

The Regionalism of Slovenia is Rooted in Habsburg Legal Culture

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Abstract The article seeks to analyse the phenomenon of Slovenian regionalisation (province) and the names of individual regions, which are still part of the heritage and identity of individuals living in the areas of each region (province). What are the reasons for the formation of the names? Common sense is that province expansion refers to all measures to improve and standardise a specific area's legal and economic structure. Economic and legal reasons dictated the name; the name was only an address for the recipient of economic and legal privileges (rights). In other words, the expansion of the province (region) concerned the "constitution" of a country in the double sense of "being legally ordered" (legal culture) and "actually being composed" (administrative culture).

Keywords: • legal culture • administrative culture • internal colonisation • Habsburgs • Landhandfeste • Provincial Constitution • instrumentalisation • Krongut • state growth

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[https://doi.org/10.4335/21.4.1235-1248\(2023\)](https://doi.org/10.4335/21.4.1235-1248(2023))
ISSN 1581-5374 Print/1855-363X Online © 2023 Lex localis
Available online at <http://journal.lex-localis.press>.

1 Preface

Legal culture, from a historical perspective, does not tolerate a "beginning" without a "before" (Ladeur, 2018: 148). This is especially evident in the Slovenian context when it comes to the issue of regionalisation. Regionalisation, as a constitutional category (three levels: state, region and local), is well defined in the Slovenian law system; on the contrary, it does not find its *raison d'être* in the administrative-practical one. Where is the reason? Indeed, not in cultural memory? Sufficient evidence for this claim is still present in the communication between individuals (Korošci, Gorenjci, Dolenjci, Primorci, Štajerci), as well as in the media (at the end of the Štajerska motorway, Primorka - as a designation for the Primorska motorway). The criticism levelled at the politicians and political representatives of the last hundred years is that they have not drawn up a programme, in anticipation of the 'Republique a venire', by altogether abolishing the administrative relationship with the environment inherited from before, that is to say, the Austro-Hungarian Empire, Austria and the Habsburg Monarchy. It is as if we were reading Nietzsche, as Strong seems to say when he says that by excluding tradition, we condemn all institutions that have been subjected to time as wrong. Cultural heritage is replaced by an 'epistemology of feeling', and 'revolutionary natural law no longer has anything to do with a culturally mediated understanding of nature in the traditional sense' (Edelstein, 2009: 206; Ladeur, 2018: 149; Strong, 1992: 174).¹

The modern Constitution of the Republic of Slovenia sets the so-called "administrative standard", a feature of all constitutions in the formal sense of the word. Over the 30 years of the independent state's existence, two levels of administration have emerged: state and local. The regional level, despite several attempts to mention only the last two, in the period up to 2008 and the most recent one, which ended with the submission of the materials to Parliament in 2022, is still awaiting its realisation. Initially, the Constitution defined the regional level as local self-government of a broader scope. Still, with the constitutional amendments of 2006, Article 143 of the Constitution of the Republic of Slovenia, the middle tier of the country's governance was given a standard: an original legal entity governed by public law with a unique scope of action. The Province thus became an independent, second level of state administration. The provision of a second level of state administration ensures the realisation of the vital importance of the population of a given area (Senčur, 2019: 353).²

The article "Regionalism Has Its Roots in the Habsburg Legal Culture" seeks to highlight several facts, namely that the "beginning" of the Republic of Slovenia necessarily includes a precondition, the possibility of a point of observation that allows for the evaluation of constitutional and administrative development linked to geographical and historical space. In this context, we must recognise culture, the inheritance of ideas and values that establish a collective identity. Blankenburg and Michaels define legal culture in line with the law as the inheritance of ideas about justice (Blankenburg, 2001: 502; Michaels, 2009); Prätorius adds that

administrative culture, the culture of organising, is linked to the subject area of administration and deals with people's expectations of administration (Prätorius, 2001: 628).

Legal culture, insofar as it is evaluated in the legal-historical sense of the word, as Kocher says, represents the formation of a legal space (Kocher, 1997: 32), and this, according to Brauner, in the constitutional-material sense, means all those rules that govern the structure and activity of a community, in particular the functioning of its organs, and its relationship with its subordinate people and communities, whether written or unwritten, statutory or customary law. In the administrative law sense, however, Brauner defines administration as the entire activity of the organs as defined by the constitution in the substantive sense (Brauner, 2005: 17). The constitutional-administrative distinction as we know it today does not exist in a legal historical perspective. Still, there is a genesis of the governance. The Slovenian national space, as far as we can speak of it from the perspective of the time when the legal landscape was formed, is covered by historical lands beginning around the first millennium. The doctrine of governance can be traced back to the Carolingian era.

The analysis thus divides into the pre-Habsburg period, the Habsburg period and the post-First World War period, when new states are created, and therefore individual administrative law traditions are included and excluded.

To this must be added the thought of the identity of a people who, despite a constitutional and administrative vacuum, maintain a historical identity.

What role did the Habsburgs play in this process? By the time they came to power, the provinces (lands) had already been formed. The elites of these lands identified themselves with the names of the provinces, and by their time a stable state/provincial formation already existed. A number of important rulers whom Baltl and Kocher count among those who strived for a unified, central, orderly state (Gesamtstaatsidee) were Emperor Maximilian I and certainly Emperor Joseph II (Emperor Frederick III (d. 1493) and Empress Maria Theresia (d. 1780)). Both lived in their own time, but it can be said that the Habsburgs were concerned with the organisation of the empire, with the economic and administrative-legal organisation of the area at the forefront (Baltl, Kocher, 2008: 105, 159). The names of the lands (regions) had already been worked out. Economic and legal regulations were identified with space. Despite the efforts to build individual institutions, to construct and form the official state, it remained within its regional (regional) boundaries, which had been shaped by historical experience. As Baltl and Kocher say, the research that gives us insight in this idea can only be mentioned in passing and cannot be presented for reasons of volume, which is not the purpose of this discussion, but it is important for understanding. Only guidance can be available for some (Baltl, Kocher, 2008: 158, especially footnotes 34-39).

Landesausbau³ is a terminus technicus in German, which seeks to understand the development of spatial planning from the perspective of legal history. Thus, it distinguishes the period of state formation during the Frankish and Stauff dynasties and calls it the pan-European process (the royal separation of property), followed by the formation of the provinces with the first constitutions (the Georgenberg Privilege of 1186) and the individual provinces (Styria, Carniola, Carinthia), the period after the Thirty Years' War, the period of enlightened absolutism, and the most interesting period for the Slovene area, the period after the end of the First World War. The period after the end of First World War was the most important for the Slovene area.

Landesausbau, as defined by Brockhaus (Brockhaus, 1976: 74), is primarily concerned with the stimulation of the regional economy, or so-called 'internal colonisation'. This is the main point of our discussion. By means of sociological and legal historical methods, by evaluating legal sources, I will try to highlight the meaning and at the same time the attempt at internal colonisation, which the Provincial Government of Slovenia tried to establish by using legal regulations in the period from 4 November 1918 to 30 April 1919.

2 Historical overview of the regionalisation starting points

The creation of a legal space is a consequence of the concern to shape the economic and social environment. It is not organised spontaneously but is a process that considers the environment's particularities – its geographical, material-economic and cultural-spiritual elements. In its initial phase, the formation of a province is already a strongly consolidated spatial structure, linked to the person of the Emperor or the Landgrave.

The starting point of this strongly cohesive and fortified unit can be found in the rules laid down by the Franks, with Charlemagne at their head – his *Capitulare de villis vel curtis imperii* is a must-mention in pre-Habsburg history. The charters and privileges that came later and were issued by individual rulers of the pre-Habsburg era are only a confirmation of the solid core that was established. From this core, the starting points for the formation of the lands emerged. As Brauneder notes, internal consolidation was followed by external consolidation (Brauneder, 2005: 25). The formation of such a region, apart from the nucleus formed by the dynasty headed by the "princeps terrae", was twofold: either the land was formed on an already existing duchy or Marche, that is, from a given unit, or on those that developed from an existing unit. In the case of the solid core around which the subsequent region was formed, it should be noted that these are all the historical lands that originated and still exist today in the Republic of Austria (Styria and Carinthia), with the exception of Carniola, which is entirely within the Republic of Slovenia.

Carinthia developed from a Frankish duchy in the 9th and 10th centuries (Štih, 2014: 45), while Styria, as part of Carinthia, was already a Carinthian duchy after 955 and, in conjunction with the counties, formed a solid nucleus from which the "terra nostra" emerged in 1186, headed by the "princeps de Stire dei Gratia" in the 10th century (Brauneder, 2005: 25-28).

The sources and literature to be consulted in this regard are primarily the *Capitulare de Villis vel Curtis Imperii* (8th/9th century), the *Privilegium minus* and the *Georgenberg Privilege*.

The Habsburg era, which lasted until the end of the First World War, can be divided into the following parts: from the beginning, the so-called formation and integration of the lands, which lasted until 1500 (the "historic lands" are consolidated internally and externally and are linked in lax alliances), the monarch binds the estates together, a period lasting until 1749 (common ruler, central authorities and subsidiary legal order), the period after 1749 - the periphery, when the estates are a monarchy, or as Brauneder puts it, "Austria's present administrative structure began in 1749 and became a reform of the state, or more precisely: the reforms of enlightened absolutism interfered with the previous structures so markedly that they expanded into state reform and, together with legal reforms and codifications in particular, created a state that was at first nameless, but in 1804, after the construction and expansion had been completed, it finally took its official name after the ruling dynasty: the Austrian Empire (Brauneder, 1994: 280-281; Brauneder, 2005: 20); early constitutionalism from 1848-1851 (the state becomes federal, yet a monarchical element prevails); monarchical central state from 1852 to 1867 (the December Laws abolish the constitutional and federal systems in favour of an absolutist unitary state, the provinces are merely administrative areas. Extreme absolutism is prevented by pseudo-constitutional institutions such as the emperor, the imperial council, and laws); constitutionalism from 1867 to 1918. 1918 constitution of the state of Slovenes, Croats and Serbs (Brauneder, 2005: 20).

3 Pre-Habsburg period

The pre-Habsburg period begins with Charlemagne. Štih calls this era the Age of Integration (Štih, 2014: 52). The regulation by which Charlemagne governed his domains, the *Capitulare de Villis vel Curtis imperialis*, is less well known, but it is certainly a regulation from which we can gather information about the culture of the area, or rather, an understanding of Carolingian culture, administration and a social understanding.

We are only interested in governance and management. What stands out is the "iudex" (steward), which appears in as many as half or most of the 70 articles in a document dealing with 70 areas (Reß, 1794: 22). Its remit concerns the organisation of the administration responsible for the economic, military and ecclesiastical spheres.

The importance of the iudex (steward) is demonstrated by documents that were created at the same time as the regulation, namely the document on the foundation of the Kremsmünster monastery in 777, which is often mentioned in Slovenian legal history. According to the document, besides the local authorities and the Duke of Tassillo, there was also a "Chunipreht iudex", who was instructed to determine and establish the boundary - "definire decreuerunt et terminum posuerunt, totum et integrum ad eum tradimus locum" (Kos, 1902: 289-291, document No. 256).

According to the terminology, the "iudex" is the central person in charge of the administration, but at the same time it is he who is instructed by the instrument of donation, which coincides with Article 9 of the Capitularium, where the "iudex" was charged with "in suo ministerio mensuram modiorum" – that is, with the measure and the correctness of what is measured, which can also be paralleled with the aforementioned task of the instrument of donation.

In addition to this document, two other documents of a later date, relating to constitutional and administrative history with an already formed core, can likely be behind the Capitulare. These are the Privilegium minus and the Gerogenberg Privilege. The Gerogenberg Privilege is important for us because, according to Spreitzhofer, the privilege confirms in writing the rights and freedoms of the representatives of the Styrian Estates (1186) and thus constitutes the starting point for the development of Styrian law. The privilege was always confirmed in the provinces as the law given by the fathers and retained its status as a constitutional document until 1848. "Although the legal reality no longer corresponded to that of the 12th century, its venerable age and formal validity nevertheless fostered a special consciousness of the Styrians within the whole Austrian state" (Spreitzhofer, 1986: 8).

The terminology relevant to this period, apart from Capitulare, is the designation of a prince of a province as "princeps de Stire Dei Gratia" and that of a closed geographical area as "terra nostra". The privilege was the starting point for developing the nobility's provincial community and the basis for the form of the Land Offices, the Land Court and the Land Law (c. 1350: Lantbuch ze Steiermark) (Brauneder, 2004: 27).

4 Period up to 1749

The Land is not a homogeneous authority, but a heterogeneous group of power holders in the same or subordinate power relationship (Province Nobility). The holders of power do not represent the sovereign; they are the holders of original power and exercise power in their own name, as Brauneder puts it, "only at another level" (Brauneder, 2004: 29). Thus, the sovereign is at the same time the holder of power at the local level, as a landlord and as a city lord. He is a member of nobility in a similar position.

5 **Enlightened, legal absolutism and/or the emergence of a decentralised unitary state (Constitutionalism)**

In a process initiated by Empress Maria Theresa with her reforms, the Provinces transferred the functions of legislation, justice and administration to new monarchical bodies, losing the character of the State, but becoming part of the State. On the one hand the monarch; on the other the Province Nobility, which is the key to understanding unitarism. The monarch was common to all, the central organs of the state were directly subordinate to him, and everything of a lower rank was still essentially the responsibility of the provincial nobility. In modern terminology, everything functioned as a monarchically mandated administration.

The monarch's decisive intervention at the middle level of administration came with the creation of the "Repräsentation und Kammer" (Representation and Chamber). On the one hand, this was the monarch's direct administrative authority in the Province and, at the same time, the Province's financial office. This led to the assumption of regional power by the newly created authority known as the "Gubernium" from 1762 onwards. This was followed by the establishment of the Kreis, which had a primarily supervisory function (Žontar, 1988: 31 p.).

While the new administration and administrative institutions helped to professionalise, the creation of the governorates, on the one hand, united the states (the two Carinthian districts and the whole of Carniola, together with Styria, into the Illyrian Governorate), but they were not allowed to change the boundaries, and, according to Baltl and his circle, contributed to the lack of transparency and to an even greater potential for abuse (Baltl, Kocher, 2008: 166-177; Brauner, 2004: 100; Bruneder, 1994: 283).

Austria finally started on the path of reform in 1848 with the Constitution of Kroměříž. The federalist situation threatened to lead to partition, while at the same time calling into question the status of the provincial authorities. The Rules of Procedure of the Reichstag provided for the division of the country into three parts: the Empire, the provinces and the municipalities, thus establishing the provinces as the middle tier of government. The Kroměříž draft thus established the historical starting point of 14 territorial units in § 2, which meant that, for example, the provinces of Carinthia and Carniola were independent provinces and no longer part of the Gubernium. With the repeal of the 1848 Constitution and the 1849 Ordinance, not much changed; the provinces remained the only middle tier of government, with the difference that instead of the term province, the historical term Crown was used. The jurisdiction of the province was defined in § 35 as "the province's own affair". As § 84 inadvisedly implies, "the executive power in the whole Empire and in all the Crown provinces is (only) one and indivisible" and "belongs exclusively to the Emperor, who exercises it through the responsible ministers and subordinate officials and appointees", and in the provinces through the governors. The

provincial constitutions, which were identical, regulated only the traditional character of the land (Verfassungs=Urkunde, 4 May 1849, RGBI No 150).

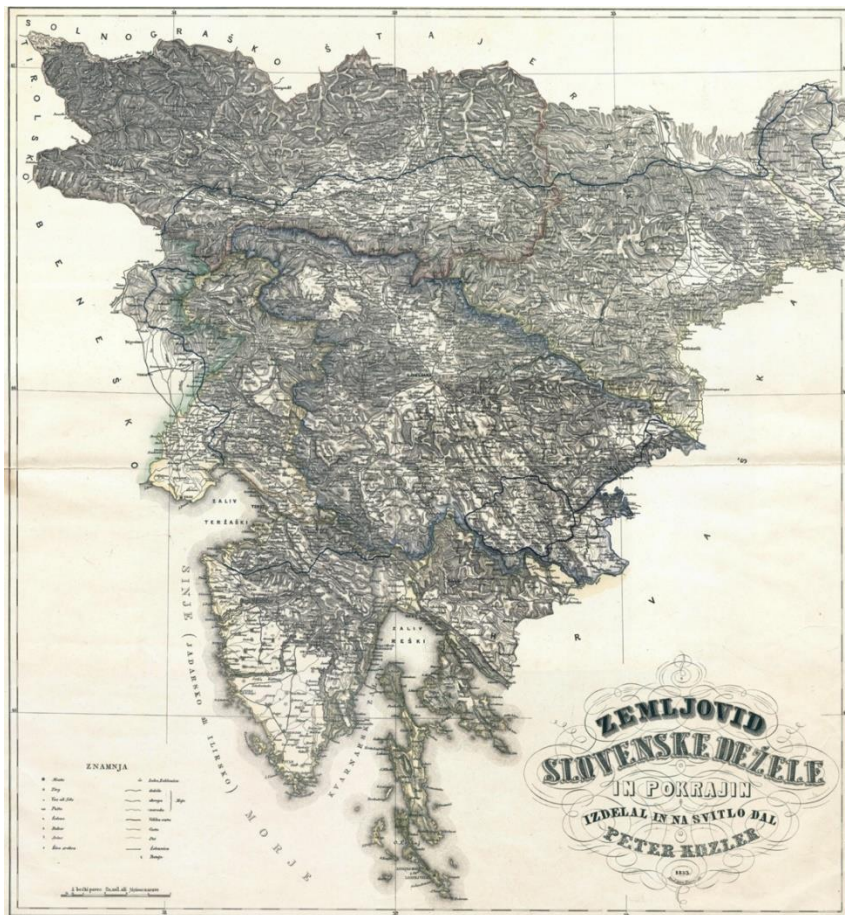
As Brauneder notes, the new administrative structures created a purely State administration, separate from the judiciary. The provinces became central administrative districts at the middle level, instead of the former gubernias (Brauneder, 1994: 296).

After 1860, the reforms abandoned neo-absolutism and returned to the Constitutionalism of 1849, resulting in the re-emergence of constitutional law, which influenced administrative procedure through a catalogue of fundamental rights and the principle of legality. The 1868 Law on the Organisation of the Administration of the State prescribed an exclusively monocratic procedure. The Constitution of 1867 rehabilitated the Constitution of 1849 while retaining certain elements of the neo-absolutist period.

This situation persisted until the end of the First World War.

6 Post-First World War

After the end of the First World War, the administrative development of the areas of the former Austria of 1804 (11 August) and Austria-Hungary after 8 June 1867 went in two completely different directions. The course of administrative development can be seen from the legislation of the Provisional Parliament of German Austria (Deutsch Österreich) in Vienna and the plenary powers of the National Government for Slovenia, which was established on the basis of a proposal by the National Council in Ljubljana for Slovenia under the Presidency of the National Council in Zagreb as the supreme authority of the state of Slovenes, Croats and Serbs (Proclamation of the National Government, Official Gazette of the National Government of the SHS in Ljubljana, November 4, 1918, No. 1, dated October 31, 1918). In both cases, in line with the theory of legal history, so Herberger (Herberger M. 1978: 1368), two new constitutional legal systems emerge on the basis of a particular legal culture (Michaels, 2009: <http://hwb-eup2009.mpipriv.de/index.php/Rechtskultur>; law in action; status 1.8.2020; Holcman, 2005: 58; Blankenburg, 2002: 502). In other words, the regulation of the state/province was about constitutionality in the dual sense that the state/province is "legally regulated" and "actually constituted" (Herberger, 1978: 1368).

Figure 1: Map of Slovene land and provinces

Source: Kozler, P. (created 1853) Map of Slovene land and provinces, *Wikipedia*, available at: https://sl.wikipedia.org/wiki/Peter_Kozler (June 23, 2023).

The web portal of the "Steiermark Constitution" (Verfassungen der Steiermark: <http://www.verfassungen.at/steiermark/index2.htm>; as of 1.8.2020) contains a map by Kozler from 1853 (see above). It shows the borders of the Slovene ethnic territory in blue. The constitution of the National Government for Slovenia on 31 October 1918 was the first request, based on legal foundations, for the creation of a Slovene ethnic territory, the central part of which was the province of Kranjska. The Slovene ethnic territory as drawn on Kozler's map, the Land of Kranjska, the southern part of the Styrian province (Lower Styria), northern Istria, most of the territories of the post-principalities of Goriška and Gradiška, and the city of Trieste (all territories of the Austrian Empire), and Prekmurje (the Kingdom of Hungary).

The request, formulated by the National Government for Slovenia under the leadership of the President of the National Government, Josip Knight Pogačnik, was finally formulated in the Ordinance of the General Government on the Preliminary Administration in the Territory of the National Government of the SHS in Ljubljana, Official Gazette of the National Government of the SHS, 21 November 1918, vol. I, No. 111. The government laid down, for the purposes of "the transitional administration for Carniola, Gorizia, the Slovene part of Istria, the city of Trieste and its surroundings, and for Styria and Carinthia, in so far as these lands form part of the SHS State" (Official Gazette of the SHS National Government in Ljubljana, 21 November 1918, Yearbook I, No. 111), the basic principles for the administrative and de facto constitutional constitution of the SHS State. The establishment of the National Government established "the highest administrative authority and service instance" (point 5 of the Regulation) for all the authorities, all the offices and public bodies and all the matters that were the responsibility of the C.C.R. Regional Government in Ljubljana, the C.C.R. substitutions in Trieste and Graz and the former C.C.R. Regional Government in Klagenfurt. The political administration was subordinated to the area of the Department of the Interior (II. Political Administration), and all autonomous authorities were subordinated to the National Government of the SHS in Ljubljana; the municipalities and districts remained unchanged in their organisation and their area, and all the affairs of the regional committees were under the authority of the National Government of the SHS in Ljubljana (III. Self-Government).

7 Historical provinces and the identity we identify with

7.1 Carniola

In the 9th century, the territory of Carniola, according to Štih (Štih, 2014: 183), was all owned by the Crown. Štih concludes this on the basis of the fact that there is no extant document with a Carolingian seal for this period. The first to receive possessions from the title of royal property, Henry II, were the bishops of Freising in 973, the present-day area of Škofja Loka and the bishops of Brixen in 1004. The recipients are "*nostri iuris praedium quod dicitur Ueldes*", they are the ones who rounded up their possessions and expanded their rights by means of gift deeds. In 1001, Otto III granted the Patriarchate of Ogleja fifty royal hubs in the surroundings of Cerknica. It should be noted that before this grant, only the bishops of Freising were the recipients of royal property, and it should be particularly pointed out that the property in question was "*in comitatu ... quod Carniola vocatur et quod vulgo Creina marchia appellatur*" (Štih, 2014: 186).

Štih's quotations imply two things: firstly, the granting of Krongut (crown domains) in the Otokar period, as Herberger argues, represents a pan-European process of *Landesausbau* and; secondly, there is evidence from this period that the name Carniola is already an established name and allows for the territorial placement of economic and legal relations.

The next stage consists of the provincial manuscripts (LandHandvest) as the first constitutions of each province. The Carniolan Provincial Constitution (Lahdhanfeste), printed in 1687, shows that Emperor Frederick III. (Duke of Carniola 1439) confirmed all the charters containing the rights, liberties and good customs granted to Carniola by Ernest, Archduke of Austria, Styria, Carinthia, Carniola, etc., (Ernest the Iron: "... das wir ihnen (Kranjski) geruechten zubestätten den Brieff / so ihnen weillend ... / löblicher gedechtnuß / über Ihr gnad / Recht / Freyheit / und guettgewohnheit / geben hat ..." (Ladts=Handwesst Des Löblichen Hörzugthums Crain, 1687.))

The re-establishment of the provincial constitution after the Napoleonic era in 1819 does not constitute an octroi constitution, but, as we can read here, it confirms everything that had been granted to the Carniola nobility by the ancestors of the provincial Prince Franz, Austrian Emperor Franz I (Holcman, 2019: 153).

7.2 Styria

The first mention of Styria as Province, according to Sutter (Sutter, 1971: 321), is the charter of 1186, 17 August, the Georgenberg Privilege, which established the hereditary succession of the Province. In Mell, we read that the first Ottokar counts of Styria, in addition to the title Traungauts or Chiemgauer, called themselves "marchiones de Stire" or "marchiones Stirenses" (Mell, 1929: 16-17). In 1180 and the years that followed, the formula "terra ducis Stiriensis" or "ducatus Stiriae" was common in the charters (Mell, 1929: 19).

The Styrian Provincial Statute (Constitution) of 1583 (LandHandvest) contains documents confirmed by the Land Prince Charles, and in the confirmatory document at the beginning of the Constitution, it states that it confirms all the rights, privileges and customs granted to the Styrian Estates by his predecessors (".... constitute coram nobis fideles ... Ministeriales, Milites, Clientes & Comprouinciales, Ducatus nostril Stiriae, quasdam Confirmationis suorum priuilegiorum, libertatum & consuetudinum, ..." (Landhanduest Des Löblichen Herzogthums Steyr / darinen Keyserliche / Königliche ...Anno M. D.LXXXIII.)).

From the above it can be concluded that the name Styria, with its Latin version, has been around for as long as the names of the other lands that have been formed in the territory of the Republic of Slovenia.

Regional names have a long tradition in this area and are a matter of identity. This identity was developed on the foundations of the constitutionality that had been shaped since Georgenberg 1186. The constitutionality derived from the LandHandvest is a prerequisite for the cultural formation of the land, so called the formation of the territory, which certainly implies the land's economics, administration and logistics.

8 Conclusions

From the above it can be concluded that the territorial development of the Slovene territory has a purely European dimension, as defined by Herberger in his *Landesausbau* (Herberger, 1978, pp. 1366-1368), and that in the formation of the territory (*Landesausbau*), the focus was on the legal situation, which allowed for legal certainty, resulting in the formation of a legal landscape.

The legal landscape was shaped in several ways: the Frankish period with the *Capitulaire de Villis* is certainly in the background, the first constitution of 1186 is considered to be the constitution that built Styria's self-confidence (so Spreitzhofer), and it is clear from the charters issued by the individual princes that the recipients of privileges were able to build on custom, rights and privileges. The legal culture continuously presupposes justice and provides a stable structure supported by a culture of organisation, and it has never been a question of welfare.

One could go further back in the argument, as Istria and Aquileia date back to the middle of the first millennium, but the author is convinced that the millennial existence of the names Carniola and Styria justifies the reintroduction of the names in the naming of the regions after the century-long vacuum that followed the First World War.

The author is convinced that, by citing selected facts, he had sufficiently demonstrated that it is always necessary to start earlier and that, as Ladeur says, a programme of anticipation of the "Republique a venir" should be built up for a change, as the Habsburgs did when they took power after the *Interregnum* and had every opportunity, as Nietzsche says, to condemn everything as useless. But they kept pragmatism added a new quality to the status quo, and put their performance on the future ground.

Notes:

¹ The same situation happens when there is new sovereignty (constitutionalism) and the beginning of political (administrative) history.

² The example of Austria, which has preserved its historic lands, is how it could have been.

³ "*Landesausbau*, a spatial and regional planning sub-area, is mainly related to agricultural areas, whose economic potential requires support. *Landesausbau* includes above all, agricultural structure improvement (land consolidation, rural settlement, village rehabilitation, road construction, etc.); improvement of infrastructure (development of transport, education, health and utilities, housing construction and increasing the administrative power of rural districts and rural communities); promotion of regional economic power (creation of new industrial jobs)."

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