

Vielfalt ordnen: Das föderale Europa der Habsburgermonarchie (Vormärz bis 1918). By Jana Osterkamp. Göttingen: Vandenhoeck & Ruprecht, 2020. 531 pp.

In the historiography, the Habsburg Monarchy has long been characterized as the “prison of the peoples” (*Völkerkerker*), a state which, allegedly, would inevitably have fallen apart because of “nationality conflicts” while it was also (again, allegedly) shaped first and foremost by the issues of “nationality politics.” However, in the more recent scholarship, more emphasis has been put (not least because of the pioneering works of Pieter Judson) on the fact that the Habsburg Monarchy offered a legal framework for different identities and self-localizations, beyond the national cluster thinking, and represented a functioning legal system.

While the micro-historical studies explore the complexity of the local level, Jana Osterkamp has tried to put these local pieces of the puzzle together in a new narrative. Given her legal and historical knowledge, Osterkamp is able to interpret new findings of Habsburg research from a legal perspective.

With her innovative concept of the “cooperative empire,” Osterkamp succeeds in capturing both in historical and legal terms the *supranational and proto-federalist* character of the Habsburg Monarchy, especially the Austrian half of the empire. She introduces the concept of the “cooperative empire” as a description for legal and political opportunities beside and among the local structures (Jana Osterkamp, *Cooperative Empires* [2016]). The concept emphasizes integration, equality, and symmetries among the imperial “peripheries.” Therefore, the Habsburg Monarchy can be understood as an interdependence of several centers and peripheries, in which a complex multi-level system was established beyond (and even against) the imperial centers.

This approach allows Osterkamp to make the supranational character and the legal-administrative functions of the Habsburg Monarchy more visible. Statehood was not nationalized in Austria (Pieter M. Judson, *L’Autriche-Hongrie était-elle un empire?* [2008]), and the Habsburg Monarchy did not grant any single people a constitutionally anchored supremacy because there was no “nation” in the sense of a political nation (Peter Urbanitsch, *Pluralist Myth and National Realities* [2004]). A very important legitimation function was therefore assigned to the law (James Shedel, *The Problem of Being Austrian* [2001]). Despite the empire’s ethnic-linguistic, religious, and regional diversity, which would have made neither the hegemony of a nation nor a democratic nation-state possible, all citizens

enjoyed the same rights in the Austrian part of the Monarchy, regardless of their ethnic or religious affiliation or their professed native tongue.

In her new book, Osterkamp applies the results of federalism studies to the Habsburg Monarchy. She comes to the conclusion that proto-federalist elements can be recognized in the complex structure of Austria-Hungary, which, on the one hand, could not yet clearly come into play at the time (because of crown land interests, nationalisms, and the idea of an Austrian confederation), but which, on the other hand, anticipated a post-nation-state age of the “political.” Osterkamp perceives federalism as a pre- and post-modern idea (p.2 et sq.). In the age of emerging nationalisms and nation-states of the late nineteenth century, this federalist-supranational idea might seem outdated, but especially for the Habsburg Monarchy, the existing structures (such as the crown lands) gave new impulses and meanings while at the same time opening up discourses for new constitutional ideas.

With the concept of federalism, Osterkamp can overcome a state-focused perspective in both historical and legal debates: “Multi-level systems of rule do not have to be sovereign state in their entirety if one wants to examine them as federal systems” (p.10). In this sense, Osterkamp understands federalism as a “*vertical division of the state power by different decision-making levels within a long-term existing political order*” (p.215, emphasis in original).

The lack of a unified nation does not turn out to be backwardness or a reason for decay, but rather enabled new paths and ideas for an empire that had to legitimize itself beyond the “national”: “The state doctrine of the Habsburg Monarchy could not rely on the central idea of the nation. The place of the nation-state was taken by an enlightened ‘overall state idea’ [Gesamtstaatsidee] oriented towards the effectiveness and welfare of the population, on which Austrian political science had been working since the 18th century” (p.47). The social pluri-culturalism and the imperial-supranational structure corresponded to a formalistic-legalistic understanding of law, which—instead of relying on metajuristic-fictional and emotionally charged categories, such as “nation” or “state”—brought the dynamic processuality and the positivistic formality of the legal system to the fore (Urbanitsch [2004]). The lack of a unified “nation” and even the lack of such a state idea favored a model in which law and administration (as form and function) stood at the very center of state activities. This explains the strongly legalistic tradition of Austrian legal thought, which continued to have an effect after 1918 (and in fact until today) (Ewald Wiederin, *Denken vom Recht her* [2007]).

Osterkamp gives plurality and supranationality, long considered as deficits of the Habsburg Monarchy, a positive meaning. Although the Habsburg Monarchy could not build one nation (p.121), its constellation enabled a system in which ideologically motivated terms, like nation-state and sovereignty, were not in the foreground. The Habsburg Monarchy yielded a multi-level structure of the administration instead of centralized, one-dimensional governance (pp.87, 214 et sq.). Osterkamp differentiates between various forms of federal structures (administrative federalism, crown land federalism, union of dualism), which she compares with the federalist ideas of the time (trialism, non-territorial personal autonomy, a “United States of Austria,” etc.) (p.413).

Osterkamp’s analysis offers a new explanation for the state structure and cooperation within the Habsburg Monarchy, and it may also explain the discrepancy between the narrative of the “prison of the peoples” and the reality of a functioning (although muddled) administration. Pieter Judson ascribes a certain theatricality to Viennese politics: polarizing debates on the stage, but cooperation behind it, or, as Osterkamp writes: “People talked about each other in public, and in the back rooms with each other” (p.224).

Osterkamp investigates not only the structures existing at the time or the federalist (federalizing) proposals, but also takes into account the reality of proto-federalist cooperation as well, for example among the crown lands vis-à-vis Vienna. Her book also analyses the different compromise models (in Moravia and Galicia), the crown land conferences, the petition practice of the local population (especially in Galicia), the financial equalization between the crown lands and between Vienna and Budapest. Separate chapters are devoted to the proto-federalist agricultural, social, educational, administrative, and health policies.

Jana Osterkamp’s monography thus represents the first attempt to describe the constitutional functioning and the administrative practices of the Habsburg Monarchy as part of her innovative concept (“cooperative empire”) and also with regard to today’s jurisprudential and theoretical debates on supranational, federalist entities (like the European Union). It is an admirable attempt impressive in its findings and insights.

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