federal Constitution before the Constitutional Court. The decision to accuse the federal president – which may lead to his or her dismissal – is taken by the Federal Assembly with a qualified quorum and majority.

Not only has federalism no influence on the design of the executive, but there are no power-sharing or consociational aspects of the system that would require the federal executive to represent the interests of the constituent units as such. If a *Land* government belongs to the same party as does the federal government, this offers it an informal channel of influence. However, it also opens the door to possible further centralization because the *Land* government is not likely to be inclined to oppose the federal government.

Nor does federalism have any influence on the selection or role of the federal president. The citizens vote for the president directly; the candidate who receives an absolute majority of votes becomes president. The role of the federal president includes a wide range of functions that concern

all spheres of government. The president controls the armed forces, represents the state internationally, appoints and dismisses the federal chancellor and the federal government, dissolves the National Council, issues emergency decrees, signs bills, appoints civil servants and other functionaries, grants certain titles, legitimizes illegitimate children, and pardons criminals. Some of these rights resemble those that, in earlier times, were available through the royal prerogative. The exercise of the more substantial powers of the president, however, are restricted either by the requirement for other organs to participate in some way or by the power to impeach the federal president.

For the most part, the powers of the president have no particular significance for federalism. There is one exception, however. Under Article 100 B-VG, the president may dissolve a *Land* parliament. This right has never been exercised; were it to be exercised, however, the dissolution would first have to be proposed by the federal government and approved by the Federal Council, which in this case has an absolute veto, with a qualified quorum and majority. A *Land* parliament must not be dissolved twice for the same reason. In exercising this power, therefore, the federal president is effectively dependent upon the will of other bodies and, to this extent, plays only a minor constitutional role in the dissolution of a *Land* parliament.

Federal Administration

It is characteristic of many federal systems that both legislative and administrative powers are shared between the federal sphere and the constituent units. The distribution of competences, as enshrined in the Austrian Federal Constitution,[36] is consistent with this characteristic, although by far the greatest share of competences lies with the federation.

In principle, there are four main types of distribution of powers in Austria. Most commonly, the federation has both legislative and administrative authority over a matter assigned to it.[37] In a smaller range of matters, the federation is responsible for legislation and the *Länder* for administration.[38] A third (minor) category entitles the federation to enact framework laws, leaving the *Länder* responsible for implementing legislation and administration.[39] Finally, the *Länder* are fully competent for both legislation and administration in relation to all matters that are not explicitly enumerated as a federal competence.[40] There are relatively few matters, however, that fall into the residual category of power. Most matters are assigned to the federation and fall within the first category mentioned above.

The federal Constitution compensates the *Länder* for their relative lack of power by providing for a system of "indirect federal administration."[41] A significant proportion of federal administration is carried out by the *Länder* on behalf of the federation, without being thereby transformed into a *Länder* administrative function. Conversely, a significantly smaller proportion of administration is directly performed by federal authorities. Article 102 B-VG lists the federal competences that could be directly executed by the federation if it so chose. On the other hand, the approval of the *Länder* would be required were the federation to directly execute those of its competences that are not so listed. The *Länder* governors are principally responsible for performing indirect federal administration. In this very special context only, they are subject to federal instructions. District administrative agencies normally deal with administrative matters at first instance, although subject to the *Länder* governors and in compliance with their instructions. Since 2002 in some cases it has been possible for Independent Administrative Senates (*Unabhängige Verwaltungssenate*), rather than *Länder* governors, to deal with second-instance natters in the arena of indirect federal administration.

The scope of federal administration thus mirrors only a portion of federal legislative responsibilities. The *Länder* have administrative responsibility for certain of the federation's legislative obligations. On the other hand, even competences that are allocated entirely to the federation are principally performed by the *Länder*, although they retain their federal character. Conversely, it is only in exceptional circumstances that the federation performs administrative functions on behalf of the *Länder*.

Whatever legislative and administrative competences the *Länder* may have, they do not exercise judicial power. There has been much discussion[42] about whether *Land* administrative courts should be established in order to strengthen *Länder* powers and to relieve the Administrative Court of the burden of dealing with all administrative appeals once the administrative process is completed.

An important step in this direction was taken in 1988, when, following a constitutional amendment, the so-called Independent Administrative Senates were established in each *Land*.

These tribunals are not courts, although they satisfy the requirements for tribunals in Article 6 of the European Convention on Human Rights. From an organizational point of view, they are agencies of the *Länder*. They are invested with a number of important functions, including providing a second level of decision making in relation to administrative-penalty procedures and dealing with appeals against administrative compulsion. Since 2002 they have had to deal with appeals against administrative rulings in many areas in which indirect federal administration is carried out by the *Länder*.[43] The *Land* governors had traditionally performed these functions, and there was controversy over whether the Independent Administrative Senates should (even if only partially) replace them.[44] In the end, however, as the *Länder* governors continue to play an important role with regard to indirect federal administration, the law was ultimately assumed to be constitutional. Moreover, the district administrative agencies that issue the rulings against which appeals are launched may object to any substantive decision of the Independent Administrative Senates other than the mere repeal of a ruling. This procedure gives them, as well as the *Land* governors to whom they are responsible, some influence. If a ruling is repealed, the case is referred back to the district administrative agencies for a new decision, which is to be taken in the light of the reasoning upon which the repeal was based.

Despite these developments, and despite the various proposals that have been made over the years, no real *Land* administrative courts presently exist. Recently, the Constitutional Convention[45] once again recommended their establishment. This is one of the recommendations most likely to be realized in the aftermath of the convention.

All administrative authorities in Austria – be they local authorities, district administrative agencies, agencies responsible for direct federal administration, or even *Länder* governors (in the case of indirect federal administration) – are bound by the instructions of superior administrative authorities. In the last resort, they are subject to the supreme administrative bodies: the *Land* government or the *Land* governor in the *Länder* sphere and the federal government, individual federal ministers, or the federal president in the federal sphere. However, the Independent Administrative Senates and other independent tribunals do not belong to this classical hierarchy; nor are they subject to instructions issued by the supreme administrative bodies

All administrative authorities, including the independent administrative authorities, are strictly bound to observe the law.[46] With few exceptions, all administrative acts need to be based upon a parliamentary law, which they must not violate. Laws, in their turn, need to be sufficiently precise to predetermine administrative action in a foreseeable way. This standard is to be observed by all parliamentary bodies - namely, the federal Parliament and the nine *Länder* parliaments.

The Federal Judicature

As noted in the previous section, legislative and administrative powers are shared between the federation and the *Länder*. The judicature, however, is reserved to the federation. The *Länder* do not have their own courts, either in the area of administrative or constitutional law or in relation to civil or criminal law.[47] Civil and criminal cases are determined by federal law courts that are located in the *Länder.* Administrative cases are dealt with by the administrative authorities, including the Independent Administrative Senates and other independent collegial bodies. As a last instance, the Supreme Court in Vienna decides civil and criminal law cases. Regarding administrative cases, appellants may lodge a complaint either before the Constitutional Court (*Verfassungsgerichtshof*) or the Administrative Court (*Verwaltungsgerichtshof*) but only after all administrative remedies have been exhausted. Both courts are supreme courts in their own right, exercising the so-called "public-law jurisdiction." The federal Constitution provides the general framework for the composition and functions of these courts, which are more precisely defined in two ordinary federal laws.[48]

The right to review and repeal laws of both of the federal and the *Länder* legislatures is reserved to the Constitutional Court. Together with the Administrative Court, the Constitutional Court is also responsible for reviewing and repealing administrative acts of the central and *Länder* executives. Neither the "ordinary" civil and criminal law courts nor the Independent Administrative Senates are entitled to review the lawfulness of laws or ordinances. If, in a pending case, an ordinary court (of second instance), the Supreme Court, or an Independent Administrative Senate doubts

whether a law is constitutional, the court or tribunal in question must ask the Constitutional Court to review it and will then continue its proceedings after the Constitutional Court has taken a decision.[49] Similarly, all ordinary courts, as well as the Independent Administrative Senates, are obliged to ask the Constitutional Court to review an ordinance if doubts arise in a pending case about whether it is illegal. In this case, also, the proceedings continue after the Constitutional Court has taken the decision.[50]

The Constitutional Court is situated in Vienna and comprises a president, a vice-president, twelve members, and six deputy members. All members must be lawyers and have worked for at least ten years either as judges, administrative officials, or law professors. The president, vice-president, six of the members, and three of the deputy members are appointed by the federal president on the proposal of the federal government. Three more members and two more deputy members are appointed by the federal president on the proposal of the National Council. The final three members and one deputy member are appointed by the federal president on the proposal of the Federal Council. The *Länder* thus have some, although limited, influence on the selection of members of the Constitutional Court. Their position is further strengthened by the requirement for three members and two deputy members to have their permanent residence in any Austrian municipality but Vienna.[51] Although a large majority of the members of the Court may thus be residents of the capital, some attempt is made to require that members be selected on a decentralized basis.

With regard to the Administrative Court, its president, vice-presidents, and all other members are appointed by the federal president on the proposal of the federal government and must be lawyers with at least ten years of professional practice. Article 134 B-VG requires, however, that at least one-quarter of the members have worked in *Länder* administration, which has a slightly decentralizing effect on the selection of the judges. The establishment of administrative courts in the *Länder* would undoubtedly create an entirely new dimension of decentralization.[52]

The Administrative Court is responsible for reviewing and repealing administrative rulings if appellants claim that rights to which they are entitled under the ordinary law have been violated. It does not matter, for this purpose, whether the ruling was issued by a federal or *Land* authority or whether the law that was violated was a federal or a *Land* law. It is also possible for the Administrative Court to decide issues in case of a defaulting administrative authority. Under certain conditions, moreover, federal ministers may lodge a complaint against administrative rulings of *Land* authorities on the grounds of illegality. In exceptional cases, a *Land* government may lodge a complaint against a ruling of a federal minister, also on the grounds of illegality.

The Constitutional Court has a wider range of responsibilities than does the Administrative Court, among which the following should be mentioned as they relate to issues of federalism. As noted earlier, the Court may review federal or *Land* laws that are at issue before an ordinary court or tribunal in a pending procedure. The Court also reviews a *Land* law if the federal government so requests, or a federal law on the application of a *Land* government. In this context, there is symmetry in the treatment of the different spheres of government, which is consistent with the concept of parity in a federal system but which is by no means characteristic of Austrian federalism more generally. Ordinary *Land* laws may be repealed by the Constitutional Court if they violate either the constitution of the respective *Land* or the federal Constitution. The *Länder* constitutions themselves may be repealed if they are in breach of the federal Constitution. Article 140 B-VG also authorizes the *Länder* constitutions to determine whether the political opposition in the *Länder* parliaments should be allowed to lodge an appeal against *Länder* laws that they believe to be unconstitutional. Decrees that were issued by a federal or *Land* administrative authority may be reviewed and repealed by the Constitutional Court not only if an ordinary court or tribunal asks it to do so but also – among other possibilities – if the federal government believes a *Land* decree to be illegal or, conversely, if a *Land* government believes a federal decree to be illegal.[53]

On the application of a private person, the Constitutional Court may also invalidate administrative rulings of federal or *Land* administrative authorities that violate that person's fundamental, constitutionally guaranteed rights.[54] The appeal must be lodged within a period of six weeks after the person receives the ruling. All administrative remedies against the rulings must have been exhausted. If the Court considers that the ruling may be based on a law that itself is unconstitutional, then it may *ex officio* initiate proceedings in order to review the law. Under certain, highly restricted conditions, a private person may also lodge a direct appeal against an

unconstitutional law before the Court, but these cases are much rarer than are those of complaints against administrative rulings.

The Constitutional Court is also responsible for dealing with competence disputes. Both the federal government and the *Land* governments may ask the Court to decide whether a draft law, to be enacted by their own parliament, would be *ultra vires*.[55] If the law is enacted even though it has been held to be *ultra vires*, it will be held unconstitutional in any post-enactment judicial review. The first decision, which usually includes an interpretation of the concerned federal or *Land* competence, is the "authentic interpretation" and is considered binding.

The Constitutional Court also decides financial disputes[56] between the federation and the *Länder*, unless they fall within the responsibilities of the ordinary law courts or administrative authorities, and disputes[57] arising from intergovernmental concordats concluded under Article 15a B-VG.[58]

INSTITUTIONAL ARRANGEMENTS OF THE CONSTITUENT UNITS

The *Land* Legislatures

Because the *Länder* have legislative functions of their own, they also have parliamentary bodies, which are called *Landtage*.[59] The federal Constitution provides the framework for the selection, composition, and role of the *Länder* parliaments but leaves the *Länder* constitutions to regulate them more precisely.[60] The *Länder* parliaments and their relations with the respective *Land* executive branch resemble their counterparts in the federal sphere only in part. Each *Land* constitution differs from the others. Likewise, the federal Constitution does not expect the *Länder* parliaments to be homogeneous copies of the federal Parliament.

The most striking organizational difference between the federal Parliament and the *Länder* parliaments is the lack of a bicameral system in the latter. However, there is a striking similarity in how the members of the *Land* parliaments and the federal Parliament are elected. Elections of the *Land* parliaments are based on the same electoral principles as are those that apply to elections of the National Council, leaving it to each *Land* to determine, through its own electoral rules, whether the entitlements to vote and to stand for election should be more generous than those that apply for election to the National Council.[61] The federal Constitution also expressly applies the provisions concerning the immunity of members of the National Council and the public character of parliamentary meetings to the *Land* parliaments.[62]

Each *Land* constitution contains detailed or supplementary provisions concerning the selection and composition of the *Land* legislature, which must, of course, be in conformity with the federal Constitution. It is usually left to standing orders and electoral rules of the respective *Land* parliaments to determine these issues even more minutely. Each *Land* may, for example, determine the number of members to be elected to its parliament. The *Länder* may not introduce a bicameral system, however, nor may they provide specific representation for minority groups without a federal constitutional basis (which, so far, has been lacking).[63]

The federal Constitution also provides that the *Länder* parliaments are responsible for law making in the *Länder* and broadly outlines the law-making procedure.[64] A bill must pass the *Land* parliament, must be signed and counter-signed in a manner determined by the *Land* constitution, and be published in the Land Gazette by the *Land* governor. The *Länder* may decide the parliamentary quorum and majority necessary for the passage of ordinary laws, but the federal Constitution stipulates that constitutional legislation requires a quorum of half of the members of the legislature and a two-thirds majority.[65] Even the law-making procedure is not entirely free from federal influence as Article 98 B-VG provides that all bills must be communicated to the Office of the Federal Chancellor before being published in the Federal Gazette. Within eight weeks after the communication is made, the federal government may object to a bill on the ground that it endangers federal interests. In this case, however, it must explain its reasons. If the federal government had been consulted before the *Land* parliament passed the bill, an objection may only be made if the bill is considered to be *ultra vires*. Unless the assistance of federal administrative organs is required by a bill, any federal veto may be overruled by the *Land* parliament with a quorum of half of its members.

On the whole, federal supervision[66] is stronger in Austria than in many other federal countries and altogether more typical of regionalized countries.[67]

The federal president does not play any role in the *Land* law-making procedure. As noted earlier, however, he or she may dissolve a *Land* parliament on the proposal of the federal government. This power is restricted, in the sense that a *Land* parliament must not be dissolved more than once for the same reason. Moreover, the consent of the Federal Council, delivered with a qualified quorum and majority, is also required, making dissolution unlikely, even though the representatives of the *Land* concerned are not allowed to vote in this decision.

The federal Constitution does not explicitly provide for direct democracy in the sphere of the *Länder*, but the *Länder* themselves may provide such a system through their constitutions. The constitutions of the *Länder* commonly provide for referenda, citizens' initiatives, public consultation, and petitions both at the *Länder* and local level. According to the Constitutional Court,[68] however, the use of direct democracy must not replace the system of representative democracy, as established by the federal Constitution. The Court applies a very narrow standard of democracy, taking the limited number of plebiscitary instruments at the federal level as a model that implicitly binds the *Länder* and prevents the creation of a strong system of direct democracy.

The *Land* Executives

The *Land* government is responsible for *Land* administration.[69] According to Article 101 B-VG, it comprises the *Land* governor, its deputies, and other members. The *Land* governments, including the *Land* governors, are elected by the *Land* parliaments according to either a proportional or a majority election system. The members of the *Land* governments need not themselves be members of the *Land* parliament, but they must be eligible for election to it. The governors preside over the *Land* governments and, before assuming office, render an affirmation to the federal president with respect to the federal Constitution.

The Federal Constitutional Act of 1925, concerning the Principles for the Establishment and Operation of the Offices of the *Land* Governments except Vienna,[70] also applies to the *Land* executives. Accordingly, each *Land* government is assisted by an office of the *Land* government consisting of several groups and departments that have to deal with both indirect federal and *Land* administrative tasks. If the office performs *Land* administration,[71] the officials are directed by the *Land* government or its individual members. If the office is dealing with indirect federal administration,[72] the administration is directed by the *Land* governor. The governor also presides over the office and supervises its director, who is always a lawyer and who is responsible for the internal management of the work of the office.

Within this framework, the *Land* constitution regulates the *Land* executive. Again, however, the basic rules are laid down by the federal Constitution and must not be changed by the *Länder.* Moreover, the Constitutional Court applies a rigorous standard of consistency, drawing not only on rules that are explicitly laid down by the federal Constitution but also on implicit standards that, according to the Court, emanate from constitutional principles and are binding on the *Land* constitutions.[73]

Local Government

In addition to the federation and the *Länder*, local government constitutes the third territorial sphere of government in Austria. Municipalities form the substructure of each state.[74] They are not, however, constituent units of the federal system; they lack sovereignty, statehood, and, more concretely, legislative powers. Nevertheless, they perform a large number of administrative tasks and thus play an important role.[75]

The federal Constitution deals with the establishment of local authorities and with their relations with the federation or the *Länder*.[76] Article 115 B-VG generally entitles, and obliges, the *Länder* to provide a detailed legislative framework for municipalities, in accordance with the principles of the federal Constitution.

Municipalities are not merely administrative units: they are also autonomous bodies with a right to self-administration. Self-administration means that administrative tasks are performed by

bodies other than the federation and the constituent *Länder*. It is a characteristic of self-administration that the sphere of government in question has its own autonomous functions as well as those that are delegated to it. When municipalities perform tasks within their own sphere of functions, they cannot be given instructions by federal or *Land* authorities, although they are subject to supervision by them. These principles give the municipalities more liberty of action. If they perform tasks within the sphere of delegated functions, however, they are bound by instructions given by federal or *Land* authorities, as the case may be. The municipalities are also responsible for a wide range of public services involving the provision of infrastructure. These have only a limited statutory framework and are often also performed by privatized companies.

The federal Constitution recognizes three main local bodies: the mayor, the local assembly, and the local board. The local assembly is directly elected by the local citizens, according to the same electoral principles that apply to elections for the National Council and the *Land* parliaments. The local board is a collegial body elected by the local assembly. The federal Constitution provides that the mayor is elected by the local assembly; since 1995,[77] however, it has authorized *Land* constitutions to deviate from this provision.[78] So far, six *Länder* have adopted constitutional provisions that allow for direct election of the mayor.

When they are acting within the area of local government autonomy, local organs are not liable to instruction by federal or *Land* agencies. However, a number of supervisory instruments dealing with, for example, the right to information, the right of repeal of illegal local orders, the right to approve local ordinances in some cases, and even the right to dissolve the local assembly are available to the federation and the *Länder* in order to ensure that municipalities do not violate their laws. The federation is competent to exercise these supervisory rights with regard to the performance of federal administrative tasks that are carried out by the municipalities autonomously. The *Länder* are competent to exercise them with regard to *Land* administrative matters that are carried out by the municipalities autonomously. The *Länder* are, moreover, competent to examine the budgets of municipalities by reference to the criteria of economy, profitability, and expediency.

In principle, the mayor is responsible for performing all tasks delegated to the local sphere. In exercising this responsibility, he or she is subject to the instructions of either federal or *Land* organs, depending on whether the task in question relates to a federal or a *Land* competence. In the event of illegal behaviour, the mayor may be dismissed by the *Land* government on behalf of the *Land* or by the *Land* governor on behalf of the federation.

It follows that local government does not enjoy a status that is equal to that of the federation and the *Länder*. Lacking their own legislative powers, municipalities must administer federal or *Land* legislation. Even their autonomous tasks derive from either a federal or a *Land* law, although the federation and the *Länder*, in their turn, are constitutionally required to allocate these tasks to the local autonomous sphere, according to the principle of subsidiarity.[79] Thus, the idea of a multilayered federalism is far from being realized. Although it is beyond the scope of this chapter, it might be noted that, within the context of fiscal relations, local government is increasingly emerging as a third partner.

INTERGOVERNMENTAL RELATIONS

Whereas in other federal systems cooperative federalism has been used principally to overcome the strong legal position of the constituent states, thus creating an informal but efficient form of centralism, in Austria the position is otherwise. Cooperative federalism has been a means for uniting the political power of the *Länder* and for coordinating *Länder* policies in order to deflect centralization. In this way, cooperation has developed as a strong political counterpart to the federation's overwhelming legal powers.[80]

Cooperation may take either a legal or a constitutional form, but it may also be informal. Legal cooperation, in its turn, may be based on private law; namely, contracts between the federation and the *Länder*. The capacity of the *Länder* to act under private law is not affected by the distribution of competences.[81] *Länder* contracts thus may concern any subject matter, within the realm of private law. In addition, the federation and the *Länder* conclude concordats under public law, within the terms of Article 15a B-VG. This provision was inserted into the federal Constitution in 1974 and may be regarded as the most far-reaching legal instrument of cooperative federalism.[82] According to this

provision, the *Länder* may conclude these concordats either with each other or with the federation, as far as their own competences are concerned. This has proved very useful in dealing with such complex matters as environmental protection, health, and spatial planning. In these areas, the necessary powers are divided between different law-making authorities, and problems cannot be resolved by the legislation of one authority alone without harmonizing with the powers of others.

Concordats are concluded between the federal government or a member of it and, pursuant to the *Länder* constitutions, the *Länder* governors. If the subject matter of a concordat affects the law-making powers of either the federation or the *Länder*, the parliament affected must give its consent after the concordat is signed, in the course of ratification. Concordats that concern legislative matters must also be implemented by laws on both sides, in another parallel with the implementation of international law.

Two relatively recent and specific concordats should be mentioned in this context: namely, the Concordat on a Consultation Mechanism[83] and the Concordat on an Austrian Stability Pact.[84] Both concordats were concluded not only by the federation and the *Länder* but also by the municipalities (represented by the Austrian Federation of Towns and the Austrian Federation of Municipalities). Article 15a B-VG authorizes the making of concordats only between the federation and the *Länder*; therefore, a constitutional act of authorization[85] had to be passed in order to empower the municipalities to take part. This development may also represent some movement towards a multilayered federalism.[86] However, because the classical concept of federalism does not recognize municipalities as constituent parts of the federal polity, and as long as this new dimension is limited to the question of financial equality, local government will not be an integral element of the federal system as a whole.

The Consultation Mechanism[87] obliges the federation, the *Länder*, and the municipalities to consult each other if a draft law or an ordinance threatens to impose financial burdens on the others. In this case, the matter would be discussed by the consultation committee, which consists of representatives of all three territorial entities. If the committee fails to reach agreement, the entity that intends to pass the law will be held responsible for any additional costs. This mechanism protects the *Länder* from federal laws that would have an adverse financial impact on them. On the other hand, the *Länder* themselves risk incurring the burden of additional costs if they enact laws against the will of the others.

The concordat on the Austrian Stability Pact 2005 was concluded under the rigorous pressure of the EU convergence criteria.[88] The pact requires the *Länder* to achieve an annual budgetary surplus (even though a limited deficit is possible on the part of the federation) while the municipalities need only balance their budgets. The *Länder* were induced to sign this concordat by a provision in the Tax Equalization Act[89] that threatened them with considerable financial sanctions if they failed to do so. This is an example of an admittedly unusual case in which both political and legal force were employed in the name of "cooperative federalism".

For the purposes of informal cooperation, the *Länder* governors, other members of the *Länder* governments, the presiding officers of the *Länder* parliaments, and senior civil servants meet frequently.[90] Representatives of the federation may be allowed to attend the meetings as observers. These inter-state conferences are regularly organized by the liaison office of the *Länder*. This is an informal agency that not only collates all necessary information for the *Länder* but also coordinates joint activities and communicates them to the federation.[91] The most important political body of *Länder* cooperation is the Conference of the *Land* Governors (*Landeshauptmännerkonferenz*), which is usually summoned four times a year but also meets for special purposes.[92]

In Austria cooperative federalism is of great political importance. In practice, all major changes of a legal, political, or financial kind are negotiated. Generally, change is not carried out without consultation with the *Länder* and municipalities. Nevertheless, the predominant role of the federal government and the dependence of all other governments on its planning and policies remain the principal features of Austrian federalism.

ANALYSIS AND CONCLUSIONS

Legislative and executive governance in Austria have a solid written basis in federal constitutional law. These core provisions are elaborated by the *Land* constitutions and ordinary *Land* legislation or,

as far as the federal sphere is concerned, by ordinary federal legislation. Due to the codified system of Austrian law, the institutions and functions of the federal system are provided on a relatively precise basis. This does not, however, prevent the Constitutional Court from interpreting constitutional law in a manner that is not always either foreseeable or favourable to the concept of federalism. Convention or practice plays a minor role in the legalistic system of Austrian law. Nevertheless, informal interaction and cooperation are highly important for the practical functioning of Austrian federalism, despite the predominance of the federal sphere of government.

When the B-VG was enacted in 1920, the federal system was not complete. Austrian federalism took its modern shape in several stages. Even now, its future direction is not entirely clear. More than a decade ago it had seemed as though a great reform of the Austrian federal system could be achieved. For political reasons, however, this attempt failed and was replaced by a number of smaller amendments.[93]

In June 2003 a Constitutional Convention, consisting of 70 members (constitutional lawyers, politicians, and lobbyists) and chaired by the former president of the Austrian Court of Auditors, was created as a forum for expert discussion on a new constitution and, in particular, on a new federal system. The convention was expected to develop a constitutional draft by the end of 2004. Due to the very different political approaches of the parties concerned, however, the project did not proceed, although a draft was privately presented by the chairperson.[94] For the moment, therefore, the matter has been referred to a select committee of the National Council (*Besonderer Ausschuss zur Vorberatung des Berichtes des Österreich-Konvents*), which is considered to be the most democratically legitimate body for dealing with the reform agenda.

Institutional reform seems to be inevitable if federalism is to operate effectively in Austria in the future and if Austrians are to continue to accept it as a legitimate system. Options for change include modifying the composition and functions of the Federal Council in order to make it better suited to representing *Länder* interests, transforming the system of indirect federal administration into direct *Land* administration, introducing *Land* administrative courts, and modifying the allocation of competences. Any reform must also take into account the context of the EU. Although the EU is said to be "blind" with regard to the internal, federal, or unitary structure of its member states, it has had the effect of accelerating the dynamics of "executive federalism," whereby the constituent units implement central policies rather than exercise law-making powers of their own.[95] If the essence of a federal system, in the sense of a dual order of legislative governance, is to be maintained, then the *Land* parliaments, which are the main victims of this phenomenon, must somehow be protected from a further loss of competences.

Notes

[1] Each of these two *Länder* has a population of approximately 1.5 million people. For further statistical data, see <www.statistik.at>.

[2] Due to Austrian membership in the European Union (EU), EU law enjoys a higher rank than does domestic constitutional law but not (it is generally thought) a higher rank than the fundamental principles of the Austrian Constitution (as modified by the accession).

[3] The B-VG was first enacted in 1920 and republished in an updated form in 1930. It has been amended 93 times.

[4] An overview of Austrian constitutional law is given by Robert Walter and Heinz Mayer, Grundriß des österreichischen Bundesverfassungsrechts, 9th ed. (Vienna: Manz, 2000); Ludwig K. Adamovich, Bernd-Christian Funk, and Gerhart Holzinger, Österreichisches Staatsrecht, 3 vols. (Vienna, New York: Springer, 1997-2003); Theo Öhlinger, Verfassungsrecht, 5th ed. (Vienna: WUV, 2003); Peter Pernthaler, Österreichisches Bundesstaatsrecht (Vienna: Verlag Österreich, 2004); and Walter Berka, Lehrbuch Verfassungsrecht (Vienna/New York: Springer, 2005).

[5] According to the nation-wide census of 2001, the Slovenian minority consisted of 17,953 Austrian nationals, the Burgenland Croatian minority of 19,374 nationals, the Hungarian minority of 25,884 nationals, the Roma minority of 4,348 nationals, the Czech minority of 11,035 nationals, and the Slovakian minority of 3,343 nationals. See Anna Gamper, "Austrian Federalism and the Protection of Minorities," Federalism, Subnational Constitutions, and Minority Rights, ed. G. Alan Tarr, Robert F. Williams, and Josef Marko (Westport/London: Praeger, 2004), 55-72.

[6] See, for example, Felix Ermacora, Österreichischer Föderalismus: Vom patrimonialen zum kooperativen Bundesstaat (Vienna: Braumüller, 1976), 25-39 (with further references).
[7]See Peter Pernthaler, Die Staatsgründungsakte der österreichischen Bundesländer (Vienna: Braumüller, 1979); Karl Weber, "Die Entwicklung des österreichischen Bundesstaates," Bundesstaat und Bundesrat in Österreich, ed. Herbert Schambeck (Vienna: Verlag Österreich, 1997), 37-65; and Karl W. Edtstadler, "Das Werden des Bundesstaates," Bundesstaat und Bundesrat in Österreich, ed. Herbert Schambeck (Vienna: Verlag Österreich, 1997), 23-35.
[8] See Felix Ermacora, Die Entstehung der Bundesverfassung 1920, 4 vols. (Vienna: Braumüller, 1986-90).
[9]See Peter Bußjäger, Landesverfassung und Landespolitik in Vorarlberg – Die Verfassungsgeschichte Vorarlbergs und ihre Auswirkungen auf die Landespolitik 1848 – 2002 (n. p.: W. Neugebauer, 2004). The history of the *Länder* after 1945 is illustrated by Herbert Dachs, ed. Der Bund und die Länder (Vienna: Böhlau, 2003).
[10]See Peter Pernthaler and Sergio Ortino, Rechtliche Voraussetzungen und Schranken der Institutionalisierung – Europaregion Tirol (Bolzano: n.p., 1997).
[11]Art. 41, B-VG.
[12]The federal law-making procedure is basically regulated by Art. 41 – 49, B-VG.
[13]Art. 42, B-VG.
[14]Art. 44, para. 2, B-VG.
[15] See Pernthaler, Österreichisches Bundesstaatsrecht, 435.
[16]*Nationalrats-Wahlordnung 1992* (BGBL 1992/471 as amended by BGBL I 2003/90).
[17]Art. 29, B-VG. The president may use this power only once for the same reason.
[18]Art. 34–37, B-VG. See Robert Walter, "Der Bundesrat," Föderative Ordnung I: Bundesstaat auf der Waage, ed. Ernst C. Hellbling, Theo Mayer-Maly, and Herbert Miehsler (Salzburg-Munich: Anton Pustet-Europa Verlag, 1969), 199-290; Irmgard Kathrein, "Der Bundesrat," Österreichs Parlamentarismus, ed. Herbert Schambeck (Berlin: Duncker and Humblot, 1986), 337-401; Robert Walter, "Der Bundesrat zwischen Bewährung und Neugestaltung," Reformbestrebungen im österreichischen Bundesstaatssystem, ed. Heinz Schäffer and Harald Stolzlechner (Vienna: Braumüller, 1993), 41-50; Heinz Schäffer, "The Austrian Bundesrat: Constitutional Law – Political Reality – Reform Ideas," Role and Function of the Second Chamber, ed. Ulrich Karpen (Baden-Baden: Nomos, 1999), 25-55; Herbert Schambeck, "Föderalismus und Parlamentarismus in Österreich," Die Stellung der Landesparlamente aus deutscher, österreichischer und spanischer Sicht, ed. Detlef Merten (Berlin: Duncker andHumblot, 1997), 15-32 and Herbert Schambeck, ed. Bundesstaat und Bundesrat in Österreich (Vienna: Verlag Österreich, 1997).
[19]See Ronald L. Watts, Comparing Federal Systems, 2nd ed. (Montreal: McGill-Queen's University Press, 2002), 93; Anna Gamper, "Demokratische Legitimation und gewaltenteilende Funktion Zweiter Kammern in der 'gemischten' Verfassung," Reflexionen zum Internationalen Verfassungsrecht, ed. Harald Eberhard, Konrad Lachmayer and Gerhard Thallinger (Vienna: WUV, 2005), 63-86.
[20]See Anna Gamper, "'Arithmetische' und 'geometrische' Gleichheit im Bundesstaat," Festschrift Peter Pernthaler, ed. Karl Weber and Norbert Wimmer (Vienna, New York: Springer, 2005), 143-166; and Anna Gamper, "A 'Global Theory of Federalism': The Nature and Challenges of a Federal State," German Law Journal 6 (2005): 1297-1318 (1315). The distinction between an "arithmetic" and a "geometric" system also touches on the issue of "asymmetric federalism": See Peter Pernthaler, "Asymmetric Federalism as a Comprehensive Framework of Regional Autonomy," Handbook of Federal Countries, 2002, ed. Ann L. Griffiths (Montreal: McGill-Queen's University Press, 2002), 472-493. Regarding Austria cf. Peter Pernthaler, Der differenzierte Bundesstaat (Vienna: Braumüller, 1993).
[21]Arts. 34-35, B-VG.
[22]See below.
[23]See below.
[24] Art. 42, B-VG.
[25]See Peter Bußjäger, Die Zustimmungsrechte des Bundesrates (Vienna: Braumüller, 2001).
[26] Art. 50, paras. 1 and 3, B-VG.
[27] Art. 15, para. 6, B-VG.
[28]See above.
[29]Art. 37, para. 2, B-VG.
[30]BGBL I 2003/71. See also Christoph Grabenwarter, "Bundesrat: Wenn Anträge keine Mehrheit finden," Journal für Rechtspolitik (2003): 155-160, Theo Öhlinger, "Die Selbstblockade des Bundesrates," Journal für Rechtspolitik (2004): 11-12 and Christoph Grabenwarter, "Anträge ohne Mehrheit - keine Selbstblockade des Bundesrates," Journal für Rechtspolitik (2004): 13-14.
[31]VfSlg 17.173/2004.

[32]See below. Future perspectives are shown by Peter Bußjäger and Jürgen Weiss, eds., Die Zukunft der Mitwirkung der Länder an der Bundesgesetzgebung (Vienna: Braumüller, 2004).
[33]BGBL 1929/392.
[34]Art. 70-72, B-VG.
[35]Art. 60, para. 6, B-VG.
[36]Cf. mainly Art. 10-15, B-VG. See, for example, Bernd-Christian Funk, Das System der bundesstaatlichen Kompetenzverteilung im Lichte der Verfassungsrechtsprechung (Vienna: Braumüller, 1980); Josef Werndl, Die Kompetenzverteilung zwischen Bund und Ländern (Vienna: Braumüller, 1984); Peter Pernthaler, Kompetenzverteilung in der Krise (Vienna: Braumüller, 1989); Pernthaler, Österreichisches Bundesstaatsrecht, 313-348; Heinz Schäffer, "Die Kompetenzverteilung im Bundesstaat," Bundesstaat und Bundesrat in Österreich, ed. Herbert Schambeck (Vienna: Verlag Österreich, 1997), 65-88; and Anna Gamper, Die Regionen mit Gesetzgebungshoheit (Frankfurt: Peter Lang, 2004), 362-404.
[37]Art. 10, B-VG.
[38]Art. 11, B-VG.
[39]Art. 12, B-VG.
[40]Art. 15, B-VG.
[41]See Karl Weber, Die mittelbare Bundesverwaltung (Vienna: Braumüller, 1987); Bernhard Raschauer, "Artikel 102," Österreichisches Bundesverfassungsrecht, ed. Karl Korinek and Michael Holoubek (Vienna, New York: Springer, 2001); Peter Bußjäger, "Artikel 102," Bundesverfassungsrecht, ed. Heinz Peter Rill and Heinz Schäffer (Vienna: Verlag Österreich, 2002).
[42]See, for example, Peter Pernthaler and Irmgard Rath-Kathrein, "Die Einführung von Landesverwaltungsgerichten - eine Alternative zu den 'unabhängigen Verwaltungssenaten in den Ländern'," Juristische Blätter (1989): 609-614; Christoph Grabenwarter, "Auf dem Weg zur Landesverwaltungsgerichtsbarkeit," Journal für Rechtspolitik (1998): 269-286; and Christian Martschin, "Der Einbau von Landesverwaltungsgerichten in das System des österreichischen Verwaltungsrechtsschutzes," Zeitschrift für Verwaltung (1999): 2-11.
[43]BGBL I 2002/65.
[44]See, for example, Wolfgang Pesendorfer, "Rechtsschutz im Verwaltungsrecht," Österreichische Juristen-Zeitung (2002): 521-531.
[45]See below.
[46]So-called "principle of legality" (Art. 18, B-VG).
[47]Art. 82, para. 1, B-VG.
[48]Regarding the Administrative Court, see Art. 130-136, B-VG and the Administrative Court Act (BGBL 1985/10 as amended by BGBL I 2004/89). Regarding the Constitutional Court, see Art. 137-148, B-VG and the Constitutional Court Act (BGBL 1953/85 as amended by BGBL I 2005/165).
[49]Art. 89 and Art. 129a, para. 3, B-VG.
[50] Ibid.
[51]Art. 147, para. 2, B-VG.
[52]The relationship between the two courts and the federal system is analyzed by Clemens Jabloner, "Der Bundesstaat und die Gerichtsbarkeit des öffentlichen Rechts," Bundesstaat und Bundesrat in Österreich, ed. Herbert Schambeck (Vienna: Verlag Österreich, 1997), 135-154.
[53]Art. 139, B-VG.
[54]Art. 144, B-VG.
[55]Art. 138, para. 2, B-VG.
[56]Art. 137, B-VG.
[57]Art. 138a, B-VG.
[58]See below.
[59]See Herbert Schambeck, ed. Föderalismus und Parlamentarismus in Österreich (Vienna: Österreichische Staatsdruckerei, 1992); and Peter Pernthaler and Helmut Schreiner, eds. Die Landesparlamente als Ausdruck der Identität der Länder (Vienna: Braumüller, 2000).
[60]Art. 95-106, B-VG. Specific provisions apply to Vienna (Art. 108–112, B-VG). See also Gamper, Die Regionen mit Gesetzgebungshoheit, 404-419.
[61]Art. 95, para. 2, B-VG.
[62]Art. 96, B-VG.
[63]Theo Öhlinger and Peter Pernthaler, Projekt eines Volksgruppenmandats im Kärntner Landtag (Vienna: Braumüller, 1997).
[64]Art. 97, B-VG.
[65]Art. 99, para. 2, B-VG.

[66]See Peter Pernthaler and Karl Weber, Theorie und Praxis der Bundesaufsicht in Österreich (Vienna: Braumüller, 1979); Clemens Jabloner, Die Mitwirkung der Bundesregierung an der Landesgesetzgebung (Vienna: Österreichische Staatsdruckerei, 1989); Clemens Jabloner, "Landesgesetzgebung und Bundesregierung," Föderalismus und Parlamentarismus in Österreich, ed. Herbert Schambeck (Vienna: Österreichische Staatsdruckerei, 1992), 75-96; and Peter Bußjäger, "Die rechtliche und politische Kontrolle der Länder und ihrer Organe im System der österreichischen Bundesverfassung," Vollzug von Bundesrecht durch die Länder, ed. Peter Bußjäger (Vienna: Braumüller, 2002), 5-22.
[67]See Peter Häberle, "Föderalismus und Regionalismus in Europa," European Review of Public Law 10/2 (1998): 299-326.
[68] See VfSlg 16.241/2001 and Anna Gamper, "The Principle of Homogeneity and Democracy in Austrian Federalism: The Constitutional Court's Ruling on Direct Democracy in Vorarlberg," Publius: The Journal of Federalism 33 (Winter 2003): 45-57.
[69]The relationship between *Land* legislature and *Land* executive is analyzed by Karl Weber, "Landesgesetzgebung und Landesregierung," Föderalismus und Parlamentarismus in Österreich, ed. Herbert Schambeck (Vienna: Österreichische Staatsdruckerei, 1992), 97-124.
[70]BGBl 1925/289.
[71]This term refers to all matters of direct *Land* administration, irrespective of whether the applicable legislation is made by the federation or by the *Länder* themselves.
[72]See above.
[73]See above, note 68.
[74] Art. 116, para. 1, B-VG
[75]An overview is given by Hans Neuhofer, Gemeinderecht, 2nd ed. (Vienna, New York: Springer, 1998). See also Österreichischer Gemeindebund and Österreichischer Städtebund, eds. 40 Jahre Gemeindeverfassungsnovelle 1962 (Vienna: Manz, 2002).
[76]Arts. 115-120, B-VG.
[77] Following the Constitutional Court's decision VfSlg 13.500/1993, according to which *Länder* legislation allowing for the direct elections of the mayor had been unconstitutional.
[78]Art. 117, para. 6, B-VG.
[79]See Karl Weber, "Art 118 B-VG," Österreichisches Bundesverfassungsrecht, eds. Karl Korinek and Michael Holoubek (Vienna, New York: Springer, 1999), 6-10; and Harald Stolzlechner, "Art 118," Bundesverfassungsrecht, ed. Heinz Peter Rill and Heinz Schäffer (Vienna: Verlag Österreich, 2004).
[80]See Felix Ermacora, Österreichischer Föderalismus, 148-155; Peter Pernthaler, "Zusammenarbeit der Gliedstaaten im Bundesstaat: Landesbericht Österreich," Zusammenarbeit der Gliedstaaten im Bundesstaat, ed. Christian Starck (Baden-Baden: Nomos, 1988), 77-123; and Karl Weber, "Österreichs kooperativer Föderalismus am Weg in die Europäische Integration," Festschrift Herbert Schambeck, ed. Johannes Hengstschläger, Johannes Heribert Franz Köck, Karl Korinek, Klaus Stern, and Antonio Truyol y Serra (Berlin: Duncker and Humblot, 1994), 1041-1062.
[81]Art. 17, B-VG. See Karl Korinek and Michael Holoubek, Grundlagen staatlicher Privatwirtschaftsverwaltung (Graz: Leykam, 1993).
[82]See Heinz Peter Rill, Gliedstaatsverträge (Vienna, New York: Springer, 1972); Theo Öhlinger, Verträge im Bundesstaat (Vienna: Braumüller, 1979); Theo Öhlinger, Die Anwendung des Völkerrechts auf Verträge im Bundesstaat (Vienna: Braumüller, 1982); Clemens Jabloner, "Gliedstaatsverträge in der österreichischen Rechtsordnung," Österreichische Zeitschrift für Öffentliches Recht und Völkerrecht 40 (1989): 225-255; Peter Pernthaler, Raumordnung und Verfassung, vol. 3, (Vienna: Braumüller, 1990), 227-287; and Rudolf Thienel, "Artikel 15a B-VG," Österreichisches Bundesverfassungsrecht, ed. Karl Korinek and Michael Holoubek (Vienna, New York: Springer, 2000).
[83]*Vereinbarung zwischen dem Bund, den Ländern und den Gemeinden über einen Konsultationsmechanismus und einen künftigen Stabilitätspakt der Gebietskörperschaften* (BGBL I 1999/35).
[84]*Österreichischer Stabilitätspakt 2005* (BGBL I 2006/19).
[85]BGBL I 1998/61.
[86]See Karl Weber, "BVG Gemeindebund," Österreichisches Bundesverfassungsrecht, ed. Karl Korinek and Michael Holoubek (Vienna, New York: Springer, 2000), 4-5.
[87]See Peter Bußjäger, "Rechtsfragen zum Konsultationsmechanismus," Österreichische Juristen-Zeitung (2000): 581-591: Weber, "BVG Gemeindebund"; Heinz Schäffer, "Konsultationsmechanismus und innerstaatlicher Stabilitätspakt," Zeitschrift für öffentliches Recht 56 (2001): 145-226.
[88]See Anna Gamper, "Der Stabilitätspakt 2001 im Spannungsfeld von Budgetkonsolidierung und Finanzausgleichsgerechtigkeit," Journal für Rechtspolitik (2002): 240-250.
[89] The same is true for the recent *Finanzausgleichsgesetz 2005* (BGBL I 2004/156 as amended by BGBL I 2005/105).

[90]See Andreas Rosner, Koordinationsinstrumente der österreichischen Länder (Vienna: Braumüller, 2000).
[91]See Gernot Meirer, Die Verbindungsstelle der Bundesländer oder Die gewerkschaftliche Organisierung der Länder (Vienna: Braumüller, 2003).
[92]See Karl Weber, "Macht im Schatten? (Landeshauptmänner-, Landesamtsdirektoren und andere Landesreferentenkonferenzen)," Österreichische Zeitschrift für Politikwissenschaft (1992): 405-418, Rosner, Koordinationsinstrumente der österreichischen Länder, pp. 15-34 and Peter Bußjäger, "Föderalismus durch Macht im Schatten? – Österreich und die Landeshauptmännerkonferenz," Jahrbuch des Föderalismus 2003, ed. Europäisches Zentrum für Föderalismus-Forschung Tübingen (Baden-Baden: Nomos, 2003), pp. 79-99.
[93] See, for example, Peter Pernthaler, "Verfassungsentwicklung und Verfassungsreform in Österreich," Verfassungsrecht und Verfassungsgerichtsbarkeit an der Schwelle zum 21. Jahrhundert, eds. Bernd Wieser and Armin Stolz (Vienna: Verlag Österreich, 2000), pp. 67-116.
[94]For further information, including the Convention's final report, see <www.konvent.gv.at>. See also Österreichische Juristenkommission, ed. Der Österreich-Konvent: Zwischenbilanz und Perspektiven (Vienna, Graz: nwv, 2004), Walter Berka et al. ,eds. Verfassungsreform (Vienna, Graz: nwv, 2004), Peter Bußjäger and Daniela Larch, eds. Die Neugestaltung des föderalen Systems vor dem Hintergrund des Österreich-Konvents (Innsbruck: Institut für Föderalismus, 2004), Peter Bußjäger and Rudolf Hrbek, eds. Projekte der Föderalismusreform – Österreich-Konvent und Föderalismuskommission im Vergleich (Vienna: Braumüller, 2005), Peter Bußjäger, Klippen einer Föderalismusreform – Die Inszenierung Österreich-Konvent zwischen Innovationsresistenz und Neojosephinismus (Innsbruck: Institut für Föderalismus, 2005) and Thomas Olechowski, ed. Der Wert der Verfassung – Werte in der Verfassung (Vienna: Manz, 2005).
[95]See, for example, Peter Pernthaler, "(Kon-)Föderalismus und Regionalismus als Bewegungsgesetze der europäischen Integration," Journal für Rechtspolitik (1999): 48-64 (54-55) and Gamper, Die Regionen mit Gesetzgebungshoheit, pp. 457-460.