



Volume 2. From Absolutism to Napoleon, 1648-1815

Emperor Joseph II on the Structure and Political Condition of the Austrian Monarchy and the Holy Roman Empire (1767/68)

The following memorandum was written in French and addressed to the emperor's brother Leopold, Grand Duke of Tuscany (1765-90) and later Holy Roman Emperor Leopold II (1790-92). In it, Joseph II exposes the Empire's fault lines (among which religious divisions still loom large) but commits himself to a scrupulous exercise of his Imperial powers for the sake of "the fatherland" and the "Corpus Germanicum." His post-Baroque, realist and rationalist mentality is on display here.

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Let us turn to the empire. Although I have been its head for more than two years, it would still be impossible for me to untangle its system in its particulars. It exists only in books, and I wouldn't even trust Montesquieu to explain what the various princes and estates see at this moment. Everybody thinks only of himself and seems to have made it a rule to disturb the others. Each confession, every community, every little individual has his own way of seeing things according to his own little brand of politics, preferences or interests, and orients his dealings only according to these things, and in no way towards the common good. They recognize a head [emperor] only in name, and his authority and that of the laws only have effect insofar as they are agreeable to them. Justice gives way to politics. Impunity can be displayed without shame, provided that it is supported by force. In short, the empire consists of various princes, whose interests are diametrically opposed, so that the common good is never considered in the least. The foreign powers, who derive the greatest advantages from the disunity and weakness of the empire, encourage these things at every opportunity. In any case, the electoral agreements have limited the imperial dignity and authority to such an extent that the emperor is not only prevented from acting as he pleases, but also cannot contemplate the common good, although everyone recognizes it.

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In light of the picture that I have just drawn, it will be easy for you to conclude that it is impossible to undertake or hope for anything great. This would of course demand complete harmony between all of the parts that together make up the empire. Aside from the natural inclination of the estates, all powers also seek, as I just said, to put obstacles in the way of this unison. To do so, they use money, threats, and all conceivable means.

In addition to the organizational failures that I have just mentioned, there is unfortunately also the poor internal constitution [of the empire]: the weakness of the governments and the ministries of the majority of the electors and Catholic princes. They exhaust their finances with their vanity, their slackness, and their dissoluteness; they ruin their subjects, and in that they only occupy themselves with trivialities, they prevent themselves from thinking of the common good and acting thereupon. To defray their expenses, they often find themselves forced to neglect their own defense and preservation and to throw themselves into the arms of whatever power promises them help. The so-called corpus of the Protestants – which is arranged more like a party, is more cohesive, and in terms of its internal organization, more active, more alert, and more attentive to their own narrow interest – is, in this regard, no more perceptive and perhaps even blinder than the Catholics when it comes to their own true interests; here, I mean with respect to that which effects the preservation of their liberty and their estate. They have blindly created a system of their own, which is wrong in principle and very dangerous for themselves, namely, for their own corpus, which is totally isolated from the Catholics in the Imperial Diet [*Reichstag*] in Regensburg as well as in all imperial circle assemblies. Even the Protestant deputies who assemble in Wetzlar to visit the Imperial Chamber Court decide by means of a preliminary council, or better said, a prejudice. They decide all matters, no matter how trifling, in their separate and secret hearings, and then they bring their completely prepared judgment to the general hearing, where the Catholics, who are divided among themselves and never well prepared, are unable to render opposition. Many Catholics let themselves be intimidated, because they feel like they are without solid and secure support, and some of them misjudge their duty to their confession and their honor in such a way that they even join the party of the Protestants, and the Protestants thereby win the majority of the votes.

Despite the decisive superiority of this united corpus, its individual members are neither happier nor freer, because they have imprudently followed the principle that every matter proposed in the Protestants' hearings, even if it is purely political and has no relationship to religious freedom, should be decided by a majority of votes, and that, in accordance with such a decision, every member of their corpus, on pain of being treated like a schismatic or apostate, is obliged to vote for the matter, simply and unconditionally, regardless of how much the decision opposes his inclination or even his material interests. In doing so, they have forged their own chains, and the individuals have made themselves slaves to the vagaries or interests of the King of Prussia and the ministry of Hannover. The King of Prussia is always sure to have the majority in the Protestants' hearings through the great number of votes he controls and through those of his creatures [i.e. clients]. As a result, he feels that he is wholly the master of all councils, provided that these Protestants – in order to avoid being forced to obey their rightful superior, the emperor, who is bound by the electoral agreement – instead give themselves two masters who are much more imperious and despotic than the most powerful and absolute emperor could be.

These are the obstacles that the misguided and poor politics of our German princes, with their fanaticism, put in the way of their own good fortune, their glory, and their liberty. Here, a head [i.e. emperor], even with the very best intentions, could not offer help, nor could he hope to do

so in the future, unless their unreasonable way of thinking is gradually changed in advance, and unless the princes and their ministers are less mistrustful and suspicious that he [i.e. the emperor] is trying to expand his power. This would require much time, effort, and patience, and above all suitable and intelligent emissaries who are well-versed in the composition of the empire and the natural interests of each and every court. Such people are quite rare among us, and one must begin this great project by training some of them.

For this reason, it appears to me that the only thing an eager emperor can do for the good of his fatherland at the current moment, and until the outlook in the Empire and in Europe becomes generally more favorable again, is win trust and general respect by acting honestly and justly. The emperor must treat the various confessions equitably and show no bias, abstain from every chicanery in trivialities and seek no triumph in intervening, which one can do, but which brings no real advantage, because it always inspires fear of an expansion of [imperial] power. Finally, to the extent possible, one must save the sad remains of the erstwhile imperial authority and prevent the total destruction thereof, which seems to be the intention not only of the foreign powers, but also the imperial estates themselves; they are the ones most interested in preserving this kind of anarchy. What remains of this [erstwhile imperial authority] is essentially limited to the administration of justice by the imperial courts and feudal rights, the latter of which the estates, even the most powerful of them, openly acknowledged in the past – and indeed in a most celebratory form – through the investiture that they were bound to accept from the emperor. I found these two pillars of the erstwhile majesty of the Empire to be very wobbly, and this large building, which was supported by such weak pillars, near the point of collapse. In order to forestall such a calamitous and imminent fall, one started with that which was most urgent.

As you know, of the Empire's two great courts of law, only the Aulic Council is directly dependent upon the emperor, whereas the Imperial Chamber Court in Wetzlar is almost entirely dependent upon the estates. Therefore, one was first concerned with the reform of the first of these courts of law, where a great number of functional and personnel abuses and inadequacies had crept in. These had led the imperial estates, even those with the best intentions, to lose almost all trust in the court. They also provided the pretext, often very poorly based on truth, but hardly less compelling, for frequent recourse to the Imperial Diet, a recently discovered method of bypassing all rulings of the imperial courts, even the most just ones. After a long and earnest consultation, one attempted to remedy the most significant and most damaging of these failures through a decree that was publicized at the reintroduction of the members who constitute this court. I put off this action long enough for everything to be prepared for such a necessary reform. This ordinance, which is printed and in everyone's hand, has had felicitous success in the Empire. In addition to the general agreement, this [ordinance] somehow revived the lost trust. There would have already been much greater progress were it just as easy to remedy the personnel problems, and were it not the case that the best laws sometimes remain ineffective because of a failure to implement them. This is still one of the objects of my daily attention and is part of the very thankless work that accompanies the imperial dignity. Impartiality is the foundation of an authority of supreme justice. Therefore, I

strictly forbade all gifts, regardless of what they were called, even if they were customary in the past, and I imposed the penalty of dismissal on those who violated the law. For the quicker processing of cases, one more work day was added to the week (and even a weekly hearing on one afternoon), and the daily consultation was extended by an hour. Additionally, to the extent possible, the procedures for written and oral arguments and the procedures for voting were improved and shortened. Everything, however, depends on the wise leadership of the president, who alone can ensure the success and the observation of the issued laws.

The Imperial Chamber Court needs reform even more urgently than the Imperial Aulic Council. The estates' complaints about this court, much more general and much more justified, had already prompted His Majesty the late emperor to propose to the Imperial Diet that the court be audited. There has not been such an audit since the Peace of Westphalia, except for an extraordinary one that began under Emperor Joseph I and ended under Charles VI and did not have much success. One initiated this salubrious work as soon as permitted by the disputes in the Imperial Diet, which were caused by the notorious happenings in Osnabrück, and which completely paralyzed its activity. Among the estates, I initially found much good will for cooperation in this matter. The estates, whose way of thinking is extremely ambiguous, showed the greatest eagerness to support our plans. The matter was decided. The deputies of the first class were called together, and the date was specified. At the time of the opening of this assembly, we first discovered the secret and dangerous intentions of the Protestants, above all those among them who call themselves the "corresponding courts." They constitute a so-called secret union quite similar to that which helped bring about the bloody Thirty Years War at the beginning of the previous century. Their aim was, and still appears to be, to avail themselves of an institution, which, according to its nature, and defined through the wisdom of the laws, is supposed to recreate an honest, impartial, and quick administration of justice and thereby strengthen the imperial authority again. Their aim was, I say, to use precisely this means to make the problem worse and actually destroy the authority or at least weaken the powers that are so necessary for the maintenance of a court of law, which for the majority of them is the only protection against oppression by their fellow estates, who are so powerful that one could not otherwise resist them. Since the opening of the audit, they have been working relentlessly on this unreasonable plan with as much trickiness as audacity. The ministers of Saxony, Bavaria, and the Palatinate are the most stubborn and ill-disposed. Next month, May, may bring about a change here, because the second class will relieve the first. However, that is still quite disputed, although it is founded on law, and it could be that this new controversy will offer a good opportunity to end the entire audit, which has cost a lot of money without being worth anything.

Whatever the fate of justice in the Empire may be: I must not be accused of not having done what I could do on my part to repair the rifts, which already existed before me, and which the powerful have all too much interest in preserving, in recognition that rulings without implementation are always just nice words that remain without results if they do not want them.

I think the same regarding the investitures. As I am an opponent of all the pettiness of unnecessary ceremony and Asiatic pomp, which is no longer suitable for our century or the

situations in which we find ourselves, I have already explained to the electors, that in no case will I hold to it, and that if they recognize the vassal oath and actually take it, I do not care whether I see their plenipotentiaries standing upright or kneeling before me, or whether they kiss the sword hilt or not. I have thereby removed the only pretext by which they excused themselves from receiving the investiture during the reigns of the two previous emperors. We will soon see whether this was the only true reason that held them back. To date, the King of England, in his capacity as Elector of Hanover, is the only elector who has, in an extremely appropriate way, spoken out, and who has recognized the absolute necessity of preserving this single and essential bond between the head and the members of a body, and [who sees] that without this there would be no connection. If it is possible to agree with the electors on the necessity and the external form of the investiture, then it will be that much easier to bring back the princes of the old houses, who also make such great claims nowadays and who let themselves be incited by the example of the electors, whatever difference there may be between the one and the other. Nevertheless, no one has received the investiture from me yet, although many of them could one day have a strong need for the protection of their direct superior, if times change.

[. . .]

You see from the thorough description that I just gave you of the most important members of our German body [*Corpus Germanicum*] that the picture of the entirety that I presented at the outset is not exaggerated, and that such an irregular body only continues to exist because of a miracle or, better yet, because of the mutual jealousy of the foreign powers. The best means to combat so much disorder would be a good standing electoral agreement. There was already talk of this previously at the Imperial Diet, and a draft has already been composed and is available. Without infringing upon the estates' reasonable liberty, it would at least restore to the emperor the power that he needs to preserve law and order and to protect the weak against the oppression of the powerful. However, one cannot touch this issue under the current critical circumstances. One must wait for more fortuitous times to raise it. During this waiting period, one must attempt, as I already said, to make clear to some of the most powerful houses the urgent necessity [of implementing a new electoral agreement] – the weak know it all too well through their many quite painful experiences – and to convince them all that one is not motivated by anything but the desire to do good and not to expand one's power at their expense.

Source: Haus-, Hof- und Staatsarchiv Wien: Familienarchiv, Sammelbände, Kasten 88.

Source of German translation: Hermann Conrad, "Verfassung und Politische Lage des Reiches in einer Denkschrift Josephs II. von 1767/68" ["Constitution and Political Situation of the Empire in a Memorandum by Joseph II from 1767-68"], in Louis Carlen und Fritz Steinegger, eds. *Festschrift Nikolaus Grass zum 60. Geburtstag, dargebracht von Fachgenossen, Freunden und Schülern. Bd. 1: Abendländische und deutsche Rechtsgeschichte, Geschichte und Recht der*

Kirche, Geschichte und Recht Österreichs [Festschrift for Nikolaus Grass on his 60th Birthday, Compiled by Colleagues, Friends, and Students. Volume 1: Occidental and German Legal History, History, and Church Law, Austrian History and Law]. Innsbruck and Munich: Universitätsverlag Wagner, 1974, pp. 161-85. [Text of the Memorandum, pp. 165-85. Translated from the French by Hermann Conrad and Thea von der Lieck-Buyken.]

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