

# Contents

<i>Acknowledgements .....</i>	<i>vii</i>
<i>List of Abbreviations .....</i>	<i>xiii</i>
<i>Table of Cases .....</i>	<i>xv</i>
<i>Table of Legislation .....</i>	<i>xxi</i>
<b>1. History and Character of the Austrian Constitution.....</b>	<b>1</b>
I. Introduction .....	1
II. The Evolution of the Austrian Constitution.....	2
A. The Absolute Monarchy .....	2
B. The Constitutional Monarchy .....	5
C. The First Republic, Armed Conflicts and the Authoritarian Regime .....	7
D. The Second Republic .....	14
III. Characteristic Features of the Austrian Constitution.....	19
A. The Style of the Constitution .....	19
B. Interpreting the Constitution .....	21
C. Written Constitution and Efficient Constitution .....	24
IV. Basic Principles of the Constitution.....	26
V. Engineering Constitutional Changes .....	30
VI. Conclusion .....	33
Further Reading .....	34
<b>2. Political Parties and Social Partnership.....</b>	<b>36</b>
I. Introduction .....	36
II. The Development of the Party System .....	37
A. Political Parties versus Electoral Parties .....	37
B. The Emergence of the Party System.....	38
C. From the mid-1980s Onwards.....	42
III. The Law on Political Parties .....	45
A. The Founding of Political Parties .....	46
B. The Funding of Political Parties .....	49
IV. The Social Partnership .....	54
V. Conclusion .....	58
Further Reading .....	59

3. The Legislative Branch of the Federal Government.....	60
I. Introduction.....	60
II. The Electoral System and the Composition of the National Council .....	61
A. The Electoral System .....	61
B. The Legal Status of Members of the National Council .....	64
III. Assembly and Legal Status of the Federal Council.....	69
IV. Parliamentary Functions I: Legislation.....	70
A. Legislative Procedures.....	71
B. Delegation of Legislative Powers.....	78
C. Participation in EU Legislation .....	83
V. Parliamentary Functions II: Overseeing the Executive Branch of Government .....	87
A. Legal and Political Accountability of the Administration.....	87
B. The Audit Court and the Ombudsman Board.....	92
VI. Conclusion .....	96
Further Reading .....	97
4. The Executive Branch of the Federal Government .....	99
I. Introduction.....	99
II. The Federal President .....	100
A. Election and Legal Position of the Federal President .....	100
B. The Powers of the Federal President.....	103
C. Accountability of the Federal President.....	112
III. The Federal Cabinet .....	114
A. The Appointment of the Federal Cabinet .....	114
B. The Powers of the Federal Cabinet.....	116
C. Instructing the Administration.....	117
D. The Accountability of the Federal Cabinet and Federal Ministers.....	119
IV. The Civil Service .....	121
V. Foreign Affairs and European Membership.....	122
A. International Treaties .....	123
B. Bodies of International Organisations .....	125
C. European Union .....	126
VI. The Federal Budget .....	127
VII. E-Government.....	130
VIII. Nationalised Industry .....	132

IX.	Conclusion .....	134
	Further Reading .....	135
5.	<b>Federalism and Autonomous Public Bodies.....</b>	136
	I. Introduction .....	136
	II. The Concept of Austrian Federalism .....	137
	III. The Allocation of Powers (Competences) .....	141
	A. Function and Principles of the Allocation of Powers.....	141
	B. The General Allocation of Powers.....	143
	C. ‘Special’ Allocation of Powers – The Finance Constitution .....	146
	D. Interpretation of Regulations Regarding Competences .....	147
	IV. State Legislation .....	151
	A. Institutions and Procedures .....	151
	B. External Powers.....	153
	C. Cooperation in the Federal State and Participation of the States in EU Legislation .....	154
	V. The Indirect Federal Administration and the Role of the State Governor.....	156
	VI. Municipal Government and Autonomous Public Bodies .....	157
	VII. Conclusion .....	159
	Further Reading .....	160
6.	<b>Jurisdiction .....</b>	162
	I. Introduction .....	162
	II. The Separation of Jurisdiction and Administration and the Road to a Two-Tier System of Administrative Jurisdiction.....	163
	III. The Organisation of the Highest Courts .....	169
	IV. Powers and Policies of the Highest Courts Pertaining to the Constitution .....	171
	A. The Constitutional Court .....	171
	B. The Administrative High Court .....	178
	C. The Supreme Court .....	181
	D. The Impact of EU Law on the Court System.....	184
	V. Conclusion .....	187
	Further Reading .....	188

7. Fundamental Rights .....	189
I. Introduction .....	189
II. General Aspects.....	190
A. History and Character of Fundamental Rights in Austria .....	190
B. Social Rights and the Social Welfare System .....	195
C. Third Party Effect .....	195
III. Binding Effect on the Administration .....	198
A. Freedom Rights .....	198
B. Principle of Equality.....	202
IV. Binding Effect on the Legislation.....	204
A. The Equality Clause .....	204
B. Freedom Rights: From Deference to Proportionality.....	207
V. Selected Case Law.....	211
A. Abortion .....	211
B. Assisted Suicide .....	212
C. LGBTQ+ Rights.....	213
D. Islamic Head Scarf .....	215
E. Immigration and Asylum .....	217
F. Data Retention .....	219
G. Covid-19 Response .....	219
VI. Conclusion .....	221
Further Reading .....	222
Epilogue .....	224
Index .....	227