Univerzita Karlova, Filozofická fakulta
Charles University, Faculty of Arts

Disertační práce
PhD dissertation

2019 **Andrew Philip Fisher**

Univerzita Karlova, Filozofická fakulta
Charles University, Faculty of Arts

Ústav Translatologie
Institute of Translation Studies

Translatologie
Translation Studies

Disertační práce
PhD dissertation

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AGENCY AND EMPOWERMENT IN TRANSLATION:
THE INFLUENCE OF JOSEF WINIWARTER AND HIS 1866 ENGLISH TRANSLATION OF THE AUSTRIAN CIVIL CODE

PŘEKLADATELSKÉ JEDNATELSTVÍ A ZMOCNĚNÍ:
VLIV JOSEFA WINIWARTERA A JEHO ANGLICKÉHO PŘEKLADU RAKOUSKÉHO OBČANSKÉHO ZÁKONÍKU Z ROKU 1866

Vedoucí práce / *supervisor*: Doc. PhDr. Marta Chromá, Ph.D.

2019

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V Praze, dne 1.9.2019
In Prague, on 1 September 2019

Andrew Philip Fisher McKinney

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ABSTRACT

In 1866, the Austrian Civil Code (*Allgemeines bürgerliches Gesetzbuch – ABGB*) was translated into English for the first time by the Viennese lawyer Josef Maximilian Winiwarter. This is a story about the agency and empowerment of this important legal translator and how his translation influenced other translators and texts.

The first part of this dissertation explores Winiwarter's life and his motivations for translating the ABGB into English and introduces the premise that Winiwarter's text was pivotal in creating a standard of legal terminology and phrasing for future civil-law texts in English.

With the help of case studies and context-oriented research, the second part maps out the agency of Winiwarter and the influence his landmark translation has had on other translators and legal practitioners. It showcases two additional English translations of the ABGB, one in the mid-twentieth century and the other in the early twenty-first century, in order to substantiate just how influential Winiwarter's translation was, even a century later.

The final part looks at the recommendations and strategies of Winiwarter and his successors in an attempt to offer practical guidance to legal translators based on the Winiwarter tradition and the research carried out in the dissertation. It also makes reference to the Czech Civil Code and the situation at the beginning of the twenty-first century as an example of how to apply these strategies and recommendations for translating civil legislation into English and for bridging the gap between the languages of common law and European civil law.

KEYWORDS:

Legal translation history, English translation, Austrian Civil Code, Josef Maximilian Winiwarter, Agency in translation

ABSTRAKT

V roce 1866 byl rakouský občanský zákoník (*Allgemeines bürgerliches Gesetzbuch – ABGB*) poprvé přeložen do angličtiny vídeňským právníkem Josefem Maximilianem Winiwarterem. Jedná se o příběh jednatelství a zmocnění tohoto významného právního překladatele a o tom, jak jeho překlad ovlivňoval další překladatele a texty.

První část této disertační práce se zabývá Winiwarterovým životem a jeho motivací k překladu ABGB do angličtiny a představuje předpoklad, že Winiwarterův text byl klíčový při vytváření standardu právní terminologie a formulace budoucích občanskoprávních textů v angličtině.

Pomocí případových studií a kontextově orientovaného výzkumu druhá část mapuje jednatelství Winiwartera a vliv, který jeho přelomový překlad měl na ostatní překladatele a právní odborníky. Představuje dva další anglické překlady ABGB, jeden v polovině dvacátého století a druhý na počátku dvacátého prvního století, aby dokázal, jak vlivný byl Winiwarterův překlad, dokonce o století později.

Závěrečná část se zabývá doporučeními a strategiemi Winiwartera a jeho nástupců ve snaze nabídnout právním překladatelům praktické rady na základě Winiwarterovy tradice a výzkumu provedeného v disertační práci. Rovněž odkazuje na český občanský zákoník a situaci na začátku jednadvacátého století jako příklad toho, jak tyto strategie a doporučení uplatnit pro překládání civilní legislativy do angličtiny a pro překlenutí mezery mezi jazyky angloamerického práva a evropského občanského práva.

KLÍČOVÁ SLOVA:

Dějiny právních překladu, Překládání do angličtiny, Rakouský občanský zákoník, Josef Maximilian Winiwarter, Překladatelské jednatelství

Acknowledgements

I would like to thank the following people for their support during the research and writing stages of my dissertation:

Anthony Pym
for his invaluable knowledge, advice, and supervision relating to translation history and historical research at Rovira i Virgili University

James St. Andre
Theo Hermans
Mona Baker
Sue-Ann Harding
Esmaeil Moghaddam
for their guidance and inspiration during the initial stages of my PhD studies

Gerald Kohl
for his overall supervision and support of my research work at the Law Faculty of the University of Vienna, his insightful contribution relating to the relationship between Winiwarter and Charles Brickdale, and his expertise in locating valuable resources in Vienna relating to Winiwarter and his translation of the Austrian Civil Code

Christian Neschwara
for his support of my research stay at the Law Faculty of the University of Vienna and his invaluable assistance at the Austrian Staatsarchiv in Erdberg

Johannes Kalvoda
for his assistance in researching Austrian historical records and reading old German script

The people at the **Archiv der Universität Wien** (University of Vienna Archives)
for their help in researching the school records of Josef Maximilian Winiwarter

Verena and Wilfried Winiwarter
for their kindness and assistance in providing me with photos relating to the Winiwarter family

Peter Eschig
for his useful comments and insight on the context of the Eschigs' translation of the ABGB

Jana Králová, PhD coordinator

for the infinite amount of practical support she has provided over the years leading up to my degree

Marta Chromá, PhD supervisor, Law Faculty of Charles University

for her legal translation expertise and overall guidance and support during the entire process of writing my dissertation

Stanislav Rubáš

for his practical and emotional support during my years at the Institute of Translation Studies and for being a wonderful friend and colleague

Montrobia McKissack

for his support and understanding, especially during the last stages of writing my dissertation

To my grandfather, **Raymond Edgar McKinney**, in memorium

and

my father, **Philip Ray Fisher**, in memorium

for inspiring me
and teaching me
the importance of knowledge and history

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DEFINITIONS

Full-fledged translation	A translation that might be influenced by previous translations of the same or similar source text, but that does not directly copy elements from these translations. A full-fledge translation is an original work that is not a mere revision or updated version of previous translations.
Jurilinguistics	The study of legal language, its structure, and its use from the perspective of linguistics
Paratext (paratextual data, clues, information)	Any text, data, information, formatting, or elements of any kind surrounding, accompanying, or relating to a translation that is not considered to be the translated text itself
Peritext	Paratextual information that is an integral part of a published text and cannot be detached. Examples: prefaces, translators' notes, blurbs, book covers. *Epitext*, in contrast, is paratextual information that is not attached to the text and freely circulates. Examples: reviews, interviews, letters
Successors (successor texts)	The people who have translated the ABGB after Winiwarter and who were in some manner influenced by him and his translation, whether directly or indirectly (e.g. Brickdale, Baeck, the Eschigs)
Translational coincidence	The occurrence of the same terms or phrasing in two or more translations of the same text without any apparent causal connection
Winiwarter tradition	An approach to translating civil legislation into another language that consults and makes use of the historical continuum of translators from the past, their experience, and most importantly, their translations I refer to it as the "Winiwarter" tradition because I first applied this approach to Josef Winiwarter and his successors.

ABBREVIATIONS

§	A symbol traditionally used in civil codes and legislation in Europe to indicate a legislative section or clause. The "section symbol" is not frequently used in common-law or English-speaking countries, which typically use the full word "section" or "article" or the respective abbreviations (Sec., S., Art.).
ABGB	*Allgemeines bürgerliches Gesetzbuch* English: Austrian Civil Code
BGB	*Bürgerliches Gesetzbuch* English: German Civil Code
k. k.	*kaiserlich königlich* – a prefix used in front of names, businesses, institutions, or military and government organizations to indicate that they were identified with or even provided services to the integrated Austrian Empire or Austria-Hungary In English: "imperial royal" "Imperial" for Austria and "royal" for Bohemia (before 1867) "Imperial" for Austria and "royal" for Hungary (1867 to 1918)

1

Introduction

History is inevitably about telling stories. And translation history is no exception.

Translation historians tell stories about translators and their translations. They discover and uncover correlations and surrounding circumstances that connect the past to the present. They are detectives, of a sort, that try to put together the pieces of a very complicated puzzle. And more often than not, these are stories that nobody has ever heard.

The translators, agents, and movers of these texts that we translation historians are exploring have all too often been neglected in translation studies and history in general. And it is now time to place them in their rightful context and to give them a voice.

Translators are rarely ever first-instance experts of the texts they translate. And if so, they are not necessarily experienced translators. In any case, they are always shifting and moving in this intermediary space between texts, between people, and between cultures. This is the real substance of translators. They are bubbling, flowing forces with the potential to join and interconnect the pieces of the world around them. They also pass on their own knowledge, values, and even judgments. And if their aims are carried through effectively and in an ethical manner, this is turned into a constructive dialogue and ultimately leads to understanding and empowerment.

Hence, translators are doing much more than just translating. And our role as translation historians is much more than just reporting history. We have committed ourselves to telling their important and unique stories.

My story begins in mid-nineteenth century Vienna, the capital of the Austrian Empire, crosses over the Atlantic to the United States, revisits Austria, and then draws to a close in the present-day Czech Republic, spanning a period of approximately 150 years.

The focus and main protagonist of the story is a Viennese lawyer, **Josef Maximilian Ritter von Winiwarter**, who translates into English an important Austrian legal document – the Austrian Civil Code. The original document was published in German in 1811 under the title *Allgemeines bürgerliches Gesetzbuch* (ABGB) (See Appendix 10 for the original title page). After coming into force, the code was legally binding for all citizens of the expanding Austrian Empire, soon to become the Austro-Hungarian Empire. It was translated into most of the languages of the empire at that time, as well as into Latin. All of the language versions of the civil code were initially deemed to be equal under law. However, due to complications with interpreting the code, this ruling was later repealed, and only the German version was legally binding.

It wasn't until 1866 that the code was published in English (see Appendix 11 for the title page of the translation). Why this document was translated and published in English more than 50 years later is not an easy question to answer. Although England had formed a great empire by the nineteenth century, English was not a language of much importance in the Austrian Empire, or for that matter, in mid-nineteenth-century central Europe. Winiwarter, though, did translate the code into English for a specific purpose. In particular, he worked for the British Embassy in Vienna as an advisor and spent time himself in England as a business associate with his brother, so we are not completely without clues as to his reasons.

The context of Winiwarter's life and work around the time the translation was produced will be discussed in more detail in **Chapter 3**. This chapter will also explore Winiwarter's motivations and intentions for translating the ABGB into English and introduces the premise that Winiwarter's text was pivotal in creating a standard for legal terminology and phrasing to be used in future civil-law texts in English.

What influence the translation had on other English-language, civil-law texts at that time and later texts is a central theme in this dissertation and will be taken up in **Chapter 4**. This will be illustrated using three case studies. The first study introduces the texts of a UK land registry officer who journeys to Austria-Hungary 30 years after Winiwarter translation was published. The second one explores an adaptation of Winiwarter's text during the second half of the twentieth century in the United States. The third takes us back to Austria in the early twenty-first century with a new, long-awaited English translation of the ABGB.

Chapter 5 will examine future directions for translating civil legislation into English by putting the findings of this dissertation into practice. It will take a look at the recommendations and strategies of Winiwarter and his successors and will suggest guidelines based on the Winiwarter tradition (see definition above). It will also make reference to the Czech Civil Code and the situation at the beginning of the twenty-first century as an example of how to apply these strategies and recommendations for translating civil legislation into English and for bridging the gap between the languages of common law and European civil law.

There are several objectives to my dissertation that accentuate and demonstrate the importance of the entire PhD project.

The first objective is to introduce readers to an innovative nineteenth-century legal translator, Josef Winiwarter, who was not generally known until this study was written.

The second objective is to show the influence and importance of Winiwarter's 1866 translation in developing and establishing a reliable model for translating civil-law terminology and phrasing into English.

The third objective is to show how this link of influence created by Winiwarter in 1866 can be reintroduced or re-established to produce more historically consistent and legally accurate English translations of continental civil law.

Though, some continuity was seen with the translations of Baeck and Eschig (see Chapter 4), this was a gap of more than 100 years, and in many countries in central Europe, the ties were cut as early as 1918 with the break-up of the Austro-Hungarian Empire.

In Czechoslovakia, this link was gradually weakened with the onset of World War II and was broken almost completely with the subsequent power shift to a soviet system of law (see Appendix 1 for a brief overview of the history of civil law in this region).

It was only in the early twenty-first century, with the drafting of the new Czech Civil Code, that any systematic legislative attempt to reconnect to the roots of civil law in central Europe had been made. A topical question at the time, though, was how to translate this new code into English, a language that, due to the predominance of common-law traditions, lacked the vocabulary for expressing civil-law concepts and terminology. This project explores this overriding issue and tries to provide some of the answers to it.

Finally, a more universal goal of my dissertation is to find a balance between producing a theoretically and academically sound work that is valuable to historians and translation studies researchers and producing a work that is practical and accessible to real

translators, history enthusiasts, and even the general public. In order to achieve this in the most effective and natural way, I have chosen to organize the text, as much as possible, as a *story* that progresses and evolves and that is filled with colourful images and illustrations. I have also tried to keep complicated language and terminology to a minimum.

However thorough and unique a work may be, if it is overly complicated and accessible only to a very narrow group of experts, it is of limited valuable and will have a limited impact. After all, I do not want my dissertation to be forgotten on a back shelf of a university library, as is the plight of so many academic theses and papers. But I want people from different disciplines with different levels of education to be interested in it and read it.

Academic exclusivity is an ailment that has affected a vast majority of academic writing produced in schools and university around the world. It does not benefit anyone and prevents unique and new ideas from reaching people by creating a linguistic and cultural barrier between academia and the real world.

Thus, my PhD project will inevitably attempt to map out the agency of Josef Winiwarter and the influence his landmark 1866 English translation of the Austrian Civil Code has had on other translators. It will take us through Austria-Hungary to the present day. It will showcase two additional English translations of the ABGB, one in the mid-twentieth century and the other in the early twenty-first century, in order to substantiate just how influential Winiwarter's translation was, even a century later. I will then look towards the future and offer some practical insight and guidance to legal translators based on the research carried out in my dissertation.

2

Methodology and Secondary Literature Review

In any historical study of translations and translators, a combination of methods and approaches are inevitably employed. This is even more true when undertaking interdisciplinary research in legal translation history, which draws on a number of disciplines, among others, translation history, legal history, jurilinguistics, sociology, cultural studies, network theory, narrative theory, and historiography. The various methods and perspectives used in this study are in no way mutually exclusive, and in fact, complement each other and share many similar premises – one of the most important being that translations are connected to real people, and thus it is counterproductive to study them detached from their translators or any other agent or factor that comes into contact with them. It is only through context and interrelationships that any kind of understanding can be reached.

My dissertation is essentially a diachronic case study containing several smaller related case studies, all interconnected within their temporal and historical continuum – starting with the Austrian Monarchy in the nineteenth century, travelling over to the United States in the mid-twentieth century, and ultimately returning to modern-day Austria and the Czech Republic at the beginning of the twenty-first century.

The first case study, the Winiwarter translation, is a "gateway" of sorts (see discussion below on network mapping below; Tahir-Gürçağlar 2007) providing us with a point of entry into and focal point for the story. I visualize this point as a *hub*, something similar to a hub airport where there are many connections in many directions to many other airports. The fundamental difference between the airport scenario and my historical method is that you are not only able to travel to different places but you may travel back in time or even start in the past and travel forward into the future, as is the case of my research.

I chose this particular departure point because of my curiosity about Winiwarter's translation, which was undoubtedly a great achievement in the environment of mid-nineteenth century Austria, and the many unknowns attached to the text and its author. Very little was known about Josef Winiwarter and his translation, the reasons for translating the Austrian Civil Code into English, or his motivations for translating the text, and yet, as I will show in this study, Winiwarter's text was not a dead end. On the contrary, Winiwarter and his translation had a direct and indirect impact on future translators of the Austrian Civil Code and the terms and concepts they employed. The knowledge of the connections, though, has been lost or fragmented, or more probably, was never even consciously documented to begin with.

As we travel forward in time from this hub, the other smaller, connected case studies act as *layovers* (in our analogy of air travel), move us closer to our destination, and most importantly, present convincing evidence of Winiwarter's influence. They are linked to and build on the hub case study and help us come to an understanding of how Winiwarter and his

translation have influenced future translators. Hence, the objective of the methods I use in this study is to uncover the connections of Winiwarter and his translation to the historical continuum of legal translation in central Europe during the nineteenth and twentieth centuries and to show that legislative translations such as this, produced and subsequently published for a specific purpose, have real consequences, and in fact, influence the terminological and translational choices of future translators.

Case studies – context-oriented research

The use of case studies has recently become a very prolific method in translation history and has been popularized by certain research focusing on historical events, one of the most important for translation history in recent years being Sturge (2004). On the other hand, Susam-Sarajeva (2009) points out that case studies have, for the most part, not been discussed much as a conscious method of research. Many researchers, in fact, use case studies as a method without further elaboration as to what a case study actually entails or how it is used in their particular research.

What sets case studies apart from other methods used in translation history is that they are specific, real-life accounts that focus on context and the holistic environment surrounding translations and their translators. Until recently, case studies have been primarily associated with contemporary events and research conducted in the present (see Gillham 2000 and Yin 2009 for differences between case study and historical research). Saldanha and O'Brien (2013) and myself, on the other hand, "… see no reason why the case study cannot be used in studying historical phenomena and be considered a method within the broader field of historical research" (Saldanha, O'Brien 2013: 207).

Context-oriented research is grounded in sociology and cultural studies, and the case study is one distinctive though fluid method within context-oriented research that can be used in translation history to account for the contextual aspects of translation and substantiate their importance.

The use of case studies in my research project seems to be a natural and logical choice since I am looking at how the ground-breaking work of one translator at a particular time in history has influenced the concepts, terminology, and even phrasing of the translations of other authors in the future. The hub case study, the Winiwarter translation (see Chapter 3), is the fundamental source case study from which the entire project evolves. It is important to understand Winiwarter's circumstances and motivations when translating the Austrian Civil Code into English (his case) in order to expose the connections that led to future developments and his influence on future translators and texts.

An understanding of Winiwarter and his text intuitively prompts us to ask what happens next. What happened to his translation? Who used his translation, formulations, and terminology? What elements of his text can we find in future texts? The smaller connected case studies provide some of those answers. These cases include the Baeck text and the Eschig translation (see chapter 4), which are updated English translations or adaptations of the ABGB and would not have developed as they did or, for that matter, exist at all without Winiwarter's translation.

Hence, the connections between the case studies create the historical progress in my research project. They let us travel through time and see through real, contextualized stories what impact Winiwarter's translation actually had and specifically how it moves through time and influences various texts and terminology and even attitudes towards translating central European civil legislation into English in the future.

Overview of methods and key literature

A fundamental source and methodological starting point for my dissertation is the now classical text in translation history *Method in Translation History* (Pym 1998). In his text, Pym stresses the importance of social causation and explaining why translations are produced in a certain time and place. It follows then that translators must be a main object of research. "Only through translators and their social entourage … can we try to understand why translations were produced in a particular historical time and place. To understand why translations happened, we have to look at the people involved." (Pym 1998: ix). Nevertheless, Pym also emphasizes multi-causality when doing translation history. Translators are not the only cause, and many other aspects are involved in causation and understanding. Before concluding that one fact has caused another, "… we first have to look around to see what else was happening in history." (Pym 1998: 159). With Pym's notions of multi-causality and explanation, we are inevitably led to a context-oriented research method, such as case studies, where more factors than just translators or their translations are taken into account.

A key concept for this project is the issue of "importance" (Pym 1998), insofar as conscientious research should attempt to tie into larger questions of importance with wider implications. Importance in Pym's sense works at two levels in this project: (a) the importance of the particular research for translation studies with respect to uncovering new information about translations and translators that has never been presented to the public in a systematic manner, and (b) importance in the sense that this research project will hopefully contribute in some practical way to informing and improving the future English translations of continental European legislation and offer guidelines and insight for legal translators.

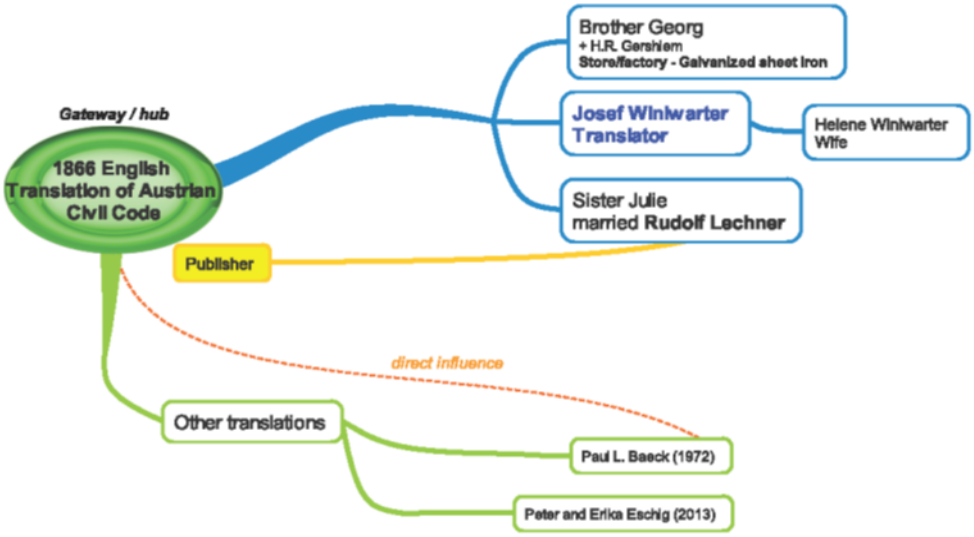
Another perspective relied on in this study is the notion of *intercultures* (Pym 2009). Pym suggests by this term that, instead of translators moving from one side to another, the inhabited space of translators somewhere between the reader and the author, between the source culture and the target culture, is a complex overlapping of cultures. The translator does not move from the author to the reader but is situated in two or more cultures at the same time, i.e. an intercultural space. Pym's concept of intercultures challenges the traditional duality or dichotomous relationship of translation in that it attempts to position the translator in an interweaved or overlapping space of cultures (the source culture, the target culture, and perhaps many others).

Pym's concepts, such as multi-causality and intercultures, provide the method and the grounding for the historical research work carried out during this project and work hand in

hand with a methodological tool used in this study: *network mapping*. Pym himself first mentions networks in his *Method of Translation History* (1998) as transfer maps that illustrate in a more qualitative manner the circulation of texts and agents. This qualitative tool, which will be used extensively in this project, is taken up in more detail in volume 52(4) of *META*, Translation and Network Studies. One article in particular describes this methodological tool in practice – *Chaos Before Order: Network Maps and Research Design in DTS* (Tahir-Gürçağlar 2007). Network mapping is a tool and concept rooted in network theory and is related to Actor-Network Theory (ANT) (Latour 2005). A network map "provides a picture of how the various elements (translators, translations, other agents) are linked, not hierarchically, but spatially" (Tahir-Gürçağlar 2007: 727). However, unlike ANT, network mapping attempts to better contextualize. Network mapping and a network map can graphically capture the intricacies and chaos of the situation in this particular project and help to contextualize the historical circumstances surrounding the Austrian Civil Code with, for example, the intricate state of affairs after 2012 relating to translation of the new Czech Civil Code.

Tahir-Gürçağlar (2007) rejects the idea that networks are limited in space and time. "For fuller contextualization, networks should be pursued across apparent time and space limits." She also refuses the idea of centrality in network mapping. "…in my version of a network map, I argue that all points lead one in a number of unilateral or multilateral directions and can be considered as 'gateways' into any given network." Applying Tahir-Gürçağlar's logic and concept, the obvious gateway for this study is the English translation of the Austrian Civil Code, and a number of directions will be initially taken from that particular point of entry in order to understand and contextualize the connections between the translators and the situation surrounding the translation of legislation into English from the 1866 English translation of the Austria Civil Code up to the present.

Example of network map:



An equally important methodological concept employed in this research project is translation agency. Agency and its role in translation studies have been dealt with extensively in Milton, Bandia (2009) and Kinnunen, Koskinen (2010). In the publication *Translators' Agency* (Kinnunen, Koskinen 2010), consensus was reached among scholars on what agency actually is: "The willingness and ability to act". Willingness relates to the personal traits of "consciousness, reflectivity and intentionality", whereas ability refers to constraints and issues of power and powerlessness. Acting, on the other hand, completes the picture with the notion of exerting influence and carrying out action.

In the introduction to their series of papers on the agents of translation, Milton and Bandia (2009) define agency from a slightly different angle focusing on "the agent" instead of the action or acting. For Milton and Bandia, agents of translation are any persons, or perhaps even institutions or journals, that are in between the translator and the end-user of a translation. They could be translators, editors, publishers, commissioners, or patrons of translation. These roles are often even combined. Their roles frequently involve innovation and change, and they oftentimes challenge the status quo.

Milton and Bandia's selection of essays emphasizes the agent's cultural and political role in history. The authors point to two specific types of agents: (i) those who affect changes in the styles of translation and who are involved in innovation and influencing literary trends and (ii) those who focus on the translation agent's political and power relationships, which could take the form of nationalism or censorship.

Milton and Bandia also discuss certain underlying elements of agents of translation, concepts by which agents function and influence translation and other agents around them. One of these elements is patronage. Patrons wield various levels of influence and power over translations, translators, and other agents and play an important role in the translation process. Patronage is one form of power, and power is another key concept in translation agency. Power relations in translation could have a profound effect on whose translation is published, and even when or where a translation is published. As will be seen later in chapter 3, power and patronage play a key role in my first case study, the Winiwarter translation. Familial connections provide Winiwarter with the support and means for publishing his translation of the Austrian Civil Code. His wife's brother, Alexander Bach, well-known throughout the empire, provides moral support as a political patron of sorts. His sister's husband, Rudolf Lechner, on the other hand, is a successful publisher and bookseller and eventually publishes most, if not all, of Winiwarter's legal translations.

The concept of *habitus*, coined by the French sociologist Pierre Bourdieu, is another important perspective prolifically used in translation studies and taken up by Milton and Bandia to explain agency. In simple terms, it focuses on a shift in translation studies from norms controlling agents (traditional descriptive translation studies) to agents and translators actually shaping and (re-)creating norms themselves. This shift in perspective is all about how agents act upon the norms and environment around them as opposed to being moulded and dictated by them. An inevitable outcome to such an approach is that it helps us understand motivation and unearth connections and relationships that were previously not apparent.

As my study unfolds, a focus on agency leads to understanding. In the Winiwarter case, the political role of agents is conveniently camouflaged by its cultural role. One of the most important pieces of legislation at that time is translated into English, a language of less importance in mid-nineteenth century Austria. The scholarly significance and prestige of the translation upstaged the political and commercial aspects. Josef Winiwarter himself, his printer-publisher, and even his brother-in-law all had political and commercial motives for pursuing the 1866 English translation of the Austrian Civil Code. Money and power were important factors, and the agency of Winiwarter and others in terms of his choice of language and terminology, publishers, patrons, etc. was decisive for the future of English translations of legislation in central Europe.

An overview of methodology and literature in translation history would not be complete without mentioning one of the key historical accounts of translators produced during the last few decades, the now iconic work of Delisle and Woodworth (2012) *Translators Through History*. The first edition of the book, initially appearing in French, was published in 1995. As the title suggests, even the first edition of the book had focused on translators as agents instead of the translations produced, ushering in the trend of the "cultural turn" in translation studies during the 1990s. The new edition includes new developments and methodology popular in translation history research since that time.

Bastin and Bandia's book (2006) *Charting the Future of Translation History: Current Discourses and Methodology* takes another angle on translation history and its future direction. The main focus of the articles in the book is to explore methodology and current discourse on translation history, to fill in some of the gaps establishing translation history as a full-fledged discipline, and to look towards the future of translation history. The authors point out that past research relating to translation history was descriptive in nature, focusing on events and facts. Recently, though, translation history has shifted to interpreting and understanding the facts and placing them in their rightful context.

In the article *Microhistory of Translation*, Sergia Adamo discusses the application of "microhistory" to translation history as a method of dealing with historical awareness and digging up unique and perhaps even unknown events and people from the past. Adamo states that "…the most distinctive and unifying element in all research that recognizes itself as microhistorical can be identified in the reduction of scale, from which all other aspects derive." In fact, microhistory, which became popular in the 1970s, is a reaction to generalizations in historical research that were prevalent in the social sciences up to that time.

The concept of microhistory plays an important role in my study of Josef Winiwarter, who was a relatively unknown nineteenth-century lawyer fragmented from the more mainstream history of the region. It was not until attempting to bring to light his story through meticulous archival research that I could start making connections to the bigger picture. Hence, the "small unit" of research, i.e. Winiwarter in this case, provides a much more meaningful and personal understanding of the circumstances surrounding Winiwarter's work and the translation environment during the mid- to late-nineteenth century.

Another perspective which compliments Pym's approach to translation history, is the application of narrative theory to translation research. Mona Baker is one of the key figures in this area, and Baker (2006) provides a detailed description of this approach. Narrative theory as applied to Translation Studies draws on the notion of narrative as understood in social theory, (Somers 1994) and (Somers & Gibson 1994), where "narrative is not conceived as an optional mode of communication but as the principal and inescapable mode by which we experience the world." (Baker 2005: 5). Here again, the translators and the narratives or stories that they tell are the key focus of research. In this approach, exploring the stories or narratives of translators, in my study, Josef Winiwarter and the translators who followed him, e.g. Baeck and Eschig, will help me understand the interweaved context and will provide some understanding of how translators have dealt with terminology and phrasing when translating civil-law texts into English.

Legal translation history

Most research undertaken in the past on translation history has focused on literary translation and translators. In addition, most work on legal translation history looks at the legal wording or linguistics aspects of texts. In-depth research on the lives of legal translators or the context in which they have translated and worked is practically non-existent.

Perhaps one of the few attempts in English to discuss legal translation history, albeit summarized into one chapter, is Šarčević (2000). In her chapter History of Legal Translation, Šarčević looks briefly at the developments of Western legal translation history from the time of ancient Egypt and Mesopotamia up to the present, focusing on the debate over "literal vs. free translation". It documents the waves and turns in history from Latin dominance, to more interpretive, free translation, and a shift back to more literal translation as a result of the assertion of various national languages in Europe, which eventually led to an attempt to make legal texts in Europe comprehensible for the peoples of the individual nations.

The part of this chapter discussing the shift to comprehension and the Austrian Empire is particularly important to my study insofar as it discusses the language versions of the ABGB created for the various lands and kingdoms in the empire. Šarčević mentions that the ABGB was translated into "ten languages: Bohemian, Croatian, Hungarian, Italian, Polish, Russian, Rumanian, Serbian, Slovenian, and even Latin." All of the translations were initially considered to be authentic texts carrying the same weight as the original German version. Later, due to complications with legal interpretation, the language versions were "downgraded" to official translations, with the German original being the only authentic version with respect to legal interpretation.

Interestingly enough, although Šarčević writes in English, she nevertheless neglects to mention anything about the first translation of the ABGB into English in 1866, supporting my premise that little was known, let alone written, about Winiwarter's translation until the launch of my research on the subject in 2013.

In a collection of articles that recently came out (*Legal Translation: Current Issues and Challenges in Research, Methods and Applications*), Pozzo (2019) takes up the history of

legal translation from a different angle. In her article, "Legal transplant and legal translation: how language impacts on the reception of foreign legal models", she focuses on how language affects the reception of foreign legal models and concludes that the study of the history of legal languages, such as Latin, French, or English, helps us understand the "evolution of legal systems".

Chromá (2014) discusses legal translation history from yet another angle, focusing on the practical aspects of applying legislation history to translating civil law. In her book, *Právní překlad v teorii a praxi: Nový občanský zákoník* [Legal Translation in Theory and Practice: The New Civil Code], Chromá offers solutions to translating Czech civil law from an historical perspective, based on consulting the terminology and phrasing of historical legislative texts from Europe and other parts of the world.

As she explains in the English summary of her book, "There are historical, social, cultural and philosophical contexts determining the meaning of the legal text, its segments and the substance of the law, which should be considered by a translator who is searching for the adequate wording of the target legal text." (Chromá 2014: 247)

Central European history

Other important historical resources relating to the first part of my dissertation and supporting the methodology used throughout the study include primarily three new, alternative histories of the Austrian Empire or central Europe (Kamusella 2009; Judson 2016; and Deak 2015). All three of them offer better contextualization of the histories and focus more on people, language, and politics rather than events and milestones. Here again, this new approach used by these historians reinforces the grounding of my methodology in case studies, agency, and narrative.

Kamusella (2009), in particular, provides an in-depth study of the language relationships in central Europe, concentrating on the developments of language politics and nationalism mainly during the growing stages of modern central Europe in the eighteenth and nineteenth centuries. His insights into the power of language and the movement of peoples speaking different languages and dialects in the region helps to contextualize the linguistic situation in central Europe during the time of Winiwarter and even the linguistic and translational decisions that translators have inevitably had to make in relation to the politics of the Austrian Empire and central Europe as a whole.

Judson (2016) presents a more people-oriented history of the Austrian Empire and fills in the gaps of past traditional histories of the region. As opposed to most of the previous authors, his focus on people and agency facilitates an authentic understanding of the mood and tone of the history of the time and brings to light new facts, events, and personal histories that have been overlooked or ignored in past historical accounts of the Habsburg Empire.

As a final remark on methodology, I would like to point out that historical research of people and their activities is initially always a process of trial and error, and eventually the errors become less and less. As research progresses, more specific decisions and conclusions may be made and a more solid foundation established.

Case-study based research can never be predicted in advance, and researchers need to adapt and change their methodology on a continual basis. All of the methods used in this dissertation have been chosen precisely because they are based on qualitative research methods. Context-oriented research, Pym's translation history method (social causation, intercultures, etc.), agency, narrative theory, Bourdieu's sociological methods, network mapping, and even oral history share many common premises and methodological positions. The most important of these is that any person, culture, or activity must be studied in context, and the only way to understand real-life phenomena, including historical events and people, is to use methods and tools that are capable of dealing with these phenomena without detaching them from their natural context.

For a brief survey of the legislative context leading up to Winiwarter's pioneering translation and later legislative developments in this part of central Europe, see Appendix 1.

3

Josef Maximilian Winiwarter and his Translation of the Austrian Civil Code

Prof. Dr. Josef Maximilian Ritter von Winiwarter translated the *Allgemeines bürgerliches Gesetzbuch* (ABGB) into English during the 1860s, and the text was initially published in 1865/1866. His motivations for translating the ABGB into English are not entirely clear, but we do have some indication why he took on such an ambitious task. In order to grasp more fully these motivations and his intentions, let's first take a look at his life, his accomplishments, and the many people connected to him up to the time of the translation.

Josef Maximilian was born on 15 October 1818 in Lemberg, Galicia (in Polish: Lwów; now L'viv, Ukraine), which was a part of the Austrian Empire (see Appendix 3 for a record of his birth and baptism), to the reputable **Prof. Dr. Josef Ritter von Winiwarter** and his wife, **Franziska von Holfeld** (Lenz 2012 – see Appendix 2 for the complete genealogical chart)[1]. His father was, in fact, a more acclaimed academic and political figure than himself. Born in Krems, Austria, Josef senior was an Austrian academic legal scholar and jurist, rector and dean of the University of Lemberg, and an honorary citizen of the city of Lemberg (Gazeta Lwowska 1827)[2]. He was the author of one of the great commentaries to the ABGB (see Appendix 13 for the title page of the commentary) and translated the ABGB into Latin. Thus in translating the ABGB into English, Josef junior was to follow in his father's footsteps.

Josef's father and mother (Lenz 2012)

After returning to Vienna sometime around 1827, Josef senior was appointed professor and dean at the University of Vienna, and starting in the 1840s, both father and son were members of the famous "Juridical-Political Reading Club" (*Juridisch-politische Leseverein*) in Vienna (Brauneder 1992). The club was a sort of political platform for

[1] Lenz, Michael (2012). Lenz-Chroniken online – Verwandtschaft von Alexander, Emilie, Franz und Felix von Winiwarter [*Relationship of Alexander, Emilie, Franz and Felix von Winiwarter*]. pdf file: http://www.lentz-chronik.de/download/Familientafel--Emilie-von-Winiwarter--V10.2.pdf

[2] Gazeta Lwowska, No. 92, 13 August 1827, ANNO Suche (Austrian National Library online)

Vienna's intellectuals and professionals and was co-founded by Josef's brother-in-law, Alexander Bach (Deak 2015). In addition to the reading club, Josef shared many professional and academic interests with his father, and we can safely assume that his father had a profound influence on his future academic pursuits in law and legal translation.

Josef had seven siblings (Lenz 2012). His younger brother **Georg** was an engineer and started a galvanized sheet-iron business with his brother Josef. Perhaps the sibling with the most relevance to Josef's endeavours as the translator of the ABGB was his younger sister **Julie**[3]. Julie's influence on Josef's career was related to the fact that she married a man by the name of **Rudolf Lechner** at the beginning of 1856, who was eventually to become the publisher of Josef's English translation of the ABGB in Vienna.

Josef's sister Julie and her husband Rudolf Lechner, the publisher of his translation of the ABGB (Lenz 2012)

Lechner was a university bookseller ("*Buchhändler*", or by profession, "*Buchverleger*" – book publisher), and in addition to his brother-in-law's legislative texts, he was known for publishing guidebooks and maps. Lechner was also the first chairman of the Association of Austrian Booksellers, which published the *Österreichische Buchhändler-Correspondenz* (OBC – see below)[4].

Immediate and extended families tended to be close-knit in central Europe during the nineteenth century, and Josef's family was no exception. It was quite common at the time for family members to assist each other in personal and career related matters and to carry out business pursuits together. So the fact that Josef's brother-in-law published his translation and advertised the publication in the OBC is entirely logical and even expected.

In addition, Josef worked closely with his brother Georg in managing a business and producing galvanized sheet iron, among other things, and his entrepreneurial involvement with his brother had a great influence on the direction Josef's career was to take during the 1850s and early 1860s.

[3] Julie also had a twin sister Cäcilie, who died at a much earlier age.

[4] Rudolf Schmidt: Deutsche Buchhändler. Deutsche Buchdrucker. Band 4. Berlin/Eberswalde 1907, pp. 601–604. http://www.zeno.org/nid/20011436611

Winiwarter's secondary and tertiary education

From 1827 to 1833 (i.e. from approximately 9 to 15 years old), Josef junior studied at the famous Akademisches Gymnasium in Vienna (source: *Kassajournale Studenten und Schule*)[5]. This was a prestigious academic secondary school that rigorously prepared students in the arts and sciences and Catholic doctrine. The school was originally founded by the Jesuits, but at the time of Josef's attendance, it was run by the Piarist order.

After completing his secondary education, Josef followed the mandatory philosophical course from 1833 to 1835, which preceded his university studies (source: *Kassajournale Studenten und Schule*)[6]. This is loosely equivalent to a general bachelor's degree in Europe and North America today.

From 1836 to 1841, Josef studied law at the University of Vienna. The records at the University of Vienna Archives show that he was a very diligent student, received a stipend, and graduated with merit (source: *Katalog vom Studien* – see Appendix 4)[7].

He received the degree of Doctor of Laws (*Dr. jur.*) on 25 May 1841 (see Appendix 5 for Josef's graduation register)[8] after defending his dissertation on 7 May 1841 at 11 a.m. His dissertation was entitled *Die Amortisation der öffentlichen Credits-Effecten nach den gegenwärtig bestehenden Vorschriften*[9] [The amortization of public credit personal effects in accordance with current regulations].

DIE

AMORTISATION

DER ÖFFENTLICHEN

CREDITS-EFFEKTEN

NACH DEN GEGENWÄRTIG

BESTEHENDEN VORSCHRIFTEN.

EIN VERSUCH

VON

JOSEPH MAXIMILIAN WINIWARTER,

CONCEPTS-PRACTIKANTEN DER K. K. HOF- UND NIED. ÖST. KAMMER-PROKURATUR.

(In den Druck gelegt bey Gelegenheit seiner öffentlichen Vertheidigung der beygefügten Gegenstände aus allen Theilen der Rechts- und politischen Wissenschaften zur Erlangung der juridischen Doctorswürde.)

WIEN 1841.
GEDRUCKT BEI DEN P. P. MECHITARISTEN.

GEGENSTÄNDE

DER

ÖFFENTLICHEN VERTHEIDIGUNG

AUS ALLEN THEILEN

DER

RECHTS- UND POLITISCHEN WISSENSCHAFTEN,

WELCHER SICH

UNTER DEM ALLERHÖCHSTEN SCHUTZE

SR. K. K. APOSTOL. MAJESTÄT

FERDINAND I.

NACH VOLLENDETEN VIER STRENGEN PRÜFUNGEN

ZUR ERLANGUNG

DER JURIDISCHEN DOCTORSWÜRDE

AN DER

K. K. UNIVERSITÄT ZU WIEN

JOSEPH MAX. WINIWARTER,

CONCEPTS-PRAKTIKANT DER K. K. HOF- UND N. Ö. KAMMER-PROKURATUR,

AUS LEMBERG IN GALIZIEN,

AM 7. MAY 1841, VORMITTAGS UM 11 UHR

UNTERZIEHEN WIRD.

WIEN 1841,
GEDRUCKT BEY DEN P. P. MECHITARISTEN.

First and last page of Josef's dissertation

[5] Kassajournale Studenten und Schule. Archiv der Universität Wien, 1827/28 to 1832/33 (R 77.44 to R77.49)

[6] Kassajournale Studenten und Schule. Archiv der Universität Wien, 1833/34 to 1834/35 (R 77.50 to R77.51)

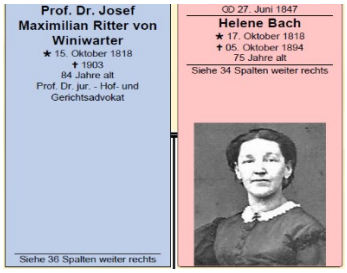
[7] Katalog vom Studien Jahre 1836/37, 1837/38,1839/40. Archiv der Universität Wien

[8] Promotionsprotokolle für das Doktorat der Rechtswissenschaften (Dr. jur., Dr. utr. jur.) (1811-1997): Winiwarter, Joseph Maximilian, 1841.05.25 (Dokument (Einzelstück)). Archiv der Universität Wien, Signatur: M 32.1-450

[9] Österreichische Nationalbibliothek, 249.181-B (Digitalized reproduction of the Austrian National Library)

From law-school graduate to translator of the ABGB

We also know that, from the time of his law-school graduation up to publication of his English translation of the ABGB, Josef was definitely not idle. During these 25 years, he married **Helene Bach** (sister of the famous Alexander Bach) on 27 June 1847 (see Appendix 6 for Winiwarter's marriage certificate) and had four children: Alexander (1848), Emilie (1850), Franz Josef (1851), and Felix (1852).



Josef's wife, Helene (Lenz 2012)

In addition, as mentioned above, Josef, his brother Georg, and a prominent chemist by the name of **H. R. Gersheim** founded in 1851 a galvanized sheet-iron factory in Gumpoldskirchen, near Vienna and opened a shop to sell their sheet iron, lead, and tin products in Vienna at Riemerstraße 16.

Winiwarter-Gersheim shop advertisement (Lehman 1860)

Thanks to a book written by **Amédée Demarteau**[10] for the International Exhibition in London in 1862 (see below), *Galvanized Iron and Its Application to Building and Other Purposes ; A Description of Messrs. J. & G. Winiwarter's Manufactory in Gumpoldskirchen (Austria), and an Account of the Different Works, Performed There*[11], we have evidence that Josef actually provided the financing for the factory business, and his brother Georg was in charge of the practical side of the business. It is no coincidence that this book was published

[10] Amédée Demarteau was an inspector of the Building Department of the Austrian Southern Railway Company and an architect.

[11] Demarteau, Amédée (1862). Galvanized Iron and Its Application to Building and Other Purposes ; A Description of Messrs. J. & G. Winiwarter's Manufactory in Gumpoldskirchen (Austria), and an Account of the Different Works, Performed There, Composed on the Occasion of the International Exhibition in London. Vienna: Rudolf Lechner, Bookseller to the University. London: Nicholas Trübner & Co

by Rudolf Lechner in Vienna and by **Nicholas Trübner & Co.** in London[12], the same people and companies that published Winiwarter's translation in Vienna and London.

His brother Georg kept the company successful and running for several years after Gersheim left the company in 1861 and his brother Josef in 1865. Why Josef left the business is not entirely clear, but we can infer from the records that he had numerous undertakings relating to the legal profession, translation, and other pursuits waiting to be completed, in particular, his English translation of the ABGB, which was published a year later.

Remnants of the Winiwarter-Gersheim factory in Gumpoldskirchen

English was not Josef's only foreign language. We know from Lehmann's address book (see below) that he was also a court-appointed interpreter for French and English. His proficiency in French can be clearly verified by the fact that he also translated legislation and legal texts from German to French, such as "*Code général de Commerce viable pour les Royaumes de Bohême, Galicie etc. introduit par la loi de 17 Décembre 1862*" and "*Loi de Change autrichienne et lois et ordonnances y relatives*", both translated at around the same time as the Austrian Civil Code and both published by his brother-in-law Rudolf Lechner[13].

As for his English proficiency, we know from the title page of his translation that Josef worked as a legal advisor to the British Embassy in Vienna.

TRANSLATED

BY

JOSEPH M. CHEVALIER DE WINIWARTER,

DOCTOR IN LAW, ADVOCATE IN VIENNA, AND LEGAL ADVISER TO HER BRITANNIC MAJESTY'S EMBASSY AT VIENNA.

How he initially learned English is not known, since English was not necessarily a commonly learned language in Austria at that time. In nineteenth-century central Europe, German, French, and Latin were the languages of science, education, and scholarly pursuits. However, we do know that, due to his engagement with the British Embassy and his various

[12] Nicholas Trübner was a German-English book publisher and linguist who moved from Germany to England in the early 1840s.

[13]Biographisches Lexikon des Kaiserthums Österreich, vol. 57, 1889, pp. 75–76. Retrieved from: http://www.literature.at/viewer.alo?objid=12541&viewmode=fullscreen&scale=3.33&rotate=&page=79

connections, he assisted his brother in promoting their galvanized sheet-iron business in England. In 1862, his brother Georg received a medal at the World Exhibition in London:


Der k. k.
landwirth. Bezirk-Verein Mödling,
hält sich verpflichtet, die Namen jener P. T. Vereins-Mitglieder, welche bei der internationalen Welt-Ausstellung in London und bei der Ausstellung der k. k. Landwirthschafts-Gesellschaft in Wien im Jahre 1862 mit Medaillen und ehrenvollen Anerkennungen ausgezeichnet wurden, seinen Vereins-Mitgliedern hiemit bekannt zu geben.
Bei der Welt-Ausstellung in
LONDON
erhielten Medaillen:
Herr Drasche Heinrich, Gutsbesitzer zu Inzerdorf am Wienerberg.
Herr Fichtner Johann, Fabriksbesitzer zu Angersdorf.
Herr Kouff Franz, Fabriksbesitzer zu Hinter-Brühl.
Herr Riemerschmidt Anton, Fabriksbesitzer zu Maria-Enzersdorf.
Herr Winiwarter J. G., Fabriksbesitzer zu Gumpoldskirchen.

(Source: http://www.projectcontrol.at/Am%20Kanal%20Web.pdf)

Transcription:
Der k. k. landwirth. Bezirks Verein Mödling, *hält sich verpflichtet, die Namen jener P. T. Vereins-Mitglieder, welche bei der internationalen Welt-Ausstellung in London und bei der Ausstellung der k. k. Landwirthschafts-Gesellschaft in Wien im Jahre 1862 mit Medaillen und ehrenvollen Anerkennungen ausgezeichnet wurden, seinen Vereins-Mitgliedern hiemit bekannt zu geben. Bei der Welt-Ausstellung in* ***LONDON*** *erhielten Medaillen:*
Herr Drasche Heinrich, Gutsbesitzer zu Inzerdorf am Wienerberg.
Herr Fichtner Johann, Fabriksbesitzer zu Angersdorf.
Herr Kouff Franz, Fabriksbesitzer zu Hinter-Brühl.
Herr Riemerschmidt Anton, Fabriksbesitzer in Maria-Enzersdorf.
Herr Winiwarter J. G., Fabriksbesitzer zu Gumpoldskirchen.

Translation:
The Imperial-Royal Mödling District Agricultural Club *considers itself obliged to announce to the members of the club the names of the PT club members who have been awarded at the World Exhibition in London and at the exhibition of the Imperial-Royal Agricultural Society in Vienna in 1862 with medals and honourable recognition. The following have received medals at the World Exhibition in* ***LONDON****:*
Mr. Drasche Heinrich, Landowner in Inzerdorf at Wienerberg.
Mr. Fichtner Johann, Factory owner in Angersdorf.
Mr. Kouff Franz, Factory owner in Hinter-Brühl.
Mr. Riemerschmidt Anton, Factory owner in Maria-Enzersdorf.
Mr. Winiwarter J. G., Factory owner in Gumpoldskirchen.
(Translated by myself with the help of colleagues at the University of Vienna)

We also have evidence that Winiwarter lived in England for a period of time. In fact, he received a British patent relating to locks on firearms and cannons:

Locks of firearms and cannon; gun matches, or mode of igniting gunpowder in guns; machinery for manufacturing the same. Being British Patent number: 13935 published: 29 January 1852
WINIWARTER, JOSEPH MAXIMILIAN RETTER VON and VON WINIWARTER JOSEPH MAXIMILIAN RITTER
(Published by London Eyre and Spottiswood published at the Great Seal Patent Office c, 1852)

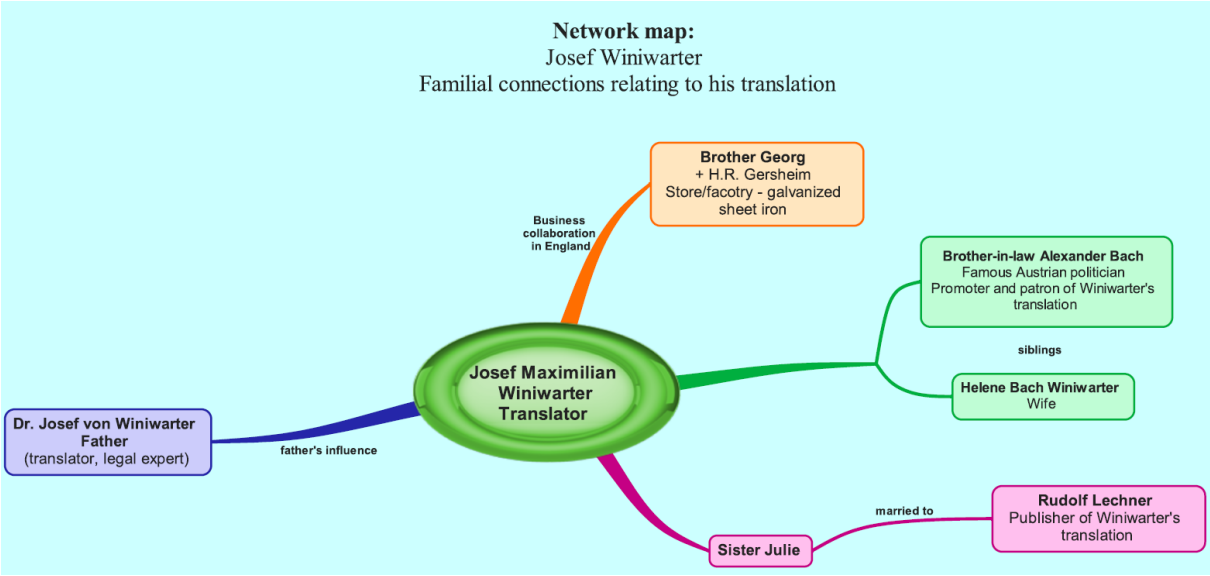
New Patents Sealed in England. 1851-2
Joseph Maximilian Ritter Von Winiwarter, of Surrey-street, Strand, in the county of Middlesex, Doctor of Law, for certain improvement in the locks of fire-arms and cannon ; and in gun-matches, or in the mode of igniting gunpowder used in guns ; and in machinery for manufacturing the same ; Sealed 29th January—6 months for inrolment.

(Newton 1852: 167)[14]

[14] The London Journal of Arts, Sciences and Manufactures, and Repertory of Patent Inventions. Conducted by Mr. W. Newton of the Office for Patents, Chancery Lane. (Assisted by several Scientific Gentlemen.) Vol. XL. (Conjoined Series) - London : published by W. Newton, at the Office for Patents, 66, Chancery- Lane, and Manchester ; T. and W. Piper, Paternoster Row ; Simpkin, Marshall, and Co., Stationers' Court ; J. McCombe, Buchanan St., Glasgow ; And Galignani's Library, Rue Vivienne, Paris. 1852

The above citation provides evidence that Winiwarter lived in London around 1852, though we do not know for how long, and was involved in manufacturing iron or steel products and patenting locks, most probably in corroboration with his brother Georg. Undoubtedly then, Josef had ample contact and exposure to the English language.

Josef junior, similar to his father, was active in politics. Winiwarter was a member of the infamous and short-lived National Assembly in Frankfurt, Germany from 3 June 1848 to 24 August 1848. His constituency was Bohemia (District of Bołeslawiec (Bunzlau), Liberec (Reichenberg)). He was an independent with no party affiliation, and he voted with the left centre (Best 1996)[15].



Österreichische Buchhändler-Correspondenz[16]

Although Winiwarter's complete translation was published in 1866, we already find references to the initial publication in the second half of 1865. In *Österreichische Buchhändler-Correspondenz* (OBC – Austrian Bookseller's Journal), there is an entry for the "First Part" of the translation in issue number 22 of 1 August 1865 (see Appendix 11 for title page):

Rudolph Lechner's k. k. Univ.-Buchh in Wien
1890. **Winiwarter**, Jos. M., Chevalier de, General civil Code for all the german hereditary Provences of the austrian Monarchy. 1. Part. gr. 8. (64 S.) geh. 80 kr.

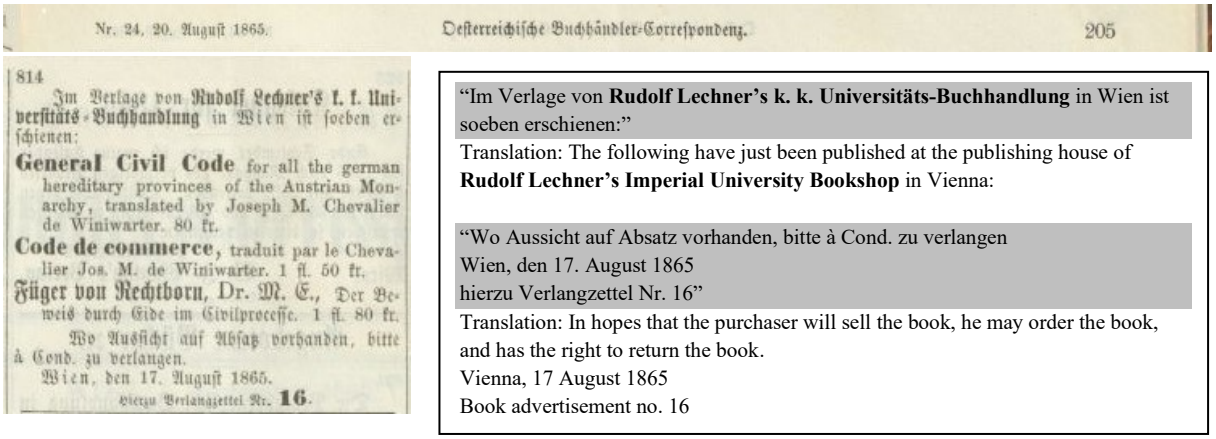
At first glance, we notice that, in addition to the translated name of the code, the names of the translator and bookseller are translated into English, i.e. "f" in Rudolf becomes "ph" and "Ritter von" becomes "Chevalier de" (a frequently used French title meaning

[15]Best, Heinrich and Weege, Wilhelm (1996). *Bibliographisches Handbuch der Abgeordneten der Frankfurter Nationalversammlung 1848/49*, p. 361. Düsseldorf: Drost

[16] Österreichische Buchhändler-Correspondenz – Austrian Newspapers Online – ANNO Historische Zeitungen und Zeitschriften: ANNO-SUCHE Volltextsuche in Zeitungen und Zeitschriften. http://anno.onb.ac.at/anno-suche/

"knight"). The 64 pages of the translation correspond to the "First Part" of the code, and the price of this publication was 80 Kreuzer. One other observation is that the publisher of the journal used German capitalization rules for the title, i.e. only nouns and the initial word of the title are capitalized.

In issue number 24 of 20 August 1865, the translation of the First Part is announced once again in an advertisement for three of Rudolf Lechner's newly published books. Winiwarter's French translation of the Austrian Commercial Code (*Code de commerce*) is listed immediately under his English translation of the ABGB.



Nr. 24. 20. August 1865. Oesterreichische Buchhändler-Correspondenz. 205

814

Im Verlage von **Rudolf Lechner's k. k. Universitäts-Buchhandlung** in Wien ist soeben erschienen:

General Civil Code for all the german hereditary provinces of the Austrian Monarchy, translated by Joseph M. Chevalier de Winiwarter. 80 kr.

Code de commerce, traduit par le Chevalier Jos. M. de Winiwarter. 1 fl. 50 kr.

Füger von Rechtborn, Dr. M. E., Der Beweis durch Eide im Civilprocesse. 1 fl. 80 kr.

Wo Aussicht auf Absatz vorhanden, bitte à Cond. zu verlangen.

Wien, den 17. August 1865.

Hierzu Verlangzettel Nr. **16**.

"Im Verlage von **Rudolf Lechner's k. k. Universitäts-Buchhandlung** in Wien ist soeben erschienen:"

Translation: The following have just been published at the publishing house of **Rudolf Lechner's Imperial University Bookshop** in Vienna:

"Wo Aussicht auf Absatz vorhanden, bitte à Cond. zu verlangen
Wien, den 17. August 1865
hierzu Verlangzettel Nr. 16"

Translation: In hopes that the purchaser will sell the book, he may order the book, and has the right to return the book.
Vienna, 17 August 1865
Book advertisement no. 16

The last sentence of the advertisement informs booksellers and bookshops that they may order books and return them if they are not able to sell the books.

Then in issue 21 of 20 July 1866, almost a year later, we have the publication of the "Second Part" and "Third Part" of the translation of the Austrian Civil Code.

Rudolph Lechner's k. k. Univ.-Buchh in Wien

1518. **Winiwarter**, Joseph M. Chevalier de, General civil code for all the german hereditary provences of the austrian monarchy. 2. 3. Part. gr. 8. (V u. S. 65–323) geh. 2 fl. 20 kr.

In this listing, we see an attempt to correct the German capitalization of the previous year's advertisement. This time, however, only the initial word of the title is capitalized, leaving "*german*", "*austrian*" and "*monarchy*" uncapitalized. The page numbers (65 to 323) correspond to the remaining pages of the code, and the price was understandably more, i.e. 2 Florins and 20 Kreuzer (see Appendix 7 for the original advertisements in OBC).

The original publication of the translation was in two volumes. The First Part was published in 1865, and the Second Part and the Third Part were published as a separate volume in 1866. Soon after Winiwarter finished the translation of the Second Part and the Third Part, all of the parts were reprinted into one volume. See below for a more detailed discussion on the publication of the First Part and the copies held by the Austrian National Library.

Logically, later printings were also done in one whole volume, as for example, the edition received by the Harvard Law School on 8 June 1908 (see Appendix 11). This edition indicated the company that printed the book:

Printed by Charles Winternitz & C. Vienna.

The original, separate two volumes were also printed by **Charles Winternitz**. It can be assumed that Lechner did not have facilities to print any of his own books. So in all probability, Lechner was involved only in bookselling and promotion, and the actual printing of the books was handled exclusively by a separate printing house, i.e. Winternitz.

In any case, from the inscriptions on the title pages of the translation and advertisements from the Austrian Bookseller's Journal, we can be almost certain that the original translation was sold and distributed solely by (i.e. the translation was printed exclusively for) Rudolf Lechner.

Lehmann's Address Book[17]

We learn many personal and professional details about Winiwarter's life from Lehmann's Address Book (*Adolph Lehmann's allgemeiner Wohnungs-Anzeiger*), which was published from 1859 to 1922. The basic purpose of the book was to document the residents of Vienna, providing their names, addresses, titles, professions, and other information and advertisements relating to business and trade. The book is a precursor to the telephone book, which was popular during the twentieth century in English-speaking countries and other European countries. I have looked, in particular, at the years 1859 to 1870, a period during which Winiwarter was active in Vienna translating the ABGB into English and involved in business ventures with his brother Georg.

[17] Adolph Lehmann's allgemeiner Wohnungs-Anzeiger : nebst Handels- u. Gewerbe-Adressbuch für d. k.k. Reichshaupt- u. Residenzstadt Wien u. Umgebung. Wien, 1859–1922 (Wienbibliothek digital). http://www.digital.wienbibliothek.at/wbrobv/periodical/titleinfo/5311

Allgemeines

Adreß-Buch

nebst

Geschäfts-Handbuch

für die k. k. Haupt- und Residenzstadt

Wien und dessen Umgebung.

Aus amtlichen Quellen verfaßt.

Erster Jahrgang.

Herausgegeben im Juni

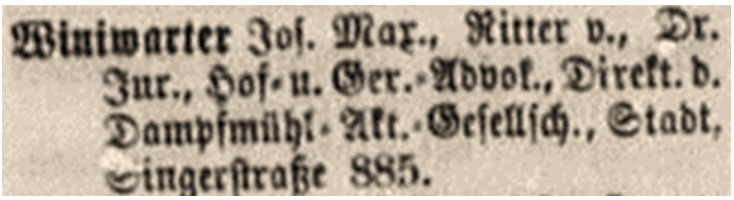
1859.

Wien,

Druck und Verlag von Friedrich Förster.

Title page of Lehmann's Address Book (Adress-Buch), first published in 1859

In the 1859 issue, the first year it was published, Winiwarter is listed twice, first as the owner of a lead pipe factory in Gumpoldskirchen with a tinware factory store at Riemerstraße 816 and then as a jurist, Court and Judicial-Advocate, and director of a steam mill, with the address Singerstraße 885.



Winiwarter Jos. Max., Ritter v., Dr. Jur., Hof- u. Ger.-Advok., Direkt. d. Dampfmühl-Akt.-Gesellsch., Stadt, Singerstraße 885.

1859 personal entry for Josef (Lehman)

His brother Georg, in all likelihood, lived at the same address as the factory store, Riemerstraße 816, which was around the corner from Josef's house on Singerstraße.

Winiwarter was listed again in 1861 with the same information as in 1859. The only difference is that Josef and Georg were listed as the owners of the factory, this time without Gersheim, who left the company during that year.

The next listing for Winiwarter in the address book is not until 1864 (the address book was not published in 1862 or 1863). Josef has two entries and Georg one, almost identical to 1861. The only change is the numbering for their addresses. Before 1864, the house numbers were associated with the house's location in Vienna and not the street where the house was located (Singerstraße 885/Riemerstraße 816). Starting in 1864, the address book used the new numbering system where the numbers are now connected to the street where the building is located (Singerstraße 13/Riemerstraße 16).

Josef's house on Singerstraße was a *Bürgerhaus* built in 1785 and still exists today.

1864 entries for Josef and Georg (Lehman)

Entrance to Singerstraße 13, Winiwarter's house in the Vienna city centre near Stephansplatz

1865 is the last time Josef is listed as the owner of the factory and director of the steam mill. Apart from the other information from previous years, we now notice Josef's transition to other business activities, replacing his involvement at the factory. In 1865, he is for the first time listed as a member of the Board of Directors of the Life and Pension Insurance Company "*Anker*" and "*Vindobona*".

1865 entries for Josef and Georg (Lehman)

1865 advertisement – Josef & Georg (Lehman)

The next entry for Josef is in 1867 where we see the definite results of his change in direction and profession. No longer associated with the factory, he has now become more focused on legal translation, and his professional activities are a reflection of that. In this entry, he is listed for the first time as an official court-appointed interpreter for French and English.

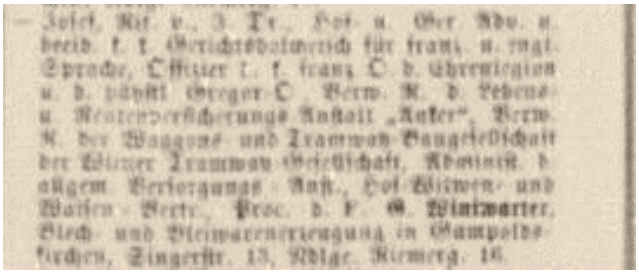
In addition to translation-related positions, he is now an officer of the "Imperial French Order of the Honorary Legion and of the Papal Gregor Order", and still holds his position as board member of the life and pension insurance company.


Winiwarter Georg Ritt. v., Civil-Ingen. u. Eigenthümer der Blech- u. Bleiwarenfab. in Gumpoldskirchen 8½, unter d. F. G. Winiwarter, Ndlge. Riemerg. 16.
— G., Blech- u. Bleiwarenfab. in Gumpoldskirchen, Ndlge. Riemerg. 16. Siehe Inserat.
— Josef Max Ritt. v., J. Dr., Hof- u. Ger. adv. u. beeideter k. k. Gerichtsdolmetsch für franz. und engl. Sprache, Offizier d. kais. franz. O. d. Ehrenlegion u. d. päbstl. Gregor-O., Verwaltgs.-R. d. Lebens- u. Rentenversicherungs-Anstalt „Anker" u. „Sindobona", Singerstr. 13.
— Leopold, k. k. Beamter, III. Gartenerg. 19.

1867 entries for Josef and Georg (Lehman)

For the 1868 edition of the address book, we find that, in addition to being an interpreter, an officer, and board member, Josef is also listed as an official representative of Widows and Orphans, administrator of the General Insurance Company, and an attorney-in-fact for his brother's factory in Gumpoldskirchen.

In 1870, the entry is almost identical to 1868 with the exception of him now being a member of the Board of Directors of the Wagons and Tramway Manufacturing Company.


— Josef, Ritt. v., J. Dr., Hof- u. Ger. Adv. u. beeid. k. k. Gerichtsdolmetsch für franz. u. engl. Sprache, Offizier k. k. franz. O. d. Ehrenlegion u. d. päbstl. Gregor-O., Verw. R. d. Lebens- u. Rentenversicherungs-Anstalt „Anker", Verw. R. der Waggons- und Tramway-Gesellschaft der Wiener Tramway-Gesellschaft, Administr. d. allgem. Versorgungs-Anst., Hof-Witwen- und Waisen-Verp., Proc. d. F. G. Winiwarter, Blech- und Bleiwarenerzeugung in Gumpoldskirchen, Singerstr. 13, Ndlge. Riemerg. 16.

1870 entry for Josef (Lehman)

So towards the end of the decade, in addition to translation, Winiwarter also held management positions in various companies, and as an upstanding citizen of Vienna, was even involved in charity work.

Lehman's Address Book has been a vital source of information helping to put together the pieces of Winiwarter's life during the time of translating the ABGB, and comparing the annual issues of the address book shows how he had redirected the focus of his career during the decade of the 1860s from being a business partner to his brother Georg to becoming a respected legal translator, a court-appointed interpreter for French and English, and a prominent Viennese lawyer representing companies and charity organizations. See Appendix 8 for the original listings and advertisements in Lehman's Address Book.

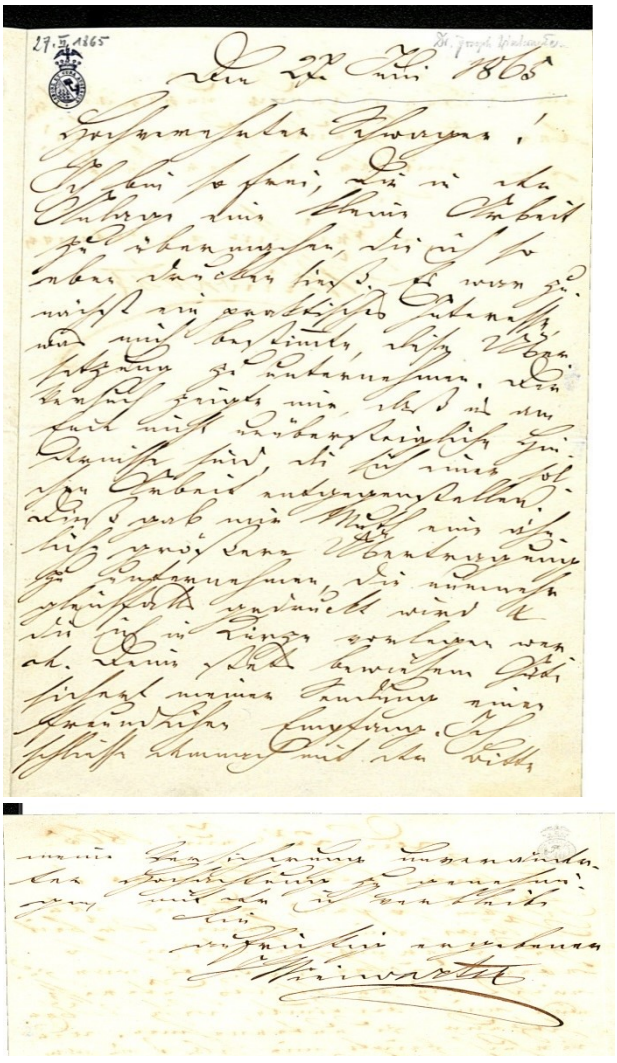
Winiwarter's relationship with Alexander Bach

Another familial influence on Winiwarter was the famous Austrian politician, **Alexander Bach**, who became Minister of Justice, and then from 1849 to 1859, Minister of the Interior. As mentioned above, Josef's wife, Helene Winiwarter, née Bach, was Alexander Bach's sister.

Bach practically dictated policy in Austria and Hungary from 1852 to 1859 after the death of Prime Minister Prince Felix of Schwarzenberg and was responsible for centralizing administrative authority in the Austrian Empire. This was commonly referred to as neo-absolutism or Bach's absolutism.

We know that Bach and Winiwarter were in regular contact with each other throughout the 1840s, 1850s, and 1860s due to his marriage with Helene Bach in 1847 and also their involvement in the Juridical-Political Reading Club, among other things. We also have evidence that Bach and Winiwarter were not only brothers-in-law, but close acquaintances who exchanged letters on occasion.

In one letter dated 27 June 1865[18], Josef Winiwarter briefly discusses his translation with his brother-in-law:



Translation:
27 June 1865

Esteemed Brother-in-Law!
I have taken the liberty to dedicate to you this small piece of work, which is attached. It has just been published. It was initially a practical interest of mine that motivated me to do this translation. The experiment showed me that there are no insurmountable obstacles in the end that would oppose such work. This gave me the courage to undertake a similar greater translation, which will also be published & which I will submit shortly. Your proven generosity ensures that my translation will always be welcome. I, therefore, close this letter with a request to accept my assurance of unchanged esteem, with which I remain,

Yours
sincerely,

J. Winiwarter

(Translated by myself with the help of colleagues at the University of Vienna)

We can make an educated assumption from all the evidence and the date of the letter that the "*small piece of work*" he is talking about is the First Part of his translation, which was

[18] Österreichische Staatsarchiv (Austrian State Archives). Box of correspondence relating to Alexander Bach, 1860s. Erdberg, Vienna

announced in Österreichische Buchhändler-Correspondenz on 1 August 1865. The "*similar greater translation*" most probably refers to the Second Part and the Third Part of his translation.

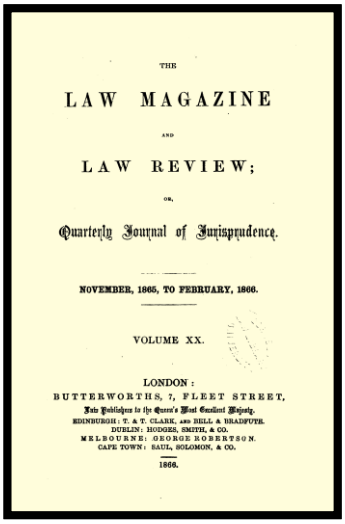
At the time of the letter, Bach was the Ambassador to the Holy See (the Vatican), and it is clear from the letter that Winiwarter respected him greatly and valued his judgement and opinions relating to his translation. In fact, he dedicated the translation to him, and we can infer from the tone of the letter that Winiwarter believed the translation would be more highly regarded or even legitimized if it were "welcomed" or endorsed by Alexander Bach.

Another important aspect of this letter is that it is one of the few pieces of evidence we have of Winiwarter's motivation for doing the translation. Unfortunately, he did not say much or elaborate on why he did the translation, but at least he clearly stated that, in the beginning, it was a practical interest of his that motivated him and that it was an experiment that ended up being successful. Whether the translation was an "experiment" or whether he was just being modest in front of his "esteemed brother-in-law" is difficult to say.

As for what Winiwarter meant by "practical interest", we can assume in Winiwarter's case that it indeed was practical, considering that he was a lawyer and court-appointed interpreter for English, that he worked for the British Embassy, and that he was involved in several business ventures in England. In any case, we can infer from the evidence that Winiwarter's "practical interest" was by far his dominant motivation for translating the ABGB into English.

A London review of Winiwarter's translation

During the same year the letter was written and around the time Winiwarter had published the First Part of his translation, a two-page review of the translation came out in London in *The Law Magazine and Law Review: or, quarterly journal of jurisprudence*[19].



THE

LAW MAGAZINE

AND

LAW REVIEW;

OR,

Quarterly Journal of Jurisprudence.

NOVEMBER, 1865, TO FEBRUARY, 1866.

VOLUME XX.

LONDON:
BUTTERWORTHS, 7, FLEET STREET,
Law Publishers to the Queen's Most Excellent Majesty.
EDINBURGH: T. & T. CLARK, AND BELL & BRADFUTE.
DUBLIN: HODGES, SMITH, & CO.
MELBOURNE: GEORGE ROBERTSON.
CAPE TOWN: SAUL, SOLOMON, & CO.

1866.

[19] *The Law Magazine and Law Review: or, quarterly journal of jurisprudence.* v.20 1865/66. pp. 346–347. London: Butterworths, 1856–1871

This review is the first real evidence we have that Winiwarter's translation was also printed in London at approximately the same time as Lechner's edition. The bibliographical entry for Winiwarter's translation at the beginning of the review clearly states that the translation was published in London by "N. Trübner & Co." (see Appendix 9 for the entire review as originally printed).

As for the review itself, the anonymous author provides a sober critique of Winiwarter's efforts to translate Austrian law for English-speaking practitioners, taking into account the lack of similarity between continental and common-law terminology. Though not offering unrestrained praise for Winiwarter's work, the author does clearly acknowledge the importance of the translation despite its imperfections.

> *The task which the author of such work has before him is the more arduous, as every system of law has its own technology, and the transfer of such terms in another language, without any explanations, always remains imperfect. Dr. Von Winiwarter, the learned author and well-known advocate in Vienna, has certainly felt this difficulty, considering that there is so little analogy between English and German Law terms, and we do not think that the value of the translation would have been diminished if the same had been a little less literal.*
>
> (The Law Magazine and Law Review, Vol. 20, 1865/66: 346)

There are a number of reasons why this review is important to our understanding of Winiwarter, and the review itself provides evidence of the impact his text has had and will have on the English-speaking world in years to come. It is clear from the review that the published translation will be used by English lawyers to understand continental civil law. Thanks to the review, not only is there a likelihood of them reading the text, but they will undoubtedly start using the terms offered by Winiwarter when working on cases dealing with civil law and Europe in general. The author of the review was well-aware of this, and by publishing the review, also indirectly promoted and legitimized the use of the translation.

> *…we receive with pleasure a valuable work which opens a complete system of law to the large community of English lawyers all over the world, who are deeply interested in the question of codifying laws, and will avail themselves of any opportunity to test the system of codification.*
>
> (The Law Magazine and Law Review, Vol. 20, 1865/66: 346)

The real importance of Josef Winiwarter and his translation, which in Winiwarter's words was initially just a "practical interest", may not be immediately evident in the framework of the more distance attempts to translate civil legislation into English, including the Czech Civil Code. However, in light of all the artefacts and evidence presented above, which put together and contextualize the bits and pieces of Winiwarter's life, we have undoubtedly created a clear and insightful picture of one man who had a significant and lasting impact on the English translations of civil legislation in central Europe and elsewhere.

As we will see in later chapters, his influence on English translations of civil law, and in particular, English formulations, phrasing, and terminology in translations of the ABGB, extended well into the twentieth century. The fact that no other English translation of the ABGB had been seriously attempted until 1972 (see Baeck in Chapter 4) strengthens even further the authority that Winiwarter's translation held for at least another 100 years.

Only known surviving photo of Josef Maximilian (circa 1899)

Photo of his wife, Helene, taken around the same time

Compliments of the Winiwarter family (Wilfried and Verena Winiwarter and Susanne Bökman)

In memoriam
Josef Winiwarter and his wife, Helene

Gravestone of Josef Maximilian Winiwarter and his wife, Helene – Wiener Zentralfriedhof (Vienna Central Cemetery)

Compliments of the Winiwarter family

Structure and organization of Winiwarter's translation of the ABGB

The original integrated version of Winiwarter's translation (i.e. all parts combined into one volume) is 323 pages. It is divided into preface, contents, the Imperial Patent, and the legislative text.

The preface

The preface to Winiwarter's translation (see Appendix 14 for the original printed version) was only discovered after locating the original editions of the text at the Austrian National Library (i.e. the edition with only the First Part (1865) and the integrated edition with all of the parts). Oddly enough, none of the later editions contain the preface. It is not clear why the preface was removed after the first publication, but we do have an indication from the preface that Winiwarter or the publisher might have considered the preface to be outdated and not useful to readers after the first printing, seeing as though the translation, in Winiwarter's own words, "does not require … any justification".

> The translation of a civil code, which has already been in operation for more than fifty years, and which during this long period has sufficiently proved its great superiority, does not require in my humble opinion any justification. Moreover the intercourse with

> foreign countries, which is daily increasing, perhaps now makes the publication of a work of this description appear useful, although no one may have previously considered such a translation necessary. …
>
> (Preface to Winiwarter's translation, page 1, January 1865)

As in Winiwarter's letter to Alexander Bach on 27 June 1865, Winiwarter seems to also stress in his preface to the translation the "practical interest" of making such a translation. As opposed to the letter, though, he provides more of an explanation here. In fact, Winiwarter states that he sees no reason why he should even justify translating the code into English considering the code's "superiority". He also indicates that the translation could be useful due to the recent increase in foreign interaction and commerce ("intercourse") – both very justifiable and practical reasons for producing the translation of the code.

So thanks to the addition of the preface, we now have another source for making a reliable hypothesis of why Winiwarter translated the code into English.

We have gradually accumulated knowledge of the reasons for Winiwarter translating the ABGB based on the following facts and resources:

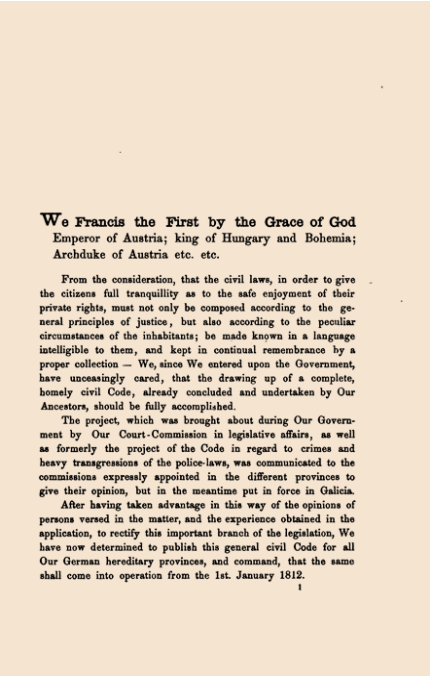
a. He worked for the British Embassy as a legal advisor.
b. He collaborated with his brother Georg in promoting their iron and tinware business in England
c. He received a British patent relating to locks on firearms and cannons and lived in London for a period of time
d. Winiwarter's letter to Alexander Bach
e. Winiwarter's preface to the original version of his translation

All of these sources point to Winiwarter's personal and practical reasons, which are to promote his brother's business, to support his legal work at the embassy, and to satisfy the practical and legal needs of non-German-speaking lawyers and businessmen when interacting with Austrians and continental Europeans in general. Though we have no proof, Winiwarter might have even benefited monetarily from the translation in the form of royalties or sales, or the translation could have opened up new doors for other translations and/or legal work – not to mention the prestige of authoring such an important work in general.

The Imperial Patent of Introduction

The Imperial Patent of Introduction is in essence an official decree of the Emperor Francis I (in German, Franz) introducing and placing into effect the new civil code (ABGB). It explains who the new code pertains to, which current laws are still valid, and which laws are to be repealed as a result of the new ABGB coming into force.

The importance of the Patent stems from the authority of the emperor as the head of state and imperial ruler of the provinces and kingdoms of the Austrian Empire. Without the emperor's endorsement in the Patent, the civil code could not have been made valid and enforceable.



We Francis the First by the Grace of God Emperor of Austria; king of Hungary and Bohemia; Archduke of Austria etc. etc.

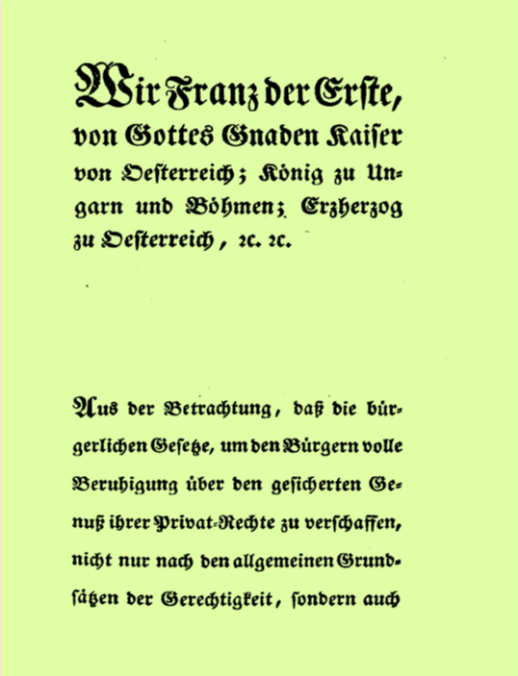
From the consideration, that the civil laws, in order to give the citizens full tranquillity as to the safe enjoyment of their private rights, must not only be composed according to the general principles of justice, but also according to the peculiar circumstances of the inhabitants; be made known in a language intelligible to them, and kept in continual remembrance by a proper collection — We, since We entered upon the Government, have unceasingly cared, that the drawing up of a complete, homely civil Code, already concluded and undertaken by Our Ancestors, should be fully accomplished.

The project, which was brought about during Our Government by Our Court-Commission in legislative affairs, as well as formerly the project of the Code in regard to crimes and heavy transgressions of the police-laws, was communicated to the commissions expressly appointed in the different provinces to give their opinion, but in the meantime put in force in Galicia.

After having taken advantage in this way of the opinions of persons versed in the matter, and the experience obtained in the application, to rectify this important branch of the legislation, We have now determined to publish this general civil Code for all Our German hereditary provinces, and command, that the same shall come into operation from the 1st. January 1812.

1

First page of Winiwarter's 1866 English translation of the Imperial Patent of Introduction



Wir Franz der Erste,
von Gottes Gnaden Kaiser
von Oesterreich; König zu Ungarn und Böhmen; Erzherzog
zu Oesterreich, ꝛc. ꝛc.

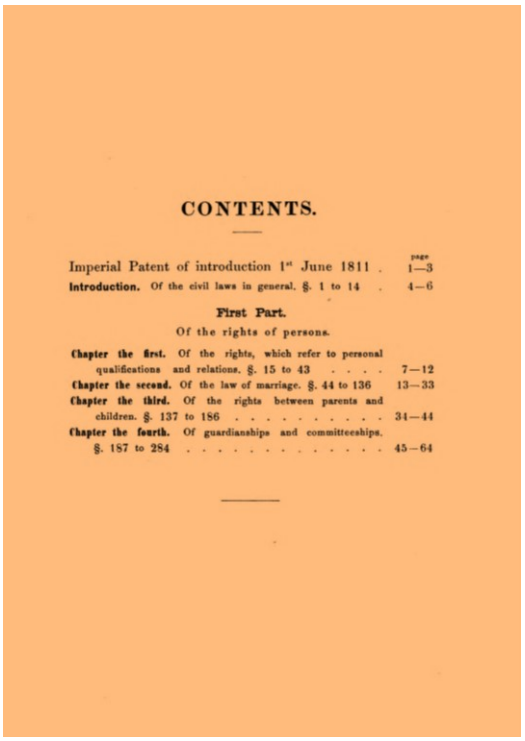
Aus der Betrachtung, daß die bürgerlichen Gesetze, um den Bürgern volle
Beruhigung über den gesicherten Genuß ihrer Privat-Rechte zu verschaffen,
nicht nur nach den allgemeinen Grundsätzen der Gerechtigkeit, sondern auch

First page of the original German Imperial Patent of Introduction (1 June 1811)

One of the later translations of the ABGB into English discussed in Chapter 4 included the Patent and one did not. Baeck (1972) chose to include a slightly shortened version, leaving out the initial salutation of Francis I and his various imperial titles, the closing paragraph stating the place, time, and date of the decree, and the undersigned parties (the emperor and his high officers). The Eschigs (2013) in their translation of the ABGB decided not to include the Imperial Patent at all "due to the lack of practical relevance".

The legislative text

The text of the civil code itself is divided into an introduction and three parts (First Part, Second Part, and Third Part). The First Part and the Third Part are divided into chapters and articles. The Second Part is divided into subdivisions (First Subdivision and Second Subdivision), chapters, and articles.



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Of the rights of persons.

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Chapter the second. Of the law of marriage. §. 44 to 136 13—33
Chapter the third. Of the rights between parents and children. §. 137 to 186 . . . . . 34—44
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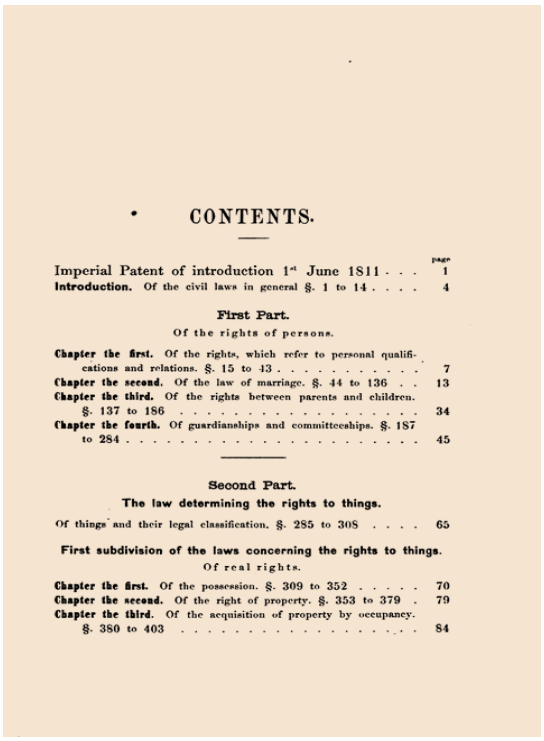

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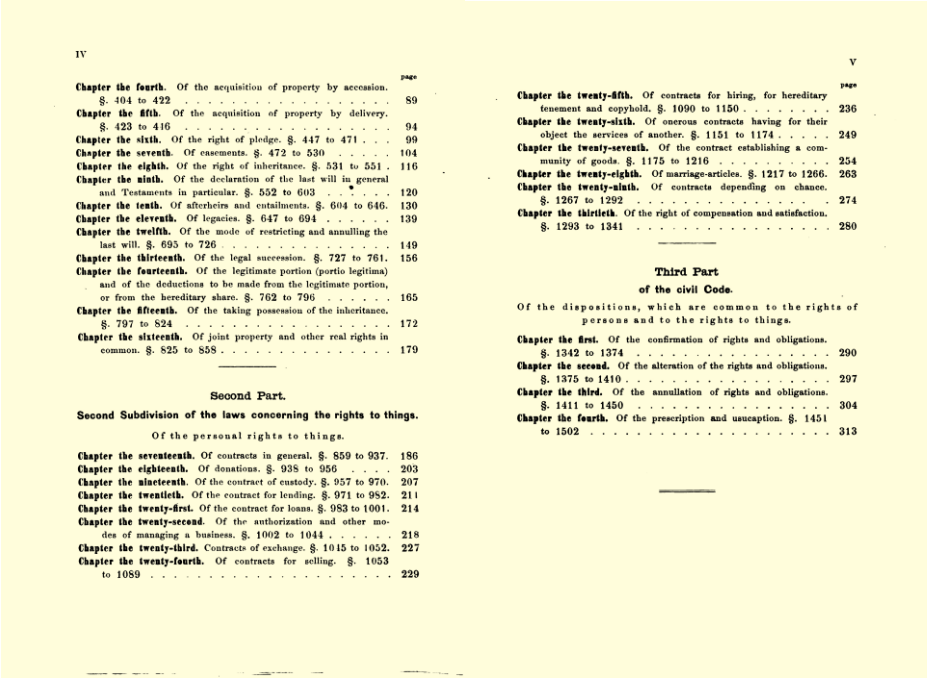

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The Introduction is subtitled "*Of the civil laws in general.*" and is divided into 14 articles. It consists of general provisions that explain what civil law is, who it pertains to, its manner of interpretation, and its general jurisdiction. See Chapter 4 for a more in-depth look at the Introduction.

The First Part, with the subtitle "*Of the rights of persons.*", is divided into four chapters and subdivided into Articles 15 to 284 (see above) and deals specifically with

personal qualifications, marriage, relations between parents and children, and matters of guardianship.

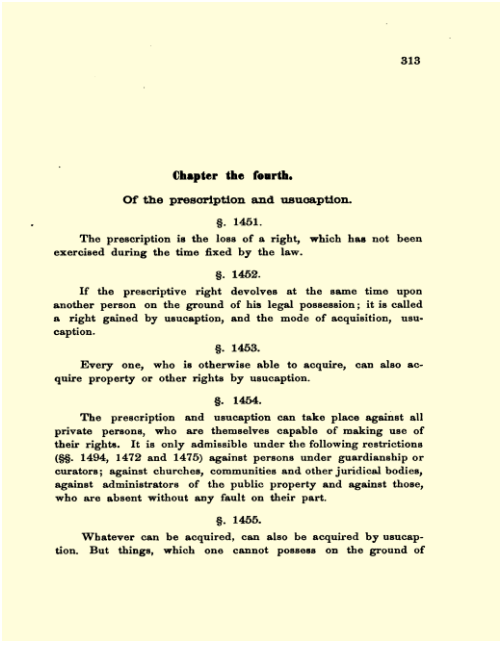
The Second Part is subtitled "*The law determining the rights to things.*" and has two subdivisions:

a. First subdivision of the laws concerning the rights to things.
Of real rights.
This deals with possession, property, and inheritance (see Chapter 4 for a more in-depth look at the articles on the right of inheritance)

b. Second subdivision of the laws concerning the rights to things.
Of the personal rights to things.
This takes up the various types of contracts (see Chapter 4 for a more in-depth look at the articles on contracts of exchange)

This part is further divided into 30 chapters and subdivided into Articles 285 to 1341.

The Third Part, with the subtitle "*Of the dispositions, which are common to the rights of persons and to the rights of things.*", is divided into four chapters and subdivided into Articles 1342 to 1502 and deals specifically with rights and obligations and prescription and usucaption.



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Chapter the fourth.

Of the prescription and usucaption.

§. 1451.

The prescription is the loss of a right, which has not been exercised during the time fixed by the law.

§. 1452.

If the prescriptive right devolves at the same time upon another person on the ground of his legal possession; it is called a right gained by usucaption, and the mode of acquisition, usucaption.

§. 1453.

Every one, who is otherwise able to acquire, can also acquire property or other rights by usucaption.

§. 1454.

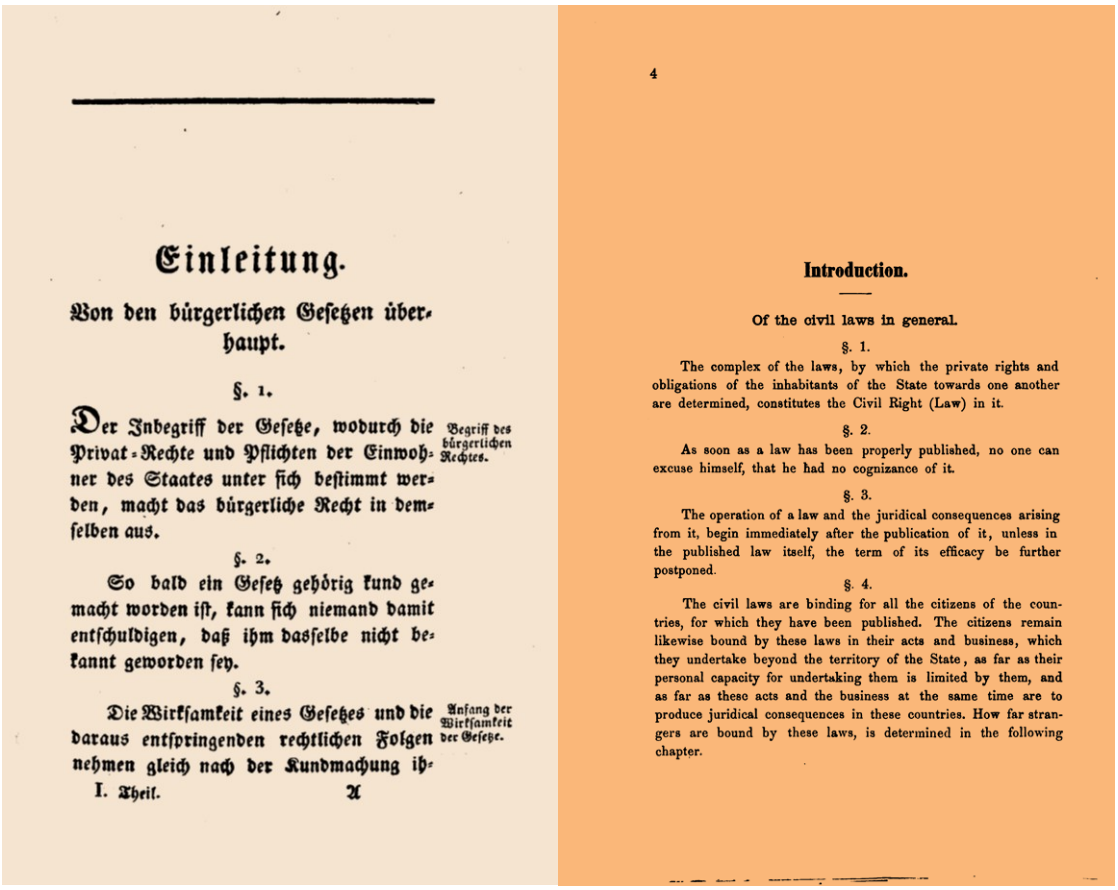
The prescription and usucaption can take place against all private persons, who are themselves capable of making use of their rights. It is only admissible under the following restrictions (§§. 1494, 1472 and 1475) against persons under guardianship or curators; against churches, communities and other juridical bodies, against administrators of the public property and against those, who are absent without any fault on their part.

§. 1455.

Whatever can be acquired, can also be acquired by usucaption. But things, which one cannot possess on the ground of

Sample text in the fourth chapter on prescription and usucaption

Logically, Winiwarter opted to use the traditional European symbol for section or article (§) throughout his translation, which was also used in the original German version of 1811. In fact, the general structure and paragraphing of Winiwarter's text is very similar to the original German, even though Winiwarter chose to omit the subtitles that were attributed to some of the articles in the original German version.



Einleitung.

Von den bürgerlichen Gesetzen überhaupt.

§. 1.

Der Inbegriff der Gesetze, wodurch die Privat-Rechte und Pflichten der Einwohner des Staates unter sich bestimmt werden, macht das bürgerliche Recht in demselben aus.

Begriff des bürgerlichen Rechtes.

§. 2.

So bald ein Gesetz gehörig kund gemacht worden ist, kann sich niemand damit entschuldigen, daß ihm dasselbe nicht bekannt geworden sey.

§. 3.

Die Wirksamkeit eines Gesetzes und die daraus entspringenden rechtlichen Folgen nehmen gleich nach der Kundmachung ih-

Anfang der Wirksamkeit der Gesetze.

I. Theil. A

4

Introduction.

Of the civil laws in general.

§. 1.

The complex of the laws, by which the private rights and obligations of the inhabitants of the State towards one another are determined, constitutes the Civil Right (Law) in it.

§. 2.

As soon as a law has been properly published, no one can excuse himself, that he had no cognizance of it.

§. 3.

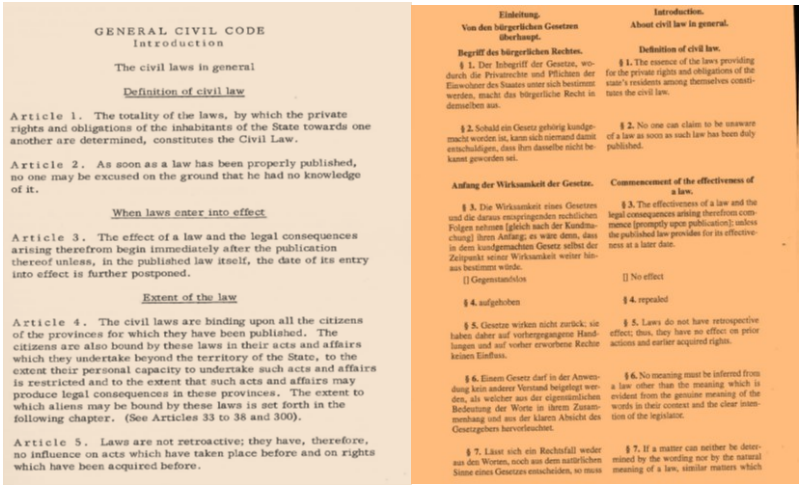
The operation of a law and the juridical consequences arising from it, begin immediately after the publication of it, unless in the published law itself, the term of its efficacy be further postponed.

§. 4.

The civil laws are binding for all the citizens of the countries, for which they have been published. The citizens remain likewise bound by these laws in their acts and business, which they undertake beyond the territory of the State, as far as their personal capacity for undertaking them is limited by them, and as far as these acts and the business at the same time are to produce juridical consequences in these countries. How far strangers are bound by these laws, is determined in the following chapter.

Comparison of structure in the original German version (1811) and Winiwarter's translation (1866)

The authors of the two main retranslations of the ABGB (i.e. Baeck 1972 and Eschig 2013 – see Chapter 4) opted for different formats, as shown below:



GENERAL CIVIL CODE
Introduction

The civil laws in general

Definition of civil law

Article 1. The totality of the laws, by which the private rights and obligations of the inhabitants of the State towards one another are determined, constitutes the Civil Law.

Article 2. As soon as a law has been properly published, no one may be excused on the ground that he had no knowledge of it.

When laws enter into effect

Article 3. The effect of a law and the legal consequences arising therefrom begin immediately after the publication thereof unless, in the published law itself, the date of its entry into effect is further postponed.

Extent of the law

Article 4. The civil laws are binding upon all the citizens of the provinces for which they have been published. The citizens are also bound by these laws in their acts and affairs which they undertake beyond the territory of the State, to the extent their personal capacity to undertake such acts and affairs is restricted and to the extent that such acts and affairs may produce legal consequences in these provinces. The extent to which aliens may be bound by these laws is set forth in the following chapter. (See Articles 33 to 38 and 300).

Article 5. Laws are not retroactive; they have, therefore, no influence on acts which have taken place before and on rights which have been acquired before.

Einleitung. / Introduction.
Von den bürgerlichen Gesetzen überhaupt. / About civil law in general.

Begriff des bürgerlichen Rechtes. / Definition of civil law.

§ 1. Der Inbegriff der Gesetze, wodurch die Privatrechte und Pflichten der Einwohner des Staates unter sich bestimmt werden, macht das bürgerliche Recht in demselben aus. / § 1. The essence of the laws providing for the private rights and obligations of the state's residents among themselves constitutes the civil law.

§ 2. Sobald ein Gesetz gehörig kundgemacht worden ist, kann sich niemand damit entschuldigen, dass ihm dasselbe nicht bekannt geworden sei. / § 2. No one can claim to be unaware of a law as soon as such law has been duly published.

Anfang der Wirksamkeit der Gesetze. / Commencement of the effectiveness of a law.

§ 3. Die Wirksamkeit eines Gesetzes und die daraus entspringenden rechtlichen Folgen nehmen gleich nach der Kundmachung ihren Anfang; es wäre denn, dass in dem kundgemachten Gesetz selbst der Zeitpunkt seiner Wirksamkeit weiter hinaus bestimmt würde. / § 3. The effectiveness of a law and the legal consequences arising therefrom commence [promptly upon publication]; unless the published law provides for its effectiveness at a later date.

[] Gegenstandslos / [] No effect

§ 4. aufgehoben / § 4. repealed

§ 5. Gesetze wirken nicht zurück; sie haben daher auf vorhergegangene Handlungen und auf vorher erworbene Rechte keinen Einfluss. / § 5. Laws do not have retrospective effect; thus, they have no effect on prior actions and earlier acquired rights.

§ 6. Einem Gesetz darf in der Anwendung kein anderer Verstand beigelegt werden, als welcher aus der eigentümlichen Bedeutung der Worte in ihrem Zusammenhang und aus der klaren Absicht des Gesetzgebers hervorleuchtet. / § 6. No meaning must be inferred from a law other than the meaning which is evident from the genuine meaning of the words in their context and the clear intention of the legislator.

§ 7. Lässt sich ein Rechtsfall weder aus den Worten, noch aus dem natürlichen Sinne eines Gesetzes entscheiden, so muss / § 7. If a matter can neither be determined by the wording nor by the natural meaning of a law, similar matters which

Comparison of the format of Baeck on the left (1972) and Eschig on the right (2013)

Baeck, grounded in US conventions and with the goal of modernizing the text, chose to use the word "article" instead of the section symbol. The Eschigs, on the other hand, opted to preserve the original central European section symbol (§).

Another evident and highly practical feature of the Eschig translation which the other translations lack is that it is dual language (German-English). Each page is divided into two columns with German on one side and English on the other (see above).

As opposed to Winiwarter, both Baeck and Eschig decided to include the subtitles for the articles, similarly to the original organization of the German text. The original German version places the subtitles in the right margins, whereas Baeck and Eschig place the subtitles in the main text preceding the articles (see previous page). We can only speculate as to why Winiwarter omitted the subtitles. They were obviously included in the original 1811 German version and in the version Winiwarter used for his translation in 1866.

In any case, despite the missing subtitles, it is clear that Winiwarter chose to mirror the structure of the original German version as much as possible. And understandably, such an important document as the laws of an empire must be altered as little as possible, even when being translated into another language.

Latin as a bridge between German and common-law terminology

Winiwarter was perhaps one of the first English legal translators to overtly recommend the use of Latin legal terms for explaining complicated German civil-law terms that need to be translated into English. It was a very convenient solution to an otherwise insurmountable translational obstacle.

He clearly explains his use of Latin in the preface to the translation:

> There are words, which are so peculiar to the German language, and the conceptions to be found only in the institutions of Austria, that a corresponding word cannot exist in the English language. In such cases I have endeavoured to express the meaning of the original as nearly, as possible in choosing an analogous english word, and I have added at the same time in brackets the latin translation of the words mentioned, which is taken from the official latin translation of the Austrian civil Code published at the Imperial State printing-office. I hope that my professional colleagues will conceive from the latin quotations, what is not sufficiently clear in my English translation.
>
> (Winiwarter 1865/66, Preface)

He copiously employs Latin terms throughout this translation in the Imperial Patent of Introduction and the actual legislative text. Here are a few examples:

From the Imperial Patent of Introduction (page 2):

already acquired according to the former laws; these acts may consist in bilateral contracts (*negotia juridica*), or in such declarations of a will, which can be altered voluntarily by the person, who made the declaration, and can be regulated according to the prescriptions contained in the present code.

Therefore a usucapio (*usucapio*) or prescription (*praescriptio*), which commenced even before this code came into force,

From Article 70 (page 17):

diment to the marriage should give notice of the same. The notice must be given directly, or by means of the guardian of souls (*curator animarum*), who has published the banns, to the guardian of souls, who is competent to celebrate the marriage.

From Article 1123 (page 243):

When an unimportant fee is paid by the possessor only in acknowledgement of the right to the estate; the estate is called copyhold (praedium emphyteuticum) and the contract concluded in regard to it a copyhold-contract (contractus emphyteuseos).

Although Winiwarter presented a unique and effective system for explaining typical German and continental European terms, Latin was not, and has never been, a stranger to the legal language systems of Europe or the Americas, including common law.

As Pozzo (2019) points out, "The collection of legal sources promulgated by Emperor Justinian I (527–565) in Latin played a profound influence on Western legal culture." (Pozzo 2019: 66). This influence was strong in nineteenth-century central Europe as well and continues in some western cultures to this day, e.g. terminology in the legal languages of common-law countries and practically all Latin-based romance cultures.

Other paratextual data in the copies of Winiwarter's translation

All of the versions and copies of Winiwarter's translations that I have come into contact with were printed by the same person, Charles Winternitz:

Printed by Charles Winternitz & C. Vienna.

Imprint in all of the versions of Winiwarter's translation (1865/1866)

In addition, we have evidence of the individual binders for the original editions of the translation owned by the Austrian National Library. The 1865 version containing only the First Part was bound by **F. W. Papke** in Vienna.

This Viennese company, specializing in leather, dry goods, and bookbinding, was known for the quality of its goods, and F. W. Papke was awarded several times for his products at world fairs and exhibitions in Europe.

The integrated version of the translation published in 1866 was bound by a different company, **Franz Hollnsteiner**.

Hollnsteiner had the distinction of an imperial court book binder in Vienna, so this inevitably added a certain level of prestige to the printed version of Winiwarter's translation.

The Austrian National Library's copy even provides a glimpse of the ornate leather binding and inside cover of the translation:

Unfortunately, the digital versions of the Harvard Library copy and the University of Michigan copy do not indicate where the copies were originally bound. We can assume, though, that these copies were rebound at one point and time in the United States. The University of Michigan copy was at least repaired or rebound in 1962.

Perhaps the most unusual paratextual data that we find in the copies of Winiwarter's translation are the corrections and editing made by hand to the original integrated Austrian National Library copy (1866). Why the corrections were made after the book was printed is not entirely clear. Although we do not have any direct evidence of who might have carried this out, we can make an educated guess.

Consultation with the Austrian National Library (*Österreichische Nationalbibliothek*) has revealed that most, if not all, of the marks were made in pencil. The research department has also indicated that these marks were probably made by a reader, but this is only an assumption by one of the librarians. The marks do not appear to be contemporary but were most likely made sometime shortly after the Austrian National Library acquired the volume. As the researcher at the library pointed out, the Austrian National Library, as a legal deposit library, must have copies of all books published in Austria, so the copies owned by the library were acquired in 1866 or soon after.

We can only speculate as to who made these marks in the book – a librarian, the publisher of the book, or just a random reader? One very remote possibility is that Winiwarter made the corrections himself, knowing that the copy would be kept by such a prestigious

institution as the National Library. Another possibility is that the publisher, perhaps even Lechner, carried out the deed. However, since these corrections were never incorporated into future printings, the most probable explanation is that a staff member of the library or a reader made the corrections.

When dealing with these marks, another question naturally comes to mind: if there are so many mistakes in the text, why weren't corrections initially made before printing the text? And if this was not done, then why weren't later printings corrected? Perhaps the publisher or Winiwarter himself did not notice the errors. Given Winiwarter's credentials as a translator, interpreter, and legal consultant, I rather doubt that. Maybe it would have been too expensive and time-consuming to incorporate corrections after the book had already been published and printed. In any case, we can say with almost certainty that no official corrections were ever made to the translation.

Whether official or not, the handmade editing of the Austrian library copy of Winiwarter's translation still makes for an interesting artefact. Moreover, if the corrections were just made by a reader in pencil, then why didn't the library remove them? My intuition tells me that the story behind these corrections is not that simple, but unless a forensic analysis is carried out on the markings, my curiosity will unfortunately have to take a back seat.

The marks consist of correcting typographical errors and spelling mistakes, marking what the corrector/reader considered to be stylistic and terminological errors, and simply underlining and highlighting terms and phrases in the text.

Here are a few examples:

Austrian National Library copies

From the original "First Part" version (1865)

§. 6.

Ne other construction can be attributed to a law in the application, than that, which is apparent from the peculiar meaning of the words in their connection, and from the clear intention of the legislator.

From the original integrated version (1866)

§. 6.

No other construction can be attributed to a law in the application, than that, which is apparent from the peculiar meaning of the words in their connection, and from the clear intention of the legislator.

This is an example of a straight-forward typographical error – "Ne" instead of "No".

§. 86.

Under urgent circumstances the publication of the banns can be entirely dispensed with by the government of the province, or the district-authorities, and when the certified, near approach of death does not permit of any delay, even by the person in authority in the place; still the persons intending to marry must declare upon oath, that they know of no existing impediment to their marriage.

§. 86.

Under urgent circumstances the publication of the banns can be entirely dispensed with by the government of the province, or the district-authorities, and when the certified, near approach of death does not permit of any delay, even by the person in authority in the place; still the persons intending to marry must declare upon oath, that they know of no existing impediment to their marriage.

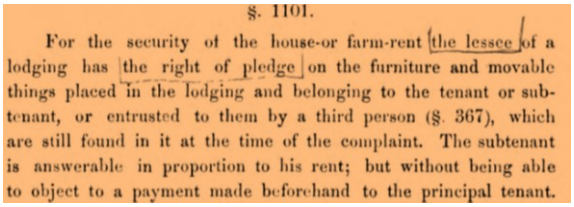
Here the corrector indicates a stylistic error by underlining the phrase, most likely indicating that the correct grammar is "permit and not "permit of".

3. when he has been severely wounded in war; or when he was on board a ship at the time it was shipwrecked, or otherwise in imminent danger of his life, and when he has been missing for three years from that time.

3. when he has been severely wounded in war; or when he was on board a ship at the time it was shipwrecked, or otherwise in imminent danger of his life, and when he has been missing for three years from that time.

In this case, the corrector inserted "of", though Winiwarter's version without "of" is correct.

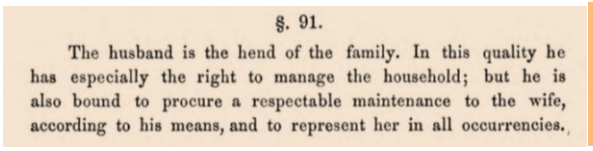
Here is an example of how the reader/corrector was just highlighting or accentuating terms.



§. 1101.

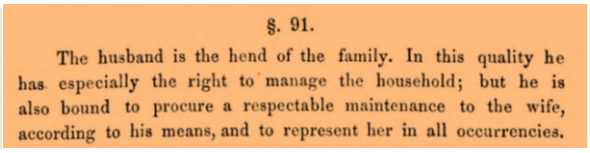
For the security of the house-or farm-rent the lessee of a lodging has the right of pledge on the furniture and movable things placed in the lodging and belonging to the tenant or sub-tenant, or entrusted to them by a third person (§. 367), which are still found in it at the time of the complaint. The subtenant is answerable in proportion to his rent; but without being able to object to a payment made beforehand to the principal tenant.

In some instances, not all of the typographical errors were discovered by the "proofreader":



§. 91.

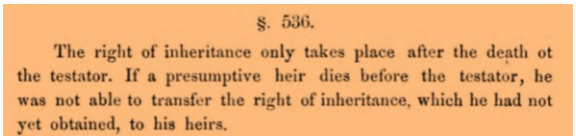
The husband is the hend of the family. In this quality he has especially the right to manage the household; but he is also bound to procure a respectable maintenance to the wife, according to his means, and to represent her in all occurrencies.



§. 91.

The husband is the hend of the family. In this quality he has especially the right to manage the household; but he is also bound to procure a respectable maintenance to the wife, according to his means, and to represent her in all occurrencies.

Notice "hend" instead of "head.



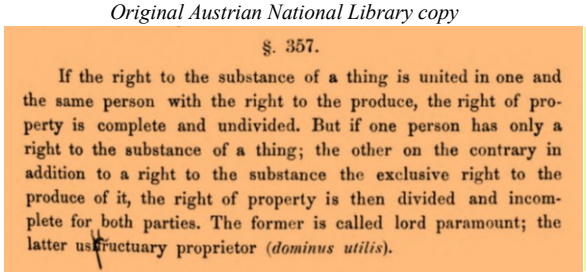
§. 536.

The right of inheritance only takes place after the death ot the testator. If a presumptive heir dies before the testator, he was not able to transfer the right of inheritance, which he had not yet obtained, to his heirs.

Notice "after the death ot …" which should be "after the death of"

As we see from the copies of the Harvard Law Library and the University of Michigan, the corrections made to the text in the Austrian National Library copy were never incorporated into any of the copies or prints acquired in the United States, strengthening the argument that the corrector was not the publisher or an official editor, but perhaps just a critical reader.

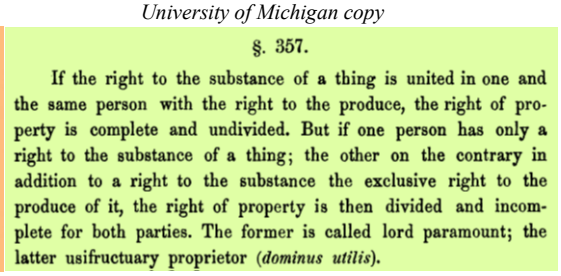
Original Austrian National Library copy



§. 357.

If the right to the substance of a thing is united in one and the same person with the right to the produce, the right of property is complete and undivided. But if one person has only a right to the substance of a thing; the other on the contrary in addition to a right to the substance the exclusive right to the produce of it, the right of property is then divided and incomplete for both parties. The former is called lord paramount; the latter usifructuary proprietor (*dominus utilis*).

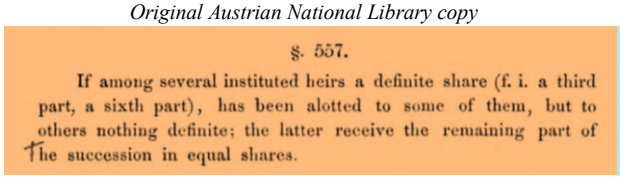
University of Michigan copy



§. 357.

If the right to the substance of a thing is united in one and the same person with the right to the produce, the right of property is complete and undivided. But if one person has only a right to the substance of a thing; the other on the contrary in addition to a right to the substance the exclusive right to the produce of it, the right of property is then divided and incomplete for both parties. The former is called lord paramount; the latter usifructuary proprietor (*dominus utilis*).

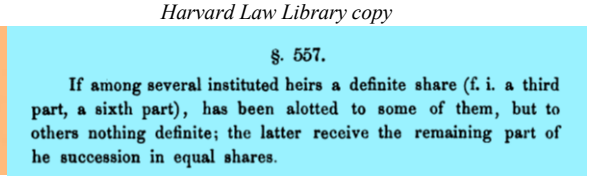
Original Austrian National Library copy



§. 557.

If among several instituted heirs a definite share (f. i. a third part, a sixth part), has been alotted to some of them, but to others nothing definite; the latter receive the remaining part of the succession in equal shares.

Harvard Law Library copy



§. 557.

If among several instituted heirs a definite share (f. i. a third part, a sixth part), has been alotted to some of them, but to others nothing definite; the latter receive the remaining part of he succession in equal shares.

As mentioned above, the most likely scenarios are either the person making the corrections had no authority and was just doing it for their own sake or for use by the Austrian National Library or it was just a reader who was making corrections in the book without the

library's knowledge. In any case, the identity of the corrector shall remain a mystery … at least for the time being.

As will be shown in upcoming chapters, Winiwarter's terminology and legal formulations were employed, directly or indirectly, by a number of legal translators in Europe and North America. Undoubtedly, Winiwarter himself borrowed terms and concepts from the texts of his contemporaries in England and elsewhere in Europe. But it was he, first and foremost, who established in the 1860s a firm standard of civil-law terminology and concepts for future English translations of civil legislation in central Europe and in English-speaking countries for the next century.

4

References to Winiwarter's Translation and Influence on Other English Translations of the ABGB

The story of Winiwarter's translation of the ABGB does not end in Austria. As mentioned in Chapter 3, another edition of the translation was printed in London at about the same time as the Vienna publication. In fact, we have documentary evidence of publication of the First Part of the text in London by N. Trübner & Co. from the bibliographical entry of the review written about Winiwarter's translation in *The Law Magazine and Law Review: or, quarterly journal of jurisprudence* (see Appendix 9).

> General Civil Code for all the German hereditary provinces of the Austrian monarchy ; translated by Joseph M. Chevalier de Winiwarter, LL.D., and legal adviser to Her Britannic Majesty's Embassy, at Vienna. First part. Vienna : Rudolph Lechner, 1865. London : N. Trübner & Co.
>
> (The Law Magazine and Law Review, Vol. 20, 1865/66: 346)

As can be seen from the above entry, the London version was most likely just a printing of the Vienna edition, since Lechner is mentioned first. Unfortunately, besides the fact that Paul Baeck (see below) mentions the London publication in the preface to his book, this is the only concrete evidence that the book was actually printed in London. Not even the British Library or other legal deposit libraries in the UK have a record of Winiwarter's translation being published by Trübner, which reinforces my assumption that the book was printed in London by Trübner but under licence from Rudolf Lechner.

We can only speculate as to why Nicholas Trübner, a prominent bookseller and linguist, printed the translation in London. One possibility is that he knew Winiwarter personally. They were of the same age, were both native speakers of German, and both lived in London in the 1850s. Rudolf Lechner could have also known Trübner as a fellow German-speaking publisher and bookseller and could have arranged to have Winiwarter's translation printed in London. These are the two most likely scenarios. Whatever the case may be, printing the translation in London would have given non-German-speaking English lawyers direct access to European civil law and terminology that were not readily available at that time.

In addition to the original publication in Vienna and the edition in London, other copies and prints of Winiwarter's translation were circulated in later years and acquired by many libraries around the world.[20] Most of the copies that I have come across had already

[20] Besides the original Vienna and London versions divided into two volume (the First Part and the Second and Third Parts) and the integrated version with all three parts, there is no firm evidence that any other reprints or new editions of the translation were actually made.

incorporated the three parts of the ABGB into one monograph instead of separating them into two volumes as originally printed in 1865/1866[21] in Vienna and in London[22]. As mentioned in Chapter 3, one such copy was received by the Harvard Law School on 8 June 1908. Many of the libraries throughout the United States acquired reproductions of this Harvard copy, including Indiana University Bloomington, the University of Chicago, The George Washington University in Washington D.C., and Columbia University in New York.

Another similar copy ended up at the law school library of the University of Michigan. This particular copy was originally owned by *Bibliothek des K. K. Justiz-Ministeriums* (Library of the Imperial Ministry of Justice in Austria).

The Hathi Trust Digital Library in Ann Arbor, Michigan digitally reproduced this copy, giving libraries and individuals all over the world access to Winiwarter's translation. Many other copies and reproductions of Winiwarter's translation inevitably ended up at libraries and law schools all over Europe, the Americas, and elsewhere, including copies at the Library of Congress and the British Library (see Appendix 11 for the various title pages to Winiwarter's translation).

The on-line library catalogue WorldCat[23] has 66 records of libraries from around the world that have a physical copy of Winiwarter's 1866 translation, 55 of these in the United States. Other exemplars may be found, for example, in Canada, the UK, Australia, Germany, Israel, the UAE, and Malaysia. Although the WorldCat records are by no means exhaustive, it does give us some indication of the extent that Winiwarter's translation had spread to other parts of the world after its first publication in 1866 thanks to the acquisitions of libraries and law schools interested in foreign comparative law.

The copyright to Winiwarter's translation is currently not owned by any person or publishing house, and due to the age of the work, it is in the public domain. Therefore, any company could theoretically reproduce the translation on paper or electronically. Considering the recent trends in virtual publishing houses and self-publishing, this is exactly what has happened. One interesting example is Ulan Press, which typically reprints object-oriented programming materials and then releases them through Amazon. Winiwarter's title was released in paperback on Amazon through this company on 23 September 2012. Another paperback version of the translation was released on 12 September 2013 on Amazon by TheClassics.us, which is a company that sells PDFs and paperbacks in the form of a book

[21] Only the original 1865/66 edition was printed in two volumes, i.e. Part One (up to page 65) and then Part Two/Part Three (pages 65 to 323). See the section on Österreichische Buchhändler-Correspondenz in Chapter 3.

[22] We have evidence of only the First Part being printed in London.

[23] http://www.worldcat.org/

club. Nabu Press, an imprint of the historical reprints publisher BiblioLife, also offers the paperback translation through Amazon (1 October 2013), and Palala Press offers a hardback copy of Winiwarter's translation. The company HardPress sells the Kindle version of the Harvard University copy of the translation for USD 7.95.

We could speculate about the various reasons why these companies offer reprints and electronic copies of Winiwarter's translation. One of the strongest reasons is perhaps purely economic. They want to make money, and the fact that the entire text is available to download free of charge adds to this appeal. Other than the actual paper and printing equipment for physical copies, there are very few expenses, and the companies can make money by just selling the text. Another reason, the ultimate aim of which is also to make money, is the importance of the translation itself in the context of legal history. The companies acknowledge that Winiwarter's text is important, and thus by exploiting the scholarly and educational aspects of the book, they can also profit from it.

The following are two examples of companies marketing the historical and cultural importance of Winiwarter's text in their descriptions of the book.

From the description of Winiwarter's translation published on Amazon by Ulan Press (23 September 2012):

> This book was originally published prior to 1923, and represents a reproduction of an important historical work, maintaining the same format as the original work. While some publishers have opted to apply OCR (optical character recognition) technology to the process, we believe this leads to sub-optimal results (frequent typographical errors, strange characters and confusing formatting) and does not adequately preserve the historical character of the original artifact. We believe this work is culturally important in its original archival form.[24]

Excerpt from the description of Winiwarter's translation published by Palala Press on the web pages of the online bookstore Book Depository (1 September 2015):

> This work has been selected by scholars as being culturally important, and is part of the knowledge base of civilization as we know it. This work was reproduced from the original artifact, and remains as true to the original work as possible. Therefore, you will see the original copyright references, library stamps (as most of these works have been housed in our most important libraries around the world), and other notations in the work. … Scholars believe, and we concur, that this work is important enough to be preserved, reproduced, and made generally available to the public. We appreciate your support of the preservation process, and thank you for being an important part of keeping this knowledge alive and relevant.[25]

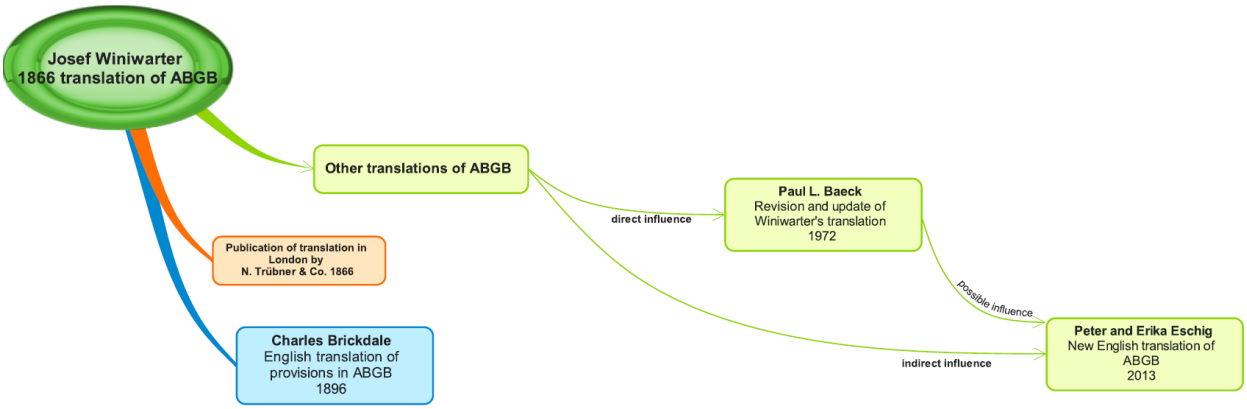
It is clear from the above book descriptions that the publishers are using the "cultural importance" of the translation as a method of marketing the book. Both of these companies play on this rather deceptive notion of importance and use it to attract potential buyers. Most likely, none of the companies paid anything for the work, considering that they have acquired it free of charge from on-line library resources or even Google. Thus, with the right type of

[24] Retrieved from: https://www.amazon.com/General-Civil-Code-Hereditary-Provinces/dp/B00AU9KTTI/ref=tmm_pap_swatch_0?_encoding=UTF8&qid=&sr=

[25] Retrieved from: https://www.bookdepository.com/General-Civil-Code-Austria/9781340917425

marketing, it could become lucrative merchandise for them. I obtained a free pdf copy of the Harvard Law School Library reproduction of Winiwarter's translation from Google Book Search, the University of Michigan copy from the Hathi Trust Digital Library, and downloaded the original versions (the First Part + the integrated version) from the Austrian National Library.

Network map:
Influence of Winiwarter's translation



Charles Brickdale and Winiwarter's translation

In 1895, **Charles Brickdale**, a land reformer and assisting barrister at the Land Registry of the United Kingdom, set off on a journey to Germany and Austria to investigate the land registry systems of those countries on the instructions of the Land Register and under the authority of the Treasury (see Kohl, forthcoming).

In Vienna, Brickdale consulted many offices and experts in order to find out how the registry system functioned in Austria. As Prof. Dr. Gerald Kohl from the Department of Legal and Constitutional History at the Faculty of Law of the University of Vienna pointed out in a discussion I had with him concerning Brickdale (Kohl, forthcoming), Josef Maximilian Winiwarter just happened to be his main contact in Vienna.

> 122. 1. *Vienna.*—Dr. von Winiwarter, who is legal adviser to the British Embassy at Vienna, has a large practice as combined barrister and solicitor—this combination is the general rule in Austria. I asked him to tell me how the system of registration of title operated in regard to time, cost, security, and general convenience to the legal profession and the public.

(Brickdale 1896: 24)

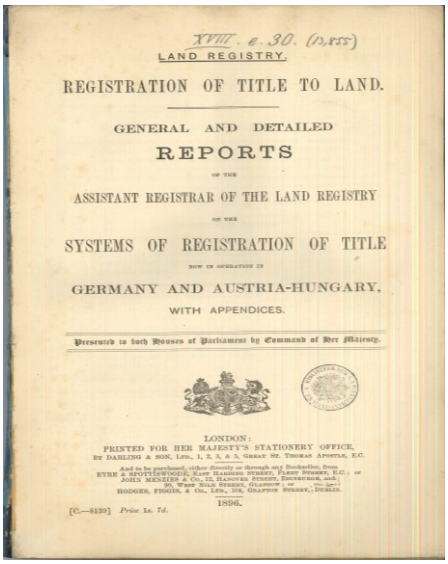
Not only did Brickdale consult Winiwarter on practical issues relating to the registry system in Austria, but he also turned to Winiwarter for help in understanding and translating some of the legal provisions dealing with the topic of title registration found in the General Land Register Law and the ABGB. In fact, we have evidence from Brickdale's reports (see

below; Brickdale 1896) that Winiwarter actually gave Brickdale a copy of his English translation of the ABGB and that Brickdale used Winiwarter's text, vocabulary, and even phrasing to help him translate and explain these provisions to his audience in England.

> In making this translation I have been greatly helped by Dr. von Winiwarter's translation (R. Lechner, Vienna, 1866), a copy of which he kindly presented to me …
>
> (Brickdale 1896: 115)

These reports are the first documented evidence that we have of anyone actually making practical use of Winiwarter's translation after its publication in 1866.

Following Brickdale's journey to central Europe, he wrote these reports on his findings related to his investigation of the registry systems, and they were subsequently published in London in 1896.



XVIII. e. 30. (D,855)

LAND REGISTRY.

REGISTRATION OF TITLE TO LAND.

GENERAL AND DETAILED

REPORTS

OF THE

ASSISTANT REGISTRAR OF THE LAND REGISTRY

ON THE

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Title page of Brickdale's reports

In Appendix III to his reports, Brickdale provides his translations and explanations of selected provisions from the ABGB based on Winiwarter's translation, so we are fortunate enough to have actual proof of how Brickdale used Winiwarter's text (see Appendix 15 for the full transcript of the comparison of Winiwarter's translation to Brickdale's text).

From the citation above, it is clear that Brickdale did not intend to just copy Winiwarter's text but "to treat the text with rather more freedom", which we can infer to mean "explain and interpret" the text in a way that perhaps his English audience would better understand.

As shown below, Brickdale's text is a combination of translation, copying, rephrasing, and explanation of the provisions. Nevertheless, when exploring the text, it is difficult to refute Winiwarter's influence and presence.

The comparison below of the same clauses from the ABGB in Winiwarter's translation and Brickdale's reports provides examples of the strategies Brickdale uses to express the meaning of the provisions.

One of these strategies is simply explaining the provision without actually trying to translate it.

Winiwarter 1866	Brickdale 1896
§. 446. The special dispositions, which exist with regard to the organization of the provincial tables and registers for landed property, contain the manner and the precautions, which are to be observed in general for the intabulation of real rights.	446. [The mode of keeping the landtafeln and public registers is laid down in special laws.]
§. 632. A possessor of an entailment can, it is true, renounce his right for himself, but in no case for the posterity, even, if it does not exist. If he mortgages the produce of the entailment, or even the estate itself under entailment; the mortgage is only good for that part of the produce, which he is justified in collecting, but not for the estate under entailment, or for the share of the produce, which belongs to the successor.	632. [Limited owner can only deal with his own beneficial interest in the property.]

In these examples, it is clear that Brickdale is avoiding complicated legal wording and opted to explain the provision in one sentence.

Another strategy by Brickdale was to use Winiwarter's translations with certain alterations.

Winiwarter 1866	Brickdale 1896
§. 431. For the transfer of the property of immovable things, the act of acquisition must be entered in the public books destined for the purpose. This entry is called intabulation.	431. For the transfer of ownership of real property the conveyance must be entered in the public register for the purpose. This entry is called registration.
§. 1451. The prescription is the loss of a right, which has not been exercised during the time fixed by the law.	1451. Prescription is the loss of a right which has not been exercised during a period fixed by law for the purpose.

Winiwarter's phrasing is discernible in Brickdale's texts, but Brickdale uses terms that are more standard in common-law contexts, such as "real property" and "public register". He also uses "registration" instead of "intabulation", which is a term normally used in English for musical arrangements.

In other clauses, we can observe that Brickdale completely retranslated the provisions in a clearer fashion.

Winiwarter 1866	Brickdale 1896
§. 441. As soon as the document concerning the right of property has been entered in the public book, the new proprietor enters into the legal possession.	441. The new owner is legally in possession from the time of the registration of the conveyance.
§. 1500. The right gained by means of usucaption or prescription can however not be prejudicial to a person, who trusting in the public books has purchased a thing or a right, before the right gained by means of usucaption or prescription has been entered in the public books.	1500. Provided that a right gained by possession or by prescription cannot be asserted to the prejudice of a person who has, in reliance on the public register, acquired the property before the registration of the prescriptive or possessory right.

Here is another example of Brickdale using terms that are less foreign to an English person's ears. For example, instead of the obscure Latin-based "usucaption", he uses "possession", which is also of Latin origin, but certainly a more common word in English.

Occasionally, Brickdale copied most of Winiwarter's text when it was clear and concise enough for English speakers.

Winiwarter 1866	**Brickdale 1896**
§. 618. An entailment (family-entailment) is a disposition, by virtue of which property is declared as an unalienable estate for all future members, or at least for several members of a lineage.	618. A family entail (familien fideicommiss) is a disposition by virtue of which property is declared as an inalienable estate for all future members, or at least for several members, of a family line.
§. 619. The entailment is in general either a primogeniture, or a majorat (*majoratus*), or a seniority (*senioratus*); according as the founder of it has favoured with the succession, either the first-born of the elder line ; or the next of the family according to the degree, but among several equally near, the elder according to his years ; or lastly without regard to the line, the eldest of the family.	619. An entail is in general either (1) a "primogenitur," or (2) a "majorat," or (3) a "seniorat," according as the founder of it has conferred the succession ; either (1) on the first-born of the elder line ; or (2) on the next of the family according to degree, but among several equally near, the elder according to age ; or (3) on the eldest of the family without regard to the line.

Although there are some difference in the texts, the overall structure and wording of Brickdale's text in the above comparison is the same as Winiwarter's.

Not only does Brickdale explain and translate the provisions, but in a few cases he actually provides recommendations. In a note introducing the section on Title by Possession, Brickdale provides a translation recommendation for contrasting a term shared in common law and one that is specific to Austrian civil law and influenced by Roman law.

[NOTE.—In the following clauses it will be observed that besides prescription, which corresponds to the English Statute of Limitations, Austrian law (following Roman law) has also a stronger form of title by possession, which not merely deprives the particular subsisting owner or owners of his or their powers of ejectment, but confers an independent title on the occupier. The former of these (Verjährung in German, Præscriptio in Latin) I translate "Prescription": the other (Ersitzung in German, Usucapio in Latin) "Title by Possession."

Verjährung = *Præscriptio* = Prescription
Ersitzung = *Usucapio* = Title by Possession
(Brickdale 1896: 117)

See Chapter 5 for a more in-depth look at Brickdale's and other recommendations and guidelines for translating civil law into English.

We can infer from Brickdale's reports and his notes and translations that, although he was appreciative of Winiwarter's help and Winiwarter's translation was of great assistance to him in explaining clauses from the ABGB, he thought the translation itself was overly formal and difficult to understand in places. Nevertheless, Brickdale did borrow some terms and

phrases from Winiwarter, and by doing so, helped push Winiwarter's legacy forward into the twentieth century.

References to Winiwarter's translation in the late-nineteenth and early-twentieth centuries

When considering that Winiwarter's text was the only English translation of the ABGB during the nineteenth century and most of the twentieth century, it should be no surprise that the translation was used practically any time legal practitioners and academics needed to refer to or cite Austrian civil law. I provide several examples below in order to demonstrate how Winiwarter's text was typically used during this period.

The first example is from an article written by Robert C. Fergus in the Yale Law Journal from 1897 entitled *The Influence of the Eighteenth Novel of Justinian*. This article explains the civil-law term "cognation", which establishes the bond between people united by blood or family in relation to inheritance and which was introduced to Roman law by Justinian's Eighteenth Novel[26]. It continues by demonstrating that the Eighteenth Novel has passed down this notion of "cognation" and has influenced many of the laws developed in Europe and other civil-law nations, including the ABGB. What better way to demonstrate this influence in English than to cite the provisions of Winiwarter's translation dealing with this topic.

> THE INFLUENCE OF THE EIGHTEENTH NOVEL OF JUSTINIAN.
>
> The Austrian Civil Code (*de Winiwarter*) reads: "Legitimate children may be of the male or female sex" (s. 732).
>
> Sec. 738: "The inheritance is then divided in two equal parts. The one half belongs to the parents of the father and the other to the parents of the mother."

(Fergus 1897a: 30–31)

In the second instalment of the article, Fergus cites Winiwarter again in relation to a discussion on how the ABGB deals with the notion of "legitimate children".

[26] Justinian's novels were in essence amendments that were meant to supplement and complete his civil law.

THE INFLUENCE OF THE EIGHTEENTH NOVEL OF JUSTINIAN.—II.

The Austrian Civil Code (Winiwarter) declares, "Sec. 762: The persons whom the testator is obliged to favor in his last disposition with a part of the inheritance, are his children; and in case of there being none, his parents. 765. The law allots to each child, as his legitimate portion, the half of what he would have obtained according to the legal succession. 766. Each legitimate heir in the ascending line, can as his legitimate portion, claim the third part of what he would have obtained according to the legal succession. 732. If the testator has legitimate children of the first degree, the whole inheritance falls to them (in case of intestacy)."

(Fergus 1897b: 71)

Winiwarter's translation was obviously available in the United States at that time, i.e. 1897. In fact, from the catalogue record of the Yale University law school library, we discover that Winiwarter's translation was apparently acquired in parts, initially the First Part and then the Second and Third Parts, and the table of contents for the entire work was inserted before the Second Part. This is the only evidence we have of an early, "non-integrated" version of Winiwarter's translation being owned by a library other than the Austrian National Library, and this presumably predated the integrated versions acquired by both the University of Michigan and the Harvard Law School (1908).

Another interesting example of an academic using Winiwarter's translation is an article written by Emanuel Tilsch, a prominent Czech professor of Austrian private law at the Law Faculty of Charles University in Prague and later dean of the faculty. In his article in English on *Austrian Divorce Law* from 1911[27], he mentions Winiwarter and cites one of the provisions in his translation (§93).

AUSTRIAN DIVORCE LAW.

[*Contributed by* PROFESSOR E. TILSCH, *of Prague.*]

As to all three cases, the Code prescribes judicial intervention by s. 93, which is worded as follows: "The spouses are on no account allowed to dissolve arbitrarily the marriage union even although they may have agreed on the subject; they may maintain the invalidity of the marriage, or its dissolution, or wish to come only to a separation *a mensa* and *thoro*."[2]

[2] The English translation of Winiwarter (General Civil Code, First Part, Vienna, 1865) has been followed.

(Tilsch 1911: 44)

Thus, it was not only native English speakers in the United States and England who were relying on Winiwarter's translation. This is a key example of how non-native English-

[27] Tilsch, Emanuel (1911). *Austrian Divorce Law*, in Journal of the Society of Comparative Legislation. Vol. 12, No. 1. p. 44

speaking professionals in the monarchy were citing the translation for articles they publish in English-language journals.

Just a few months later in the same journal[28], we find another example of an English legal practitioner and academic, Henry Anselm de Colyar, citing several provisions in Winiwarter's translation dealing with the legal notion of the presumption of death and survivorship in Austria.

NOTES ON THE PRESUMPTIONS OF DEATH AND SURVIVORSHIP IN ENGLAND AND ELSEWHERE.

[*Contributed by* H. A. DE COLYAR, ESQ., K.C.]

Austria.—By the General Civil Code of 1811, which applies to all the German Hereditary Provinces of the Austrian Monarchy, it is provided[10] that if there should be a doubt as to whether an absent person or a missing person is still living or not, his death is only to be supposed under the following circumstances:

(1) When a period of eighty years has elapsed since his birth, and his place of residence has remained unknown for ten years.

(2) Without regard to the time which has elapsed since his birth, if his place of residence has remained unknown for fully thirty years.

(3) When he has been severely wounded in war, or when he was on board a ship at the time it was shipwrecked, or otherwise in imminent danger of his life, and when he has been missing for three years from that time.[1]

In all these cases the declaration of death can be applied for and granted under the precautions prescribed by the Code.[2] The day on which a declaration of death has obtained its validity at law is considered as the legal day of the death of a person who is absent.[3] Such declaration, however, does not exclude the proof that the absent person has died, sooner or later, or that he is still living, and, if such proof be established, the person who on the ground of the judicial declaration of death has taken possession of a property is to be treated like another *bona fide* possessor.[4]

The mere lapse of the time fixed by the Code for declaration of death of an absent spouse does not authorise the other party to consider the marriage as dissolved, and to proceed to another marriage.[5] If, however, this absence is accompanied by such circumstances as leave no reason to doubt that the absent person is dead, the judicial declaration that the absent person may be considered dead and the marriage dissolved may be applied for to the privileged Court of the district in which the deserted spouse resides.[6]

[10] Art. 24. Code translated by Joseph M. Chevalier de Winiwarter (Vienna, 1866).

[28] de Colyar, H. A. (1911). *Notes on the Presumptions of Death and Survivorship in England and Elsewhere*, in Journal of the Society of Comparative Legislation. Vol. 11, No. 2 (1911), pp. 267–268

[1] Art. 24.

[2] The tribunal to whom application is made for the judicial declaration of the death of a person who is absent has first of all to appoint a curator for the absentee, who is then summoned by an edict, the term of which is fixed for a year, with the addition that the tribunal, if he does not appear within this time, or if he does not inform the tribunal in another way of his existence, will proceed to the declaration of his death (Art. 777 of Austrian General Civil Code).

[3] Art. 278. [4] *Ibid.* [5] Art. 112.

[6] *Ibid.*; and see Arts. 113 and 114 as to procedure required to be adopted by the deserted spouse, before remarriage, indicating the precautions prescribed in such cases.

(de Colyar 1911: 267–268)

In this particular example, the author devotes practically a whole page citing the provisions of Winiwarter in his article.

So it is clear from just the few excerpts provided above that Winiwarter's translation was not just filed away on the back shelf of a library, but was an important reference book for legal practitioners and academics and cited in many legal and legislative journals in Europe and abroad during this period.[29]

Surprisingly, or perhaps understandably, considering the complex task of translating the ABGB into English, it wasn't until 1972 that a new English version of the ABGB was completed and published. Hence, the dominance and influence of Winiwarter's 1866 translation in the English-speaking world lasted for more than 100 years, and even longer if we take into account the recent reprints and electronic versions mentioned above. And as we will see in the next sections of this chapter, Winiwarter's influence is clearly present, whether directly or indirectly, in newer English translations and editions of the ABGB.

Baeck's English version of the ABGB (1972): translation or text revision?

In 1972, more than a century after Winiwarter's translation was published, **Paul L. Baeck** produces a new version of the ABGB in English for the Parker School of Foreign and Comparative Law at Columbia University in New York City. Paul Baeck was of Austrian origin and was a member of the Austrian Bar Association prior to immigrating to the United States and becoming a member of the New York Bar Association[30]. He graduated from the law school of the University of Vienna in 1912 (*Dr. Iur.*) and has an LLB from the Brooklyn Law School (1945)[31].

At first glance, Baeck's text appears to be an independent translation of the ABGB, and indiscriminating readers would assume that it is. When taking a closer look at the

[29] Winiwarter has also been mentioned or his translation cited in more recent history by various academics dealing with legal history, such as Kranjc, Janez (2012) in *Virtues in the Law: the Case of Pietas*, p. 105 or Lesser, Daniel (2017) in his Master's thesis *Adjectival Vagueness in Legal Language: The Case of the Austrian Civil Code*, p. 40.

[30] Baeck, Paul L. (1958). *The Austrian Cartel Law*, in The Business Lawyer, Vol. 13, No. 4, July 1958, American Bar Association

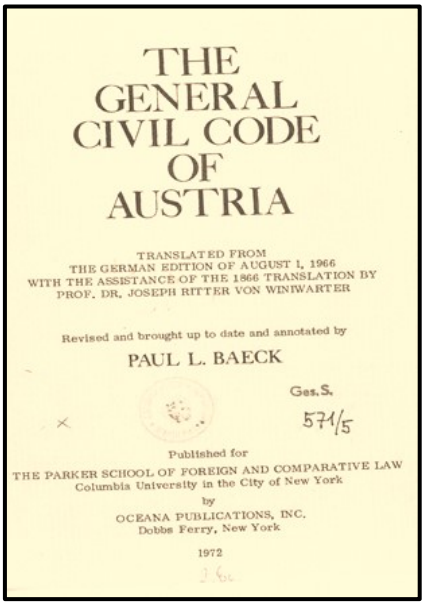
[31] International Cooperation in Litigation: Europe (1965). Hans Smit (ed.). The Hague, Netherlands: Matinus Nijhoff

paratextual clues, though, we understand that appearances can sometimes be misleading. The title page of the book clearly states that the text is a translation from the 1966 German edition, *but* with the assistance of Winiwarter's 1866 translation. What Baeck means by "assistance" is not completely clear, nor is there any real explanation. However, it will become more apparent later in this chapter what kind of assistance Baeck actually took from Winiwarter's original translation.

Baeck does indicate in the preface to his book that he is qualified to carry out the translation:

> The translator of laws should … be a person who is not only familiar with the two languages concerned, but also with the two legal systems in question; this translator, as a former Austrian lawyer and now a member of the New York Bar, hopes to qualify in this respect.
>
> (Baeck 1972: i)

This, though, is the only place in the book that Baeck refers to himself as the translator. Moreover, we cannot help but notice from the title page that Baeck does not use the word "translator" or "translated by" when referring to himself, but rather as someone who is revising the text and bringing it up-to-date.


THE
GENERAL
CIVIL CODE
OF
AUSTRIA

TRANSLATED FROM
THE GERMAN EDITION OF AUGUST 1, 1966
WITH THE ASSISTANCE OF THE 1866 TRANSLATION BY
PROF. DR. JOSEPH RITTER VON WINIWARTER

Revised and brought up to date and annotated by
PAUL L. BAECK

Published for
THE PARKER SCHOOL OF FOREIGN AND COMPARATIVE LAW
Columbia University in the City of New York
by
OCEANA PUBLICATIONS, INC.
Dobbs Ferry, New York
1972

Title page of Baeck's book, 1972

Another important detail in the preface is that Baeck admits he used Winiwarter's text when possible:

> It is the purpose of this revised translation to bring up-to-date the present provisions of the Code and with all due respect to Professor Winiwarter's work, the language of the translation. Completing the Code by taking into consideration all the changes thereof enacted in the last 100 years and modernizing the language are the two main aims of this author: wherever I deemed it possible and advisable, I let the translation of Prof. Winiwarter stand as it was.
>
> (Baeck 1972: ii)

As will be apparent from the comparison tables below, there are many clauses in the text where Baeck did indeed let Winiwarter's text "stand as it was". Upon careful observation, we see that most of the changes Baeck made concerned only stylistic differences between nineteenth and twentieth century written English, and perhaps even more importantly, differences between British and American English, including British and American legal terminology. It should be pointed out, though, that Winiwarter was not so much using British terminology as he was creating new terms or borrowing terms from Latin and German to explain continental law in English.

Baeck's partiality to American English was, of course, logical and natural, considering that his legal education in English was from a university in the United States and that the "translation" was commissioned by Columbia University in New York City. However, it was only in places where the 1966 German version of the ABGB differed from the nineteenth century version that Baeck actually made fundamental changes. So, in essence, Baeck's text seems to be more of a revision or modernization of Winiwarter's text than a full-fledged translation[32].

Despite this obvious fact, Baeck adopted quite a critical tone towards Winiwarter's translation:

> … Far older and more questionable is the translation of the Austrian Civil Code (ABGB) by Prof. Winiwarter; a thorough study of this work shows its insufficiency for today's use. It was published in 1866 – more than 100 years ago – in Vienna and in London. Apart from the fact that the English thereof was century-old British English which is in many respects different from American English, especially the legal language, the provisions of the Code have been changed time and again by amendments, additions and deletions. The result is that the Winiwarter work is no longer a viable translation.
>
> (Baeck 1972, p. ii)

Instead of simply acknowledging Winiwarter's achievement, Baeck surprisingly underplays the importance of the text and even questions the viability of the translation, emphasizing his more modern, up-to-date version. The question for us is why Baeck would even use the "assistance" of Winiwarter's translation at all if he does not consider the text to be a "viable translation" or considers it to be insufficient. Why didn't he just retranslate the text from scratch? The logical assumption is that Winiwarter's text is not as "questionable" as Baeck leads us to believe and that he indeed found it useful and a valuable source of legal terminology and phrasing.

When looking at Baeck's note for Article 26 in the First Chapter, we also notice that his goal of modernization sometimes gets side-tracked and that he was not really against using "archaic" terms when he felt it was appropriate.

[32] For the purposes of this dissertation, I define "full-fledged translation" as a translation that might be influenced by previous translations, or have even borrow elements from them, such as vocabulary, but that does not outright copy text from these translations and is not a mere revision or updated version of them.

> The Civil Code uses the archaic term "moral person", instead of the modern "legal person" or "legal entity", to designate approximately, a corporative entity. In this translation the archaic expression is preserved.
>
> (Baeck 1972: 7)

As opposed to Winiwarter's translation (and the Eschigs' translation – see discussion later in this chapter), Baeck's version of the code was heavily annotated. This provides a rich source of paratextual data that are not present in the other translations, which is fortunate for us since Baeck is no longer alive to consult. Most of the notes deal with the legal interpretation of the code and terminology, but occasionally we get a glimpse of Baeck's personal opinion or choices, such as the citation above.

Some of Baeck's notes also provide recommendations for translating typical continental European legal terms into English. One such extensive example is at the beginning of the Twenty-fifth Chapter on pages 211 and 212:

> … Under these circumstances, the reader is admonished to bear the translation selected well in mind while dealing with the provisions of the law set forth in this chapter. The translations used are: for Miete the translation "tenancy"; for Pacht the translation "lease" (lessor and lessee, rent for lease, etc.); and for Bestandvertrag the translation "contract of tenure" (grantor and grantee of tenure, consideration therefor, etc.).
>
> (Baeck 1972: 211–212)

This particular note, as well as others in the text, is undoubtedly a rich source of professional knowledge on how to translation continental terminology into English, and this topic will be taken up in more detail in Chapter 5.

The table below compares Winiwarter's text to Baeck's in the introductory part of the ABGB. The only significant difference between the German version of the ABGB valid in the mid-1800s and the 1966 German version used by Baeck is that Article 11 was repealed.

Comparison of Winiwarter and Baeck – Introductory provisions of the ABGB[33]

Blue highlighted text = Differences in legal terminology and phrasing
Green highlighted text = General differences in choice of words or phrasing

Winiwarter (1866)	Baeck (1972)
Introduction. Of the civil laws in general. §. 1. The complex of the laws, by which the private rights and obligations of the inhabitants of the State towards one another are determined, constitutes the Civil Right (Law) in it.	Introduction The civil laws in general Definition of civil law Article 1. The totality of the laws, by which the private rights and obligations of the inhabitants of the State towards one another are determined, constitutes the Civil Law.

[33] Due to the nature of this study, time constraints, as well as my inferior knowledge of German, I only compare the English translations for this introductory section and do not take up the original German versions of the code unless it is directly relevant to the subject matter at hand.

Notes: > Of – literal translation of the German "*Von*" > German "*Von*" not translated in Baeck's text > The choice of "totality" is not much better than "complex".	
§. 2. As soon as a law has been properly published, no one can excuse himself, that he had no cognizance of it.	Article 2. As soon as a law has been properly published, no one may be excused on the ground that he had no knowledge of it.
Note: > "Knowledge" is a synonym of "cognizance". Although cognizance is slightly more formal than knowledge, its use is not archaic in modern English.	
§. 3. The operation of a law and the juridical consequences arising from it, begin immediately after the publication of it, unless in the published law itself, the term of its efficacy be further postponed.	When laws enter into effect Article 3. The effect of a law and the legal consequences arising therefrom begin immediately after the publication thereof unless, in the published law itself, the date of its entry into effect is further postponed.
Notes: > General improvement and modernization of terminology in Baeck, e.g. throughout the text, Baeck changes Winiwarter's "juridical" to "legal" > Example of Baeck's use of "there-" compounds. Notice his inconsistency of use in Articles 2 and 3 (highlighted in yellow): shouldn't "of it" be "thereof" in Article 2?	
§. 4. The civil laws are binding for all the citizens of the countries, for which they have been published. The citizens remain likewise bound by these laws in their acts and business, which they undertake beyond the territory of the State, as far as their personal capacity for undertaking them is limited by them, and as far as these acts and the business at the same time are to produce juridical consequences in these countries. How far strangers are bound by these laws, is determined in the following chapter.	Extent of the law Article 4. The civil laws are binding upon all the citizens of the provinces for which they have been published. The citizens are also bound by these laws in their acts and affairs which they undertake beyond the territory of the State, to the extent their personal capacity to undertake such acts and affairs is restricted and to the extent that such acts and affairs may produce legal consequences in these provinces. The extent to which aliens may be bound by these laws is set forth in the following chapter.
Notes: > The highlighted words/phrases are examples of Baeck's attempt to modernize or revise Winiwarter's translation. > "Country" is consistently replaced with "province" in Baeck. This is reasonable considering that in the mid-20th century we are referring to the subdivisions of Austria proper and not the other surrounding "*Länder*" of the old monarchy.	
§. 5. Laws are not retro-active; they have therefore no influence on acts, which have taken place before, and on rights, which have been acquired before.	Article 5. Laws are not retroactive; they have, therefore, no influence on acts which have taken place before and on rights which have been acquired before.
Note: > Baeck essentially copied this clause from Winiwarter with no changes.	
§. 6. Ne [sic] other construction can be attributed to a law in the application, than that, which is apparent from the peculiar meaning of the words in their connection, and from the clear intention of the legislator.	Interpretation Article 6. No other interpretation shall be attributed to a particular provision of the law than that which is apparent from the plain meaning or the language employed and from the clear intention of the legislator.
Note: > Winiwarter's wording is rather outdated in this instance, but Baeck still copies the essence of Winiwarter's text.	
§. 7. If a case cannot be decided either from the words, or from the natural construction of a law, similar cases, which are distinctly decided in the laws, and the motives of other laws allied to them, must be taken into consideration. Should the case still remain doubtful; it must be decided, with regard to the carefully collected and well considered circumstances, according to the natural principles of right.	Article 7. If a case can be decided neither from the language nor from the natural sense of a law, similar situations which are determined by reference to the laws and the purpose of related provisions must be taken into consideration. Should the case still remain doubtful, then it must be decided upon the carefully collected and well-

	considered circumstances in accordance with the natural principles of justice.
Note: > Here again, Baeck revises the text, but Winiwarter's core text is clearly intact. > Winiwarter uses the civil-law meaning of "right" here, whereas in English, it should be translated as "law", or perhaps "justice" as in Baeck's text. See Molchynsky (2012) for a detailed discussion on this topic and an explanation of the use of "right" and "law".	
§. 8. The Legislator alone has the power to interpret a law in a generally binding manner. Such an interpretation must be applied to all the cases still to be decided, as far as the Legislator does not declare, that his interpretation cannot have reference to the decision of cases, the object of which are acts undertaken and rights claimed, before the interpretation was given.	Article 8. The legislator alone has the power to interpret a law in a generally binding manner. Such an interpretation must not be applied to pending cases unless the legislator states that his interpretation must be applied in the decision of cases involving acts performed and rights claimed before the interpretation was given.
Note: > Winiwarter's phrasing is more indirect and difficult for a modern reader to understand, whereas Baeck attempts to be more direct, using negative and positive phrasing in the opposite way Winiwarter does.	
§. 9. Laws are obligatory till they have been either altered, or expressly abolished by the Legislator.	Duration of the law Article 9. Laws are binding until they have been either altered or expressly repealed by the Legislator.
§. 10. Customs can only be taken into consideration in cases referred to by a law.	Other kinds of rules: a) Custom and usage. Article 10. Customs and usage can be taken into consideration only when referred to by a law.
Note: > Winiwarter translates the German word "*Gewohnheiten*" as just customs, whereas Baeck reads into the more encompassing meaning of the word, which also includes usage or practice. As we will see in the part on the Eschig translation, the Eschigs also interpret the word more generally.	
§. 11. Only those statutes of single provinces and districts of the country have obligatory force, which after the publication of this Code have been expressly confirmed by the Sovereign.	b) Provincial statutes. Article 11. *Repealed.*
Note: > This original clause has been repealed because it deals with the powers of the emperor, which were obviously non-existent after 1918.	
§. 12. The determinations issued in single cases and the sentences passed by the courts in particular law disputes, have never the power of a law; they cannot be extended to other cases, or to other persons.	c) Judicial decisions. Article 12. The decisions issued in individual cases and the opinions handed down by the courts in particular litigations never have the force of a law; they cannot be extended to other cases or to other persons.
Note: > Despite improvements in legal terminology, the clause remains almost identical, and some of the changes are somewhat unwarranted, e.g. litigations instead of law disputes, individual instead of single.	
§. 13. The privileges and immunities granted to individuals or to corporations, are to be judged of the same as other rights, so far as the political ordinances do not contain any particular determination on the subject.	d) Privileges. Article 13. The privileges and immunities granted to individuals or to corporations are to be determined in the same manner as other rights, to the extent that political ordinances do not contain particular relevant provisions.
§. 14. The prescriptions contained in the civil Code have for their object the law of the rights of persons, the law of the rights	Main Division of Civil Law Article 14. The provisions contained in the Civil Code establish the law of personal and property rights and the procedures which apply to both.

of things and the determinations, which are common to both of them.	
Note: > This is practically the only clause in the introduction that Baeck actually translates and modernizes without much help from Winiwarter's text. > Baeck provides an explanation of why he prefers to use "property rights" instead of "rights of things": "The Code uses the term Law of Things (Sachenrecht) which includes the law of movable and immovable property; instead of the cumbersome term "things" the term "property" is used throughout the translation." (Baeck 1972: 50)	

Below is a typical example of a provision from the First Part of the ABGB showing that Baeck relies extensively on Winiwarter's phrasing:

First Part: First Chapter – The rights of persons	
Winiwarter (1866)	**Baeck (1972)**
§. 26. The rights of the members of a society authorized, among one another, are determined by the deed, or the object and particular prescriptions existing for the same. In their relations towards others, authorized societies enjoy as a rule equal rights with individuals. Illegal societies have as such no rights, either against the members, or against others, and are incapable of acquiring rights. Illegal societies however are those, which are especially forbidden by the political laws, or are evidently contrary to safety, public order, or good morals.	IV. Rights of a "moral person". Article 26. The mutual rights of the members of a duly organized corporate body are determined by its contract or purpose and by the special provisions which apply thereto. In their relations towards others, duly organized corporate bodies generally have the same status as individuals. Unlawful corporate bodies have no rights whatever, either against the members, or against others, and are incapable of acquiring rights. Unlawful corporate bodies are those which are specifically forbidden to exist by the political laws or are evidently contrary to safety, public order, or good morals.
Note: > In the above text, I have highlighted the words and phrasing that are identical. Although this clause has been heavily edited by Baeck, the similarity of Baeck's text to Winiwarter's is striking.	

The above comparisons provide clear evidence of how little Baeck actually translated the introduction and other clauses, and instead, in many instances, just copied Winiwarter's text verbatim. The influence of Winiwarter's translation is substantial, and the publication of Baeck's book for Columbia University in New York provided an avenue for Winiwarter's legal terms and phrasing to become known, if not actually put into use, in the environment of Columbia University and anywhere the book was purchased or acquired after being published in 1972. The copy of Baeck's book that I use is owned by the law school library of the University of Vienna, so the book is also available in several law libraries outside the United States.

In fact, the on-line library catalogue WorldCat indicates that physical copies of Baeck's book were acquired by over 120 libraries in the United States, as well as numerous libraries in Canada, the UK, and Australia, and libraries in France, the Netherlands, Belgium, Germany, Spain, Sweden, Switzerland, Italy, Hungary, Japan, New Zealand, South Africa, and Thailand.

It is not only the introductory part of the ABGB that is striking with regard to Winiwarter's influence. To further reinforce my argument, let's take a random, though calculated, look at some of the other provisions in the two English versions of the code.

Second Part, First subdivision: Chapter 8 – The Right of Inheritance	
Winiwarter (1866)	**Baeck (1972)**
§. 532. The exclusive right to take possession of the whole succession, or a part of it determined in regard to the whole, (for instance the half, a third part) is called the right of inheritance. It is a real right, which is efficacious against every one, who will arrogate the succession. He, to whom the right of inheritance is due, is called heir, and the succession in regard to the heir, is called inheritance.	Inheritance right and estate Article 532. The exclusive right to take possession of the whole estate, or a part of it in proportion to the whole, (for instance one-half or one-third) is called the right of inheritance. It is a right in rem which is enforceable against anyone who might contest the succession. He to whom the right of inheritance is due is called the heir, and the estate in relation to the heir is called his inheritance.

In this clause, we observe some differences in the legal terms used by both authors, but essentially, the wording is the same. Winiwarter uses the more traditional term "succession" to mean "estate", but the terms can be synonyms, meaning the property and assets a person leaves after death. Winiwarter also uses "real right" to mean a property right, i.e. a right in rem (Baeck's term). Baeck uses "succession" as well, but here to distinguish between the actual property ("estate") and the process of distributing the property ("succession"). Winiwarter uses "succession" for both the property and the process. Although Baeck has in some ways modernized the terminology, Winiwarter's choice of terms is still valid and not as antiquated as we might think, taking into account the age of the translation.

Winiwarter (1866)	**Baeck (1972)**
§. 533. The right of inheritance is founded on the will of the testator declared according [sic] the legal provision; on a hereditary contract admissible according to the law (§. 602), or on the law itself.	Title to inheritance right Article 533. The right of inheritance may be based on the will of the testator declared in accordance with legal provisions, on a hereditary contract admissible according to the law (Article 602) or on the law itself.

In the clause above, the structure is once again copied from Winiwarter with only a few changes. Baeck here is inconsistent in his usage of "in accordance with" and "according to", changing Winiwarter's text to the more acceptable legal term "in accordance with" in the first instance, but then leaving "according to" in the second instance. Winiwarter, on the other hand, is consistent, despite the fact that he omits "to" in the first instance and generally uses the less formal, "non-legal" variety.

This provides a convincing example suggesting that Baeck was not necessarily qualified to revise the English in Winiwarter's text. Consistency is likely Baeck's most serious fault, but we can also venture to guess that Baeck, as a non-native speaker of English, lacked the native education and intuition that a English speaker would have. Winiwarter was also a non-native speaker of English, and although his text is somewhat dated with respect to

certain phrasing and terms, his English knowledge and language intuition appear to be better than Baeck's.

In addition to the text comparison itself, there are other pieces of evidence to support this assumption. Although Winiwarter studied and practiced law, he was also a translator by profession and had much more experience translating Austrian legislation than Baeck did. We get the feeling from Baeck's book that he was a professional legal practitioner, but an amateur translator. Despite these shortcomings, it would be pointless to only emphasize the negative aspects. After all, Baeck did make overall improvements to the wording of the text and made it more palatable to a twentieth-century audience.

Winiwarter (1866)	**Baeck (1972)**
§. 536. The right of inheritance only takes place after the death ot [sic] the testator. If a presumptive heir dies before the testator, he was not able to transfer the right of inheritance, which he had not yet obtained, to his heirs.	Vesting of the estate Article 536. The right of inheritance vests only after the death of the decedent. If a presumptive heir dies before the decedent, the right of inheritance which he had not yet obtained does not pass to his heirs.

In the above example (and in the previous example and the ones to follow), Baeck distinguishes between the testator (writer of the will) and the decedent (the testator after passing away). Winiwarter does not make this distinction and uses only testator. Nevertheless, we notice the redundancy of Baeck's phrase "death of the decedent", which should be "death of the testator" as indicated in Winiwarter or "dies before the decedent" where "testator" once again would make more sense in the logic of the sentence.

Winiwarter (1866)	**Baeck (1972)**
§. 542. Whoever has compelled the testator to the declaration of the last will, or has induced him to this declaration in a deceiptful manner, or prevented him from declaring or modifying the last will, or suppressed a last will already made by him, is excluded from the right of inheritance and remains answerable for all the damage caused by it to a third person.	Article 542. Any person who coerces a testator to execute a last will, fraudulently procures the making thereof, prevents the declaring or modifying of a last will, or suppresses a last will already executed is excluded from the right of inheritance and becomes liable for any damages caused thereby to third persons.

As seen in the introductory provisions of the ABGB and the example above, Baeck paradoxically introduces, and in my opinion, overuses antiquated "there-" compounds, which pre-date even Winiwarter and today could be considered legalese. He uses these terms even in his less formal translator's preface (see the citations above), and there are many more examples of outdated "there/here compounds" used throughout the text. Here again, his overuse of these compounds may be due to his lack of native English intuition and the fact that much of his education in English took place in a formal, perhaps even old-school, legal environment in the 1930s and 1940s where archaisms unfortunately flourished and were considered to be the norm.

Winiwarter (1866)	Baeck (1972)
§. 545. The capacity of inheriting can only be determined according to the moment of the real falling of the succession to a person. This moment is in general the death of the testator (§. 703).	Determination of capacity Article 545. Capacity to inherit can only be determined as of the moment of the vesting of the estate in a person. This moment is, in general, the death of the testator (Article 703)

In the clause above, Baeck now uses the correct formulation "death of the testator" instead of "death of the decedent" used in one of the previous clauses.

Winiwarter (1866)	Baeck (1972)
§. 548. The heir takes upon himself obligations, which the testator would have had to fulfil from his property. Fines inflicted by the law, to which the deceased was not yet sentenced, do not pass over to the heir.	Article 548. The heir assumes all obligations which the decedent would have had to fulfill from his property. Fines imposed by the law to which the decedent was not yet sentenced do not pass over to the heir.

Here is a clear example of how Baeck correctly distinguishes between "testator" and "decedent", using "decedent" only when the person is no longer living. Notice that Winiwarter uses "deceased" here, instead of testator, to emphasize that the testator is no longer alive.

Hence in conclusion, and after evaluating the above sample texts and data, we can consider Baeck's text as a continuation of Winiwarter's translation, infusing it with additional life and moving it culturally and linguistically forward into the twentieth century – and even to a different continent. Baeck copied a lot of text from Winiwarter, and although he revised a substantial portion as well (though some parts not so eloquently), we cannot deny the strong presence of Winiwarter's text in it. Most importantly, we have substantial documentary evidence that the 1866 translation lives on 100 years later, albeit in a slightly modified configuration and packaging.

The Eschigs' translation of the ABGB (2013): influence from the past?

In 2013, approximately 150 years after Winiwarter's translation in 1866 (and 40 years after Baeck's version), a new English translation of the ABGB was published by LexisNexis Verlag ARD Prac GmbH & Co Kg in Vienna. The translators of the code are the husband and wife team **Peter Andreas Eschig** and **Erika Pircher-Eschig**, both of whom are Austrian and have professional legal careers in London. Peter has an LLM and Mag. iur. degree from the University of Vienna and an LL.M. from University College London and is currently the director of a legal translation agency in London, T-Lex Ltd. Erika has an LL.M. from the London School of Economics, a Mag. iur. degree from the University of Vienna, and has worked in London for several years as a solicitor.

Title page and inside cover of the Eschig translation (2013)

Undoubtedly, exploring the circumstances surrounding the Eschigs and their translation is somewhat different than researching people who are no longer living, i.e. Winiwarter and Baeck, and thus a different approach must be taken.

Winiwarter's text is over 150 years old, and all of the artefacts and information relating to him and his translation had to be gathered from written and electronic sources and pieced together into a coherent story.

In fact, I was in contact with only a few living people who could offer any information at all on Winiwarter, one being Dr. Gerald Kohl of the Department of Legal and Constitutional History at the Faculty of Law of the University of Vienna. And of course, nobody who knew Winiwarter personally is still alive. I did, though, talk to one of Winiwarter's direct descendants, Wilfried Winiwarter, who provided me with the only known photo of Winiwarter (see Chapter 3). However, he and his family had practically no new information to offer on Winiwarter.

The situation with Baeck is very similar, and there is even less first-hand information about him and his translation. Most of the information, in fact, concerns his legal articles and publications in the United States.

On the contrary, the Eschigs are alive and well in London, and their translation was only recently published. Hence, their point of view and opinions need to be taken into consideration. As will be seen below in this part of the chapter, I have made personal contact with the Eschigs and initiated a conversation with them in order to discover certain details and information that would not have been available by just examining the textual elements of their translation.

Although their book lacks many of the paratextual clues that Baeck's contained, it is quite unique due to its dual-language format (with the German text on the left and the English on the right) and an extensive glossary at the end (German-English and English-German).

Besides the glossary, the only other peritext found in the book is the short preface at the beginning of the book and a brief blurb at the very end. The preface itself does not give us much information about why the Eschigs decided to translate the ABGB into English, or more importantly, what sources of information or inspiration they used when translating it or, for that matter, if they were even aware that other translations had been done in the past.

Nevertheless, they do mention in the preface the difficulty of translating such an old text into modern English:

> With this translation of the Austrian Civil Code … we tried to translate the German text, which is often difficult to translate, into – in our opinion – modern English. …
> We are aware that, when translating a text which is to some extent more than 200 years old, as well as specific Austrian legal terms into the English language a literal translation is not always possible. …
>
> (Eschig and Pircher-Eschig 2013: VI)

In the blurb at the end of the book, they clearly state the purpose of the translation, which is not unlike Winiwarter's or Baeck's, i.e. to understand Austrian law in the context of international relations and to make it accessible to non-German speakers:

> The **translation** of the **Austrian Civil Code** was predominately written for **lawyers** and **associates** as well as for everyone who refers to **Austrian civil law** in an international context. It shall serve as a **useful tool** and **source of reference**.
>
> (Eschig and Pircher-Eschig 2013)

When exploring the text of the translation and comparing it to Winiwarter and Baeck, there is no convincing evidence that the Eschigs had overtly copied any text from past translations. Thus, the Eschigs' version can be considered a full-fledged translation (see Definitions above). In addition, there is no mention at all of Winiwarter or Baeck in the preface to the book or in any other paratextual information.

Influence from past texts or translators, though, does not necessarily have to be as blatant and transparent as in Baeck's case. And this is certainly true of the translation made by the Eschigs.

So were the Eschigs influenced in any way by older translations of the ABGB?

This is not an easy question to answer. However, it is difficult to imagine how anyone could translate such a lengthy and complicated text in the twenty-first century without at least consulting previous translations that are, in essence, the same text. Along the same lines, it would be absurd to assume that, when translating the ABGB, the Eschigs were completely disconnected from the historical context and evolution of past English translations of the ABGB or other civil legislation. So we can presume at this point that the Eschigs did consult and/or rely on previous translations, at least to some degree – even if there are no overt clues of this in their book.

Fortunately, the Eschigs, who are living and working in London, agreed to provide some information on the topic. As for the purpose of translating the ABGB, Peter Eschig

stressed that the translation was to address the needs of legal practitioners and was not necessarily intended as an academic reference.

The questions that I asked were formulated so that the Eschigs would reveal whether they were actually influenced in any way by past translations. I made a point to tell them that I respect them as translators and made sure they knew throughout the whole process that my intention was not to criticize their work or translation, but on the contrary, to understand how they went about translating such a complicated legal text that has a 200-year history *and* that has already been translated in the past.

Although I was upfront about my objectives, and even mentioned Winiwarter and Baeck to them, I did not want to influence their answers too much, and in essence, let them explain to me their strategies for translating the ABGB.

Unfortunately, only Peter was engaged in the conversation, and although Erika was copied in all of the e-mail exchanges we had, she did not react or offer any information.

One of the key questions I asked in the discussion with Peter was:

- What sources and resources in general did you rely on when translating the ABGB into English?

His answer was quite thorough and included the following:

- Legal dictionaries (Langenscheidt, Black's Legal Dictionary, Oxford Dictionary of Law, etc.)
- Eur-Lex (a freely accessible database of EU law in the 24 official EU languages)
- EuroVoc (an EU terminology database)
- Linguee (an English-German dictionary) which was used for bilingual context research
- Various textbooks on English law
- Legal databases (Practical Law, LexisNexis, RDB)
- A translation of the German Civil Code (BGB)
- Legal commentaries on the Civil Code, especially the famous Schwimman Practical Commentary on the Civil Code

and last but not least,

- The 1972 translation by Paul L. Baeck

Here we have our first piece of evidence that the Eschigs were indeed not disconnected from the past and were influenced in some way by another translation of the ABGB (Baeck) and another English translation of civil legislation (the BGB).

I then proceeded to ask more specific questions relating to this topic:

- Were you aware of any past English translations of the ABGB when doing your translation – specifically the 1866 translation by Winiwarter or the 1972 translation by Paul L. Baeck?

If so, how did these translations (or perhaps other translations) influence you, help you, or guide you when producing your translation?

Of course, he had already listed the Baeck translation as one of his resources, but the first part of his answer was quite surprising.

- "Honestly, we only were made aware of the 1866 translation by our publisher – so we did not refer to it".

This, in fact, further supports my supposition that Winiwarter and his translation has, for all practical purposes, been forgotten or neglected over the years. After all, if conscientious translators of the ABGB, such as the Eschigs, did not know about Winiwarter's translation (a precursor of their text!), then less engaged people would likely not know about it either.

When following up with Peter on this question, I asked the following:

- ❖ When your publisher told you about Winiwarter's translation, were you already finished with your translation, or what stage were you in?
- "I am sorry but I do not recall the exact date."

- ❖ How did you react to the discovery of the 1866 translation? Did you look at it or get a copy of it?
- "We might have looked at it briefly (I think you can find it via google books) but we did not obtain a copy and dismissed it fairly quickly."

I realized at this point that Peter was not necessarily willing to go out of his way to answer my questions, and I sensed a bit of recalcitrance in his answers. In recollection, I understood that this could have been partially due to the fact that my questions were focused more on other translations and not on their translation of the ABGB.

In any case, we can reasonably assume from this last answer, as well as other evidence, that Winiwarter's translation had no *direct* influence on the Eschigs. Or perhaps it did? They obviously cared enough about it to know that it can be found "via google books". In fact, that copy is easily accessible and free of charge.

In contrast, the Eschigs were aware of Baeck's 1972 translation, and we can infer from the responses that they consulted it to a certain degree.

Peter's answer was as follows:

- "Regarding the 1972 translation: We were aware but did not refer to it extensively (other than to double-check the [use of] important terminology)"

Peter remarked that the code has been amended many times since the 1972 translation, and not many practitioners are aware of this, and hence they [he and Erika] "did not consult the translation very often" and essentially used the text to "double-check important terminology".

Peter also pointed out that they did not use the translation directly, i.e. they did not "copy" the text because that would have been a copyright infringement. Instead, in Peter's own words, we "rather chose to rely on our own attempts to transfer the meaning of the Civil Code…"

Again, despite my reassurance that I was not trying to critique them or their translation in any way, I sensed that he was being very careful and somewhat disinclined in his answers.

When discussing this topic further with Peter, he did mention two examples of where they consulted or "doublechecked" terminology with the Baeck translation: the terms "minor" and "liability", but no details were added.

When asked if they could provide a few more examples of terminology (or any other aspects) that they consulted or double-checked with the Baeck translation, Peter gave the following response:

- "Unfortunately, I can't – as mentioned, our aim was a new and modern translation of the Civil Code and we did not focus on previous translations (or the translation of the German Civil Code)."

I then turned to the examples of terms that he did provide:

- By the term "minor" are you referring to the use of "Minderjährige" in the text?

And his answer:

- "The glossary should clarify that or do you have any specific questions in this regard."

The entry in the glossary and the occurrences of the term in the legislative text (cited below) do more or less clarify and confirm this, and so I proceeded to consult the text.

Minderjähriger	minor	21, 138 158–183, 204–233, 271, 272, 276, 310, 569, 865, 1034, 1219, 1454, 1494, 1495

(from the bilingual glossary; Eschig 2013: 377)

Below is an example of a section where the term “minor” appears in all three translations.

Winiwarter (1866)	Baeck (1972)	Eschig (2013)
§. 21. Those, who for want of years, infirmities of the mind, or other circumstances are themselves unable to take proper care of their affairs, stand under the peculiar protection of the laws. To this class belong : children, who have not yet reached their seventh year; those, who have not attained the age of discretion, namely their fourteenth year; minors, who have not completed the twenty fourth year of their life; then: raving persons, mad persons and idiots, who are either entirely deprived of the use of their reason, or are at least incapable of understanding the consequences of their actions; further those, whom the judge, as declared prodigals, has forbidden the further administration of their property; lastly persons, who are absent, and communities.	II. Personal rights based upon age or metal deficiency Article 21. Those who, for want of years, infirmities of the mind, or other reasons, are unable to take proper care of their affairs have special protection under the laws. To this class belong: children less than seven years of age; persons less than fourteen years of age; minors less than twenty-one years of age; then lunatics, insane persons and imbeciles, who are either entirely deprived of their reason or are at least incapable of appreciating the consequences of their actions; those who have been adjudged spendthrifts and forbidden further to administer their property; and, persons who are absent and municipal bodies.	**II. Personal rights of minors as well as those having otherwise limited capacity to act.** § 21. (1) Minors and individuals who are not capable of taking care of all or some of their matters on their own due to a reason other than being a minor, are specifically protected by law. (2) Minors are individuals who are not yet 18 years old; if they are not yet 14 years old, they are under age.
In the German text, minor = Minderjährige		

In the comparison above, the Eschigs’ translation is quite different due to the fact that the provision has been amended and updated several times between 1866 and 2013. Baeck’s text is understandably more similar to Winiwarter’s and shares even the same overall structure, so there is a definite and direct connection between Winiwarter and Baeck. Baeck, in fact, has copied Winiwarter’s wording, including Winiwarter’s use of “minor”.

As Peter originally mentioned, the Eschigs consulted the use of “minor” in their translation with Baeck’s text. So we can logically infer from this that, since *Minderjährige* was used in the German text, there could, in fact, be an indirect influence of Winiwarter on the Eschigs by way of Baeck in this instance of the use of “minor”. However, Peter was unwilling to elaborate on the specific instances of where they consulted the use of “minor”, so we can only somewhat reliably infer this connection from the occurrences of the terms *Minderjährige* and “minor” in the text.

To reinforce this line of reasoning, I provide below another example of the use of “minor” in a section of the code for all three translations.

Winiwarter (1866)	Baeck (1972)	Eschig (2013)
§. 272. Should legal disputes arise between two or several minors, who are under	Article 272. Should legal disputes arise between two or more minors who have	§ 272. If the interests of two or more minor [persons] or persons not having

one and the same guardian, this guardian dare not represent either of the minors, but he must apply to the tribunal to appoint another curator for each separately.	a common guardian, the guardian must not represent any of the minors and he must apply to the court to appoint a separate curator for each.	full capacity to act otherwise who have the same legal representative are in conflict with each other, he must not represent either of the mentioned persons. The court has to appoint a special trustee for each of them.
In German: Minderjährigen (1811) (1966; the German version Baeck used) minderjähriger Personen (2013)		

Although there are certain differences in the 2013 German text, the overall meaning of the clause has not changed. The conveyance of text from Winiwarter to Baeck in the above clause is distinct and unquestionable, and we can imply the indirect influence in the Eschigs' text with the occurrence of "minor [persons]".

When considering the second word that Peter Eschig mentioned as a term they consulted with the Baeck text, i.e. "liability", I asked the following:

- ❖ And what about the term "liability"?
  Are you talking about "Deliktsfähigkeit" or perhaps the use of "haften für" throughout the text?
  And his answer:
- ➢ "I would need to check this where ever the term is used (the translation of a term will always also depend on the context). If you have any specific questions in connection with a section please do let me know but I would struggle to do a general analysis now."

Below are a few examples of clauses containing "liability/liable":

Winiwarter (1866)	**Baeck (1972)**	**Eschig (2013)**
§. 460. If the creditor has pledged the pledge further, he is liable even for such an occurrence, by which the pledge would not have been destroyed or deteriorated, if it had remained in his custody.	Article 460. If the creditor has made a sub-pledge, he is liable for the loss of the pawn through such an event as would not have occurred if it had remained in his custody.	§ 460. If the creditor pledged the pledged asset further [to someone else], he is even liable for such coincidence whereby the pledged asset would not have been lost or deteriorated if it had been in his [possession].
Same text in German for all three translations[34]: Hat der Gläubiger das Pfand weiter verpfändet; so haftet er selbst für einen solchen Zufall, wodurch das Pfand bey ihm nicht zu Grunde gegangen oder verschlimmert worden wäre.		

Winiwarter (1866)	**Baeck (1972)**	**Eschig (2013)**
§. 801. The consequence of an unreserved entrance on the succession is, that the	Effect of the unconditional acceptance Article 801. Upon the unconditional acceptance of the estate, the heir	**Effect of the unconditional,** § 801. The consequence of the unconditional declaration of

[34] There were only minor differences in the German versions relating to updated spelling conventions, e.g. "bey" vs. "bei" and the use of "ß/ss".

heir must make himself liable to all the creditors of the testator for their demands, and all the legatees for their legacies, even when the assets are not sufficient to satisfy them.	becomes personally liable to all the creditors of the testator for their claims and to all the legatees for their legacies, even if the assets of the estate are not sufficient to satisfy them.	acceptance of inheritance is that the heir is liable to all creditors of the testator with respect to their claims and all legatees for their legacies, even if the estate is not sufficient.
Same text in German for all three translations: Die unbedingte Erbserklärung hat zur Folge, daß der Erbe allen Gläubigern des Erblassers für ihre Forderungen, und allen Legataren für ihre Vermächtnisse haften muß, wenn gleich die Verlassenschaft nicht hinreichet.		

Winiwarter (1866)	**Baeck (1972)**	**Eschig (2013)**
§. 891. If several persons promise one and the same whole, solidarily, in such a manner, that one binds himself expressly for all and all for one; each separate person is liable for the whole. …	Joint and several obligations (Korrealitaet) Article 891. If several persons promise jointly in regard to the same matter in such a manner that one obliges himself expressly for all and all for one, them each separate person is liable for the whole. …	**Relationship of debtors among themselves.** § 891. If multiple persons jointly and severally promise one and the same in a way that one is expressly obliged for all and all expressly for one, each individual person is liable for the whole. …
Same text in German for all three translations: Correalität. Versprechen mehrere Personen ein und dasselbe Ganze zur ungetheilten Hand dergestalt, daß sich Einer für Alle und Alle für Einen ausdrücklich verbinden; so haftet jede einzelne Person für das Ganze.		

Winiwarter (1866)	**Baeck (1972)**	**Eschig (2013)**
§. 1397. Whoever cedes a demand without an equivalent, consequently makes a present of it, is not further liable for it. …	Liability of the assignor Article 1397. A person who assigns a claim gratuitously makes a donation thereof and has no further liability in regard thereto. …	Liability of the assignor. §. 1397. Whoever assigns a claim without consideration, hence donates, is no longer liable for the claim. …
Same text in German for all three translations: Haftung des Cedenten. Wer eine Forderung ohne Entgeld abtritt, also verschenkt, haftet nicht weiter für dieselbe. …		

The clauses above were selected because, among other things, the German text has not been changed or amended since the code was first drafted in 1811, and so the translators used the same base text for their translations.

As mentioned earlier, there are no particularly overt traces of influence or borrowing in the Eschigs' translation. In addition to the use of "liability/liable", there are several terms and phrases in the resulting translations that are similar, even in the Eschigs' translation. But this does not necessarily mean that the Eschigs have "borrowed" these terms or phrases or even consulted the texts. The reason could be simply "translational coincidence" (see Definitions).

I followed up one more time with Peter on the topic of the terms they consulted with the Baeck translation, and the response I received was quite interesting and somewhat disappointing.

These were the questions:

- I know the term Minderjährige was used in several sections of the code, e.g. §21, §272, §569.
  Were these some of sections where you double-checked the use of "minor" with the 1972 translation? Or other sections?
  I know the German originals are somewhat different, but the essence of those sections is the same in the 1966 German version (the version Baeck used) and the 2013 German version.

I provided a comparison chart of Baeck and the Eschigs' clauses to make it easier for Peter to remember and compare data.

- There are even more sections in the code where "liability" or "liable" appears, e.g. §460, §801, §891, §895, §§1397/1398, §1406, etc.
  Did you double-check the term liability/liable in some of these sections? And if not, did you check in other sections?

I again provided examples in a comparison table.

His reaction to my questions was as follows:

- "My initial e-mail might have been a bit misleading when I listed the Baeck translation as resource/source. We were obviously aware of the translation but dismissed it very early in the process so it should not have been included as a resource/source. Past texts did not have an influence on our translation as we did not really read them and did not compare German sections and the various translations. Whilst we might have checked some terms, this was not a complete analysis of each section (and in which context) such term was used.
  Re the terms "minor" and "liability" – we definitely did not check the translation of each section where these terms were used. As we only used the Baeck translation to a very limited extent we do not even have notes in this regard so can unfortunately not confirm your below questions. Unlike Baeck (as it seems from your below e-mail), we did not use a previous translation as the basis for our translation."

From the answer above, it is clear that Peter was trying to avert any attempts on my part to associate their translation with copying or plagiarizing past translations, even though I had emphasized several times that this was not my goal and that I just wanted to understand what strategies they used to translate such a complicated legal text that had already been translated in the past and to find out if they were influenced in any way by the past translations.

His reaction, on the other hand, is understandable considering that Peter and Erika are lawyers and are justifiably quite proud of their translation. As a rule, lawyers are often extremely cautious about what they say and want to avoid any risk of damage to their reputation or good standing – in this case, as respected translators of legislation.

Before realizing what my intention was, Peter more freely provided information and even admitted to consulting Baeck's text. After it was clear to him that I was trying to find out whether they had been influenced by Baeck's translation, he backed down from his original answers and stated outright that they were not influenced by past translations at all and that they did not use a previous translation "as a basis for" their translation.

The whole purpose of questioning the Eschigs, contemplating their responses and intentions, and comparing the sections of the code was to arrive at a reasonable conclusion of whether or not there was any indirect causal link between the Eschigs' translation and Winiwarter. The question is whether the evidence and data are conclusive in this respect.

Should we take Peter at his word, or should we read into the situation and consider all of the surrounding context and circumstances? Were the Eschigs actually influenced by past translations of the ABGB?

When taking the evidence into consideration, it would be difficult to say no. I am convinced that they were indeed influenced by Baeck's text, at least to some extent, despite the Eschigs' contrary opinion, and all of the evidence seems to support this claim. Moreover, as a consequence of association with Baeck's text, they were also *indirectly* influenced by Winiwarter's text.

Whether this is a correct assumption or not does not change the fact that there is an historical and contextual link between the texts, explicitly between Winiwarter and Baeck and implicitly between the Eschigs and Baeck.

The most substantial piece of evidence is the fact that the Eschigs knew about the Baeck translation, looked at it, and even consulted it, as they originally admitted to me. Their strong denial of this at a later stage in our conversation was an expression of apprehension on their part and a means of protecting their interests and reputation. This contradictory reaction, in and of itself, suggests that they could indeed have been influenced by the texts. Nonetheless, without being actually present when they translated the code, it is more difficult to ascertain just how much they were influenced.

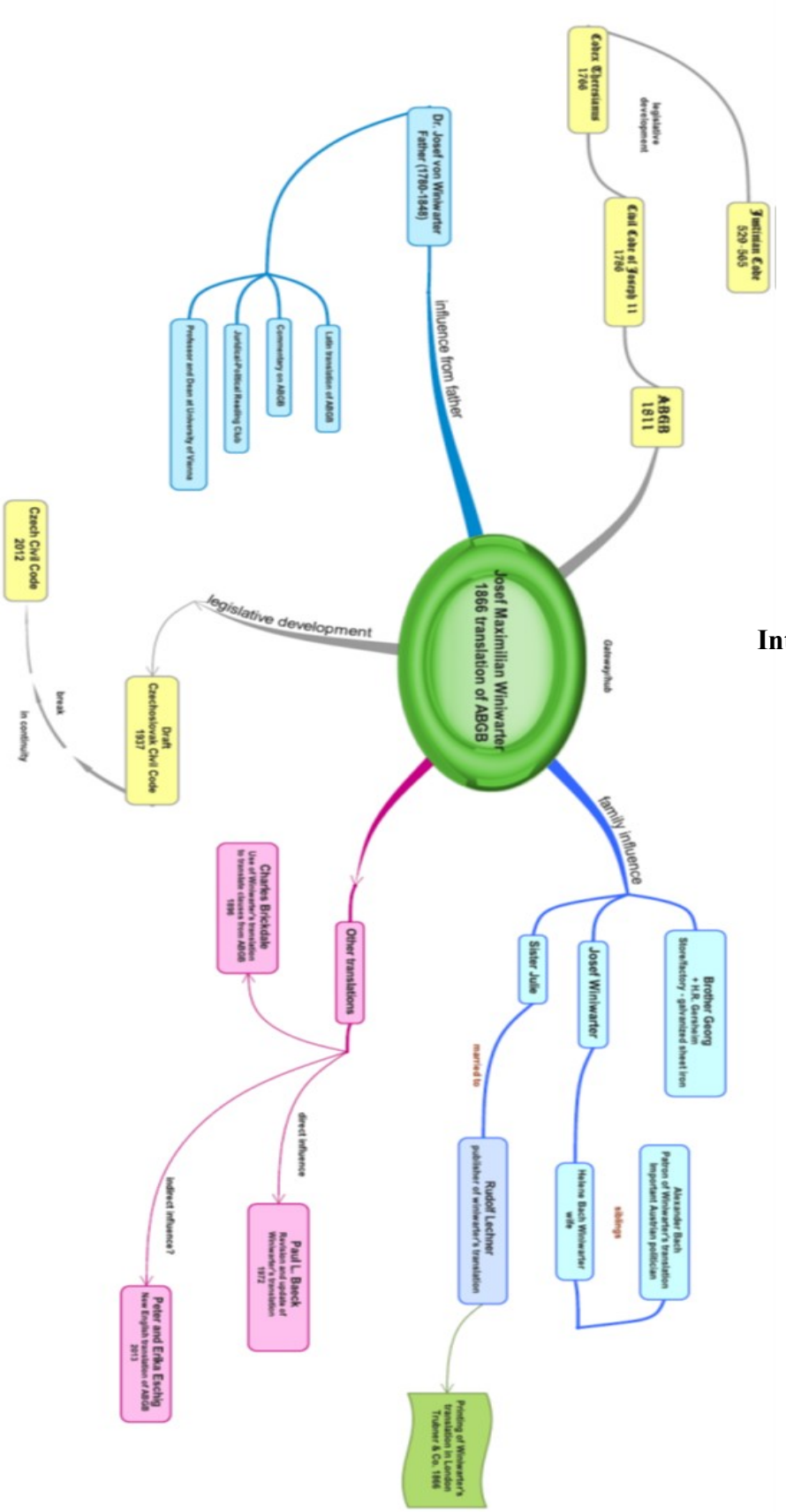
Another important piece of supporting evidence can be found in the comparison of the texts (see above). Although the evidence is not as conclusive as between Baeck and Winiwarter, we can infer with some level of certainty that this link and influence is present.

In any case, whether the Eschigs were "directly" influenced by Baeck's text or not, they did, admittedly, look at the text and consult some of the terminology and thus were motivated or affected by the text in some way, however indirectly or remotely this might have been.

When comparing all three English translations, including Brickdale's excerpts, we see a sort of progression in the development of the legislative text. And Winiwarter's presence is still perceptible.

As we will see in Chapter 5, all four of the translators (Winiwarter, Brickdale, Baeck, and the Eschigs) offer recommendations and advice on how to translate continental civil law into English – in their own style and manner and using their own methods.

On the following page, I provide an integrated network map summarizing and contextualizing the lines of influence relating to Winiwarter and his English translation of the ABGB.



Integrated network map

5

Future Directions

Translators undoubtedly employ various strategies to translate the terminology and phrasing of civil legislation into other languages. As Šarčević (2010) points out, literal translation was considered in the past to be the only valid strategy for translating legislation. However, this situation had changed during the twentieth century, and many "freer" and more dynamic strategies have been offered and used.

> "… text type and *skopos* are the main factors affecting translation strategy; however, extra-linguistic factors constituting the specific communicative situation of the particular multilingual setting also come into play …".
>
> (Šarčević 2010: 25)

In this chapter, I will draw on past experiences of translating the Austrian Civil Code into English in an attempt to propose a general framework for translating European civil legislation into English. In addition to the Austrian context, centred on the ABGB, I will make repeated references to the Czech Civil Code as a unique example of a legislative text grounded in the tradition of the ABGB and the efforts made during the last decade to effectively translate the code into English. The overall approach will focus on bridging the gap between common-law and civil-law drafting traditions and effectively translating the unique language of continental law by tapping into the historical evolution and texts of past English translations of the Austrian Civil Code.

In order to accomplish this, I will make use of the research and texts taken up in the previous chapters. The basis of this framework is to use and consult the experience of translators from the past, their knowledge, and most importantly, their translations.

Translators are not solitary creatures scavenging for random bits of information in an isolated environment, but are contextualized beings connected to the methods, traditions, and texts of the past, whether they are aware of this or not. Hence, it is important for translators to be conscious of this, to learn and acquire this past knowledge, and above all, to put it to use. This is the essence and key premise of my approach.

The framework is founded on what I refer to as the "Winiwarter tradition" (see Definitions above) and the historical and causal evolution of Winiwarter's English translation of the ABGB, and it will offer general guidelines for putting this tradition into practice. Thus, the aim of this chapter is not to provide an exhaustive analysis or a concrete methodology for translating civil legislation into English, but to provide examples of strategies and recommendations illustrating how this framework could work and how it could be useful to legal translators.

The Winiwarter tradition:
A framework for translating civil legislation into English

Translating law into another language is generally not an easy task. And translating the concepts and cultural context of civil law into English, which is grounded in a common-law tradition, is even more challenging.

As Cao (2010) points out:

> "A basic linguistic difficulty in legal translation is the absence of equivalent terminology across different languages. This requires constant comparison between the legal systems of the SL and TL. In terms of legal style, legal language is a highly specialised language use with its own style. The languages of the Common Law and Civil Law systems are fundamentally different in style. Legal traditions and legal culture have had a lasting impact on the way law is written."
>
> (Cao 2010: 192–193)

If you have ever translated civil legislation into English, you most likely will have no difficulty comprehending and agreeing with the above statements, and although the translators in my story come from different backgrounds and periods in history, they seem to be in agreement on this point as well.

Winiwarter had mentioned in the preface to his translation that German (and civil law in general) is so peculiar that it is difficult to find corresponding words in English.

Due to the complicated nature of the legislative text in German and in English, Brickdale decided to paraphrase most of Winiwarter's clauses so that they would be more palatable to English-speaking ears.

Baeck stresses in his preface that misunderstandings can occur due to the incongruency of terminology between languages, and the fact that there is a lack of good translations does not help matters. The frequency of notes throughout his translation also demonstrates that he was attempting to cope with the difficulty of the German original.

The Eschigs pointed out that it was difficult to translate the German text into modern English, and due to the specificity of Austrian-German legal terms and the age of the text, they could not make a literal translation and also had to slightly adjust the German text.

In the Czech Republic during the early years of the twenty-first century, we encounter slightly different circumstances that have complicated the task of translating civil legislation into English.

The new Czech Civil Code was introduced in 2012 and came into effect at the beginning of 2014. Drafted at a time when the legislators wanted to rid the Czech Republic, once and for all, of all legislative remnants of socialism, the aim of this new legislation was to reconnect Czech society to its legal roots and traditions grounded in mainstream European continental law. These roots stretch as far back as the Code of Justinian, and were firmly established and even codified in the Austrian Monarchy in 1811 with the drafting and adoption of the ABGB (see Appendix 1 for an historical survey).

However, after the Second World War, the continuity of this civil-law tradition in the Czech lands was severed, and it was gradually replaced with a socialist legal system that deviated substantially from European civil law.

So with the introduction of the new Czech Civil Code in 2012, legal terms and concepts that had not been used in over 60 years were now being revived and incorporated into the new legislation (e.g. the archaic word "*pacht*" and many other concepts and terms), and for the general public as well as lawyers, the text seemed to be very awkward, outdated, and just generally difficult to understand.

Hence, the first problem was understanding the new Civil Code in the original Czech, and then, translating the code into other languages, such as English. The question was – and still is to some extent – how to go about translating the Czech Civil Code into English without reliable and readily available models.

Given the specific context and historical nature of the original Czech text, grounded in the ABGB tradition of civil law, one logical step would be to revisit Winiwarter's 1866 English translation and the texts and translations of his successors (see above for a definition of "successors") as terminological and conceptual sources for translating the Czech Civil Code into English. And as will be demonstrated further in this chapter, this strategy is not only applicable to the Czech situation but could also be useful for anyone translating European civil legislation into English.

As laid out in the previous chapters, Winiwarter's translation and the successor texts and translations have played an important role in the development of vocabulary and phrasing for translating the Austrian Civil Code into English. So why not take advantage of this unique knowledge which offers translators contextual grounding and assistance for translating European civil legislation into English.

The Winiwarter tradition then is an approach to translating civil legislation that draws on the experience and translations of past translators in an attempt to contextualize legislative texts and to provide legal translators with historically relevant and accurate solutions.

The trailblazing work of Josef Winiwarter (1866)

When translated in 1865/66, Winiwarter's text was an original and ground-breaking work that offered legal practitioners, institutions, and even the general public a means of expressing European civil-law concepts in English. Despite being over 150 years old, Winiwarter's translation provides a solid foundation and is still a viable source of civil-law terminology and phrasing for English translations.

I provide below a few examples of typical phrasing, vocabulary, and strategies used by Winiwarter that could be useful to consult and adopt when translating civil legislation into English:

A. Phrasing: Perhaps the most valuable assistance Winiwarter has provided with his translation of the ABGB is his general sentence structure and phrasing of the provisions in English. This was, in effect, the first official English translation of the ABGB. And though it may seem somewhat outdated to contemporary

translators and legal practitioners, his use of language helped create a style that was distinctly his and was a preliminary model or template for future translations of the ABGB as well as other civil legislative texts in this part of Europe.

Here are a few typical examples of his distinctive legal style of expression:

> *In cases of doubt, whether a child has been born living or dead, the former is to be presumed. Whoever maintains the contrary, must prove it.* (§23)

> *The relation, in which one member of a family stands towards the others, is established by the marriage-contract. In the marriage-contract two persons of different sexes declare legally their resolution to live together in inseparable community, to beget children, to educate them, and mutually to assist one another.* (§44)

> *If some one is injured by an animal; he who has driven it, who has excited it, or has neglected to guard it, is answerable for it. If no one can be convicted of a fault of this sort; the injury is to be considered as an accident.* (§1320)

It is difficult to ignore Winiwarter's legal clarity and eloquence of style, especially when considering that he was not a native speaker of English. And even today, translators can still gain practical knowledge from consulting his sentence structure and overall phrasing.

B. Recommendation: Pacht (Pachtzins) vs. Miete (Mietzins)
The difficulty in differentiating between the historical civil-law pair *Pacht* (Latin *pactum*) and *Miete* is handled in English by Winiwarter and his successors in various ways (see the discussions below on these terms for Baeck, Eschig, and Chromá 2014). Winiwarter resolves the situation in §1092 of the code by using "deeds of conveyance" for *Mietverträge* and "leases" for *Pachtverträge* and translating both *Mietzins* and *Pachtzins* simply as "rent" when no distinction needed to be made. In some cases (e.g. §1101), he felt it necessary to differentiate between the two types of rent: "house-rent" (*Mietzins*) and "farm-rent" (*Pachtzins*). Many other instances of "*pacht*-" are translated into English as "farm", e.g. *Pächter* (farmers – §§1096, 1098), *Pachtstücke* (things farmed – §§1098, 1106), and *Pachtung* (contract for farming – §1099).

C. Strategy: As Winiwarter mentions in his preface, when there were no real equivalents in English for the German terms, he used the most suitable words in English and then clarified the meaning by adding the appropriate Latin terms, a strategy that is still employed today in the legal languages of many Western cultures. This strategy prevents any confusion with respect to incongruities in meaning between the source and target languages and works well in a common-law environment, which also relies heavily on Latin legal terminology. Either an English-speaking practitioner will understand the Latin term or will look it up to

understand the meaning. In any case, the Latin term will most likely be more precise from a legal standpoint than trying to find an equivalent in a language that does not have this concept to begin with.

Examples: §70 – guardian of souls (*curator animarum*), §97 – privileged court in the first instance (*forum nobilium*), §97 – representative of the Fiscus (*procurator fisci*), or §1450 – restitution to the former state (*restitutio in integrum*).

As will be demonstrated, Winiwarter's translation is a solid foundation that his successors have used and built on, and additional examples of Winiwarter's terminological choices will be included in the sections below on his successors and their texts.

Brickdale – notes, adjustments, and paraphrasing (1896)

As discussed in Chapter 4, Brickdale selected clauses from Winiwarter's translation of the ABGB in order to describe and explain to his audience back in English the system of land registration in Austria-Hungary. In the majority of cases, instead of just copying Winiwarter's provisions verbatim, he adjusted the wording or paraphrased the clauses to make it easier for native English speakers to understand. Below are some of his recommendations for translating terms into English or the strategies he used when translating for his audience.

A. Recommendation: In a footnote on page 117, Brickdale recommends using the Latin-based term "dominium" for *Obereigenthum*, instead of Winiwarter's term "right of lord paramount", and "usufruct" for *Nutzungseigenthum*, instead of "usufructuary property" (see below in the section on the Eschigs for a comparison of the full clauses – §629).

B. Recommendation: In another note on page 117, Brickdale explains the difference between the German terms *Verjährung* and *Ersitzung* and provides suggestions for translating them. He explains that *Verjährung*, which corresponds to the English "Statute of Limitations", is *Præscriptio* in Latin and should be translated as "Prescription" in the context of the Austrian Civil Code. Winiwarter also translates this term as "prescription". The other term, *Ersitzung*, as he points out, is a stronger form of possession and does not have an equivalent in English law. He suggests translating this term, not with its Latin equivalent (*Usucapio*), but as "Title by Possession" or just "possession". Winiwarter uses the anglicized version of the Latin term, "Usucaption" (see Appendix 15 for the complete transcript). Also see below for a comparison of Baeck's and Brickdale's use of these terms (§§1451–1452).

C. Recommendation: In §431, Brickdale recommends using "registration", which is a more standard term used in English for this process, instead of "intabulation". The German version of the ABGB uses *Einverleibung* and also provides the term "intabulation" in parentheses. This is likely the reason why Winiwarter decided to use the term "intabulation" in his translation. If we look at the other two translations of the

ABGB, Baeck surprisingly also uses "intabulation", and the Eschigs elegantly resolve the problem by using "incorporation" and putting "intabulation in parentheses, mirroring the original German text[35].

D. Strategy: In some cases, Brickdale uses Winiwarter's overall clause structure but adjusts and modernizes the wording and terms so that they sound more like a common-law text.

Winiwarter (1866)	**Brickdale (1896)**
§. 1500. The right gained by means of usucaption or prescription can however not be prejudicial to a person, who trusting in the public books has purchased a thing or a right, before the right gained by means of usucaption or prescription has been entered in the public books.	1500. Provided that a right gained by possession or by prescription cannot be asserted to the prejudice of a person who has, in reliance on the public register, acquired the property before the registration of the prescriptive or possessory right.

In the comparison above, Brickdale modernizes the terms:

- usucaption > possession
- public books > public register
- thing > property

and adjusts the phrasing:

- prejudicial to a person > to the prejudice of a person
- right gained by means of usucaption or prescription > prescriptive or possessory right
- trusting in > in reliance on

E. Strategy: Brickdale's use of paraphrasing offers various alternatives for Winiwarter's terms and significantly shortens the phrases. His strategy here is directly related to the *skopos* (purpose) of his translation, i.e. to explain the ideas to his audience in England as simply and clearly as possible. As opposed to Winiwarter's text, there was no need to strictly adhere to the original structure of the legislative text in German. In fact, Brickdale stated this aim specifically in his introductory note:

> … I have found it advisable for the purposes of this Report to treat the text with rather more freedom than would have been admissible in Dr. von Winiwarter's work.
>
> (Brickdale 1896: 115)

Examples of his paraphrasing:

In §632, Brickdale takes the original, long and complicated clause and shortens it to two lines. Undoubtedly, his paraphrase is much easier to understand than Winiwarter's clause, which follows the structure of the original German version.

[35] In Czech, the corresponding term would be "vklad" (intabulace).

Winiwarter (1866)	Brickdale (1896)
§. 632. A possessor of an entailment can, it is true, renounce his right for himself, but in no case for the posterity, even, if it does not exist. If he mortgages the produce of the entailment, or even the estate itself under entailment; the mortgage is only good for that part of the produce, which he is justified in collecting, but not for the estate under entailment, or for the share of the produce, which belongs to the successor.	632. [Limited owner can only deal with his own beneficial interest in the property.]

In §1474 below, Brickdale abbreviates the clause to quickly convey the meaning to his audience. Notice that it is not even a full sentence.

§. 1474. The qualification of a family-entailment, of a fee-farm and copyhold-estate is only lost in consequence of a free possession of fourty years.	1474. [Entails and settlements protected against prescription for 40 years.]

Baeck's annotations (1972)

As discussed in detail in Chapter 4, Winiwarter had a huge influence on Baeck and his version of the ABGB, and Baeck even openly stated this in his preface. What sets Baeck apart from Winiwarter and the other successors was that he heavily annotated his text in the form of legal and linguistic recommendations. Below are some examples that could offer assistance when translating civil-law texts into English.

A. Recommendation: As discussed above in the Winiwarter section, the terms "*Miete*" and "*Pacht*" are a common issue when translating civil legislation into English, and Baeck discusses this as well. In his note on page 211, Baeck explains the difference between both terms and points out that there is a third expression in German covering both concepts, i.e. "*Bestandvertrag*" which he translates as "contract of tenure". After careful deliberation, Baeck recommends translating *Miete* as "tenancy" and *Pacht* as "lease".

The table below compares the use of terms for Winiwarter's principal successors and the corresponding German original. The terms are colour-coded to match up the terms for each of the translators.

Winiwarter (1866)	Baeck (1972)	Eschigs (2013)
Of contracts for hiring, for hereditary tenement and copyhold.	Contracts of Tenure, Hereditary Leasehold and Copyhold. Contract of Tenure	**About tenancy agreements [, emphyteusis agreements and rent charge agreements][36] Lease agreement.**

[36] The part in brackets […] is no longer in effect.

§. 1090. The contract, by which some one receives the use of an inconsumable thing, for a certain time and for a fixed price, is called in general a contract for hiring.	Article 1090. A contract by which a party is granted the use of durable property for a certain period and for a fixed price is called, in general, a contract of tenure.	**§ 1090.** The agreement pursuant to which someone is granted the use of an [sic] non-consumable asset for a specific period of time and for a specified price is called a lease agreement.
§. 1091. The contract for hiring is called deed of conveyance, when the thing hired can be used without being worked; but lease, when it can only be used with application and trouble. If in a contract things of the first and second description are hired at the same time; the contract is to be judged of according to the quality of the principal thing.	1. Contract for tenancy and lease. Article 1091. A contract of tenure is called a tenancy contract when the property for which tenure was granted can be used without further work and is called a lease when it can be used only with diligence and work. If in a tenure contract property if both sorts is granted at the same time, the contract is to be determined according to the nature of the principal property.	**I) Tenancy and commercial lease agreement.** § 1091. A lease agreement is called a tenancy agreement if the asset subject to the lease can be used without further modification; if it can only be sued by [use of] diligence and effort, a commercial lease agreement. If assets of the first and the second type are subject to a lease agreement at the same time, the contract is to be assessed in accordance with the nature of the main asset.
German original: **Von Bestand-, Erbpacht- und Erbzins-Verträgen.** **Bestandvertrag.** § 1090. Der Vertrag, wodurch jemand den Gebrauch einer unverbrauchbaren Sache auf eine gewisse Zeit und gegen einen bestimmten Preis erhält, heißt überhaupt Bestandvertrag. **Mieth- und Pachtvertrag.** § 1091. Der Bestandvertrag wird, wenn sich die in Bestand gegebene Sache ohne weitere Bearbeitung gebrauchen läßt, ein Miethvertrag; wenn sie aber nur durch Fleiß und Mühe benützt werden kann, ein Pachtvertrag genannt. Werden durch einen Vertrag Sachen von der ersten und zweyten Art zugleich in Bestand gegeben; so ist der Vertrag nach der Beschaffenheit der Hauptsache zu beurtheilen.		
Note: The comparison of terms in the ABGB (such as the above clause) could provide some clarification with respect to translating the terms used in the Czech Civil Code relating to sections 2201 to 2331 on "*nájem*" (rent, tenancy, lease) and sections 2332 to 2357 on "*pacht*" (lease, usufruct, usufructuary lease). See discussion below on this topic relating to Chromá 2014.		

The above terms can be summarized as follows:
Bestandvertrag = contract for hiring (Winiwarter) = contract for tenure (Baeck) = lease agreement (Eschig)
Erbpachtvertrag = hereditary tenement (Winiwarter) = hereditary leasehold (Baeck) = emphyteusis agreement (Eschig)
Erbzinsvertrag = copyhold (Winiwarter, Baeck) = rent charge agreement (Eschig)
Mietvertrag = deed of conveyance (Winiwarter) = tenancy contract (Baeck) = tenancy agreement (Eschig)
Pachtvertrag = lease (Winiwarter, Baeck) = commercial lease agreement (Eschig)

B. Recommendation: Baeck discusses the use of the civil-law term "thing" in a footnote on page 50. The ABGB itself includes a section on *Sachenrecht* (Law of Things), which he suggests translating as "Law of Property". He also recommends translating *Sache* (literally "thing") as "property" in order to avoid the cumbersome term "thing". Interestingly, Winiwarter decided to use "thing" to correspond more closely to the

original term in German and other European languages, including Latin (*res*).[37] As we see in the comparison table below, the Eschigs opted for another term: "asset".

Winiwarter (1866)	**Baeck (1972)**	**Eschigs (2013)**
§. 285. Every thing, which differs from the person and serves for the use of men, is called a thing in the legal sense.	Article 285. Everything which differs from the person and serves for the use of men is called property in the legal sense.	§ 285. Everything that is different from a person and that can be used by humans is defined as an asset in the legal sense.
German original: Alles, was von der Person unterschieden ist, und zum Gebrauche der Menschen dient, wird im rechtlichen Sinne eine Sache genannt.		
2012 Czech Civil Code: §489 Věc v právním smyslu (dále jen „věc") je vše, co je rozdílné od osoby a slouží potřebě lidí. Section 489 A thing in a legal sense (hereinafter a "thing") is everything that is different from a person and serves the needs of people. Note: Like Winiwarter, the English translation of the Czech Civil Code, retrieved from the ASPI database, also uses "thing" as a translation of "*věc*".		

The Czech Civil Code contains an almost identical provision defining the term "thing" (see above). The influence from the ABGB here is unmistakable, and hence, it would be beneficial to consult the various English translations of section 285 in the ABGB when translating the Czech provision (§489), as well as other provisions that are similar in the Czech Civil Code. When taking into account the translators' choices above, perhaps one of the alternatives to "thing" would be more effective for the translation of "*Sache*" or "*věc*"(?) See the discussion below (Chromá 2014) on the use of "thing" in the Czech Civil Code.

In any case, since the term "thing" is used throughout most European civil codes (e.g. *Sache* – German, *věc* – Czech) and the Latin term "*res*" is commonly used in western legal texts in a number of legal expressions, translators should indeed carefully consider how they express this term in English.

C. Recommendation: On page 151, Baeck makes a practical recommendation with respect to the German term *Verwaltung*, which could be translated as "administration" in other contexts. Baeck points out that "administration" in legal English, i.e. personal representation of the deceased person, means something quite different than what the term intends to connote in German. The German term *Verwaltung* means management, and thus to avoid confusion, should be translated as such.
In the table below, both Winiwarter and Baeck use "management". The Eschigs, on the other hand, opt for "administration" and "administer". In the context of inheritance, it seems that the choice of "administration" could indeed be ambiguous and lead to misunderstandings.

[37] Although the German word "Ding" is related to "thing" etymologically, "Sache" is normally used in German in the legal sense of "thing". The term "rights in rem" is translated into German as *dingliche Sachenrechte*. "Sache" and the English word "sake" are of the same origin.

Winiwarter (1866)	Baeck (1972)	Eschig (2013)
§. 810. If the heir in entering upon the inheritance proves his right of inheritance sufficiently, the management and use of the assets is to be left to him.	Procedure before the transfer of the inheritance a) Management. Article 810. If the heir, in accepting the inheritance adequately proves his right thereto, the management and use of the estate are to be conferred upon him.	**Provisions prior to devolution of the inheritance:** **a) administration;** § 810. (1) The heir, who sufficiently evidences his right to an inheritance at the time of acceptance of the inheritance, is entitled to use and administer the assets comprising the estate …
German original: Vorkehrungen vor Einantwortung der Erbschaft: a) Verwaltung;] German version (1866, 1966): Wenn der Erbe bey Antretung der Erbschaft sein Erbrecht hinreichend ausweiset, ist ihm die Besorgung und Benützung der Verlassenschaft zu überlassen. German version (2013): Der Erbe, der bei Antretung der Erbschaft sein Erbrecht hinreichend ausweiset, hat das Recht, das Verlassenschaftsvermögen zu benützen, zu verwalten und die Verlassenschaft zu vertreten, solange das Verlassenschaftsgericht nichts anderes anordnet.		

D. Recommendation: Baeck also has his own recommendation for the terms *Verjährung* and *Ersitzung* that is somewhat different from Brickdale's. As opposed to Winiwarter and Brickdale, Baeck chooses to use "limitation" for *Verjährung* to correspond more closely to the concept in common law of "statute of limitations". For the sake of clarity, I provide below a comparison table showing how Winiwarter, Brickdale, and Baeck translate the terms.

Winiwarter (1866)	Brickdale (1896)	Baeck (1972)
Of the prescription and usucaption. §. 1451. The prescription is the loss of a right, which has not been exercised during the time fixed by the law.	1451. Prescription is the loss of a right which has not been exercised during a period fixed by law for the purpose.	Limitation and adverse possession Limitation Article 1451. A limitation is the loss of a right which has not been exercised during the time fixed by the law.
§. 1452. If the prescriptive right devolves at the same time upon another person on the ground of his legal possession; it is called a right gained by usucaption, and the mode of acquisition, usucaption.	1452. If the right which has been lost owing to prescription devolves at the same moment on another person by virtue of lawful occupation, it is called a possessory right, and the mode of acquisition, title by possession.	Adverse possession (usucapio) Article 1452. If a right lost by limitation devolves at the same time upon another person on the basis of his legal possession, it is called a right acquired by adverse possession
German original: §. 1451. Verjährung. Die Verjährung ist der Verlust eines Rechtes, welches während der von dem Gesetze bestimmten Zeit nicht ausgeübt worden ist. §. 1452. Ersitzung. Wird das verjährte Recht vermöge des gesetzlichen Besitzes zugleich auf jemand Anderen übertragen; so heißt es ein ersessenes Recht, und die Erwerbungsart, Ersitzung.		

The above recommendations could be consulted when translating the sections in the Czech Civil Code dealing with *promlčení* and *prekluze* (§§ 609–654 and others). However, translators should be very careful with their terminological choices. *Verjährung* (*promlčení*) is sometimes translated as "prescription", which could be confused with the term "*prekluze*" in Czech – also sometimes translated as "prescription". One way to resolve this issue is to avoid using the term "prescription" for any of the institutions and to translate *promlčení* as "limitation" or "statute of limitation" and *prekluze* as "statute of repose". See the discussion below on *prekluze* and *promlčení* (Chromá 2014).

The Eschigs and their glossary (2013)

In addition to the fact that the Eschigs' translation is dual-language (German-English), the most valuable part of their text is their extensive German-English and English-German glossary. One very useful feature of the glossary is that it lists the sections in which the terms occur.

Glossar ABGB Deutsch – Englisch

Deutsch	Englisch	§§
Abbaubetrieb	on site mining work	218, 219
Abgeltung der Mitwirkung am Erwerb [des Ehegatten]	compensation for contribution to the income [of the spouse]	98, 99, 1486a, 1495
abgerissenes Land	cut-off land	412
Abhandlung der Erbschaft	probate proceedings	797–824
Abhandlungsgeschäft	testamentary matter	798
Abhängigkeitsverhältnis	relationship of dependence	284f
Ableugnung des Besitzes	denial of possession	376
Abschlagszahlung	discount	1415 f, 1428
Absicht der Parteien	intention of the parties	914
Abstammung	descent	140–154
Abstammung in der Seitenlinie	collateral descent	41
Abstammung in gerader Linie	lineal descent	41
Abstammung vom Vater	descent from the father	144
Abstammung von der Mutter	descent from the mother	143
Abstammungssache	affair regarding descent	142
Abtretung [einer Forderung]	assignment	1392 ff
Abwasser	wastewater	364
Abwesende	absent persons	270
Achtung	respect	137
Adoption	adoption	191 ff

Excerpt from the glossary (Eschig and Pircher-Eschig 2013: 363)

The glossary itself is a rich source of civil-law terminology that can be consulted and used to translate any civil legislation into English, not only German-language texts. Since the Czech Civil Code has a direct legal and historical connection to the ABGB and shares many of the same terms, the glossary would especially be useful in consulting terminology used to translation the Czech Civil Code into English.

A. Recommendation: Pacht vs. Miete
   The glossary understandably deals with the traditional juxtaposition between the terms *Pacht* and *Miete* and provides the following entries:

   Pachtvertrag = commercial lease agreement
   Mietvertrag = tenancy agreement
   Pachtzins = rent (under a commercial lease agreement)

Mietzins = rent (under a tenancy agreement)
Pächter = commercial lessee
Mieter = tenant

Similar to Winiwarter, the Eschigs differentiate between the two rental types "*Pacht*" and "*Miete*" according to the specific purposes, i.e. commercial and residential. The Eschigs, of course, use the more up-to-date terms "commercial" and "tenancy", whereas Winiwarter uses terms from his own environment and time period ("house" and "farm"). In addition, both authors similarly refer to both types of rent (*Pachtzins* and *Mietzins*) as just "rent" in English unless there is a need to distinguish between them.
Both Baeck and the Eschigs agree on the general terms to use for *Pacht* and *Miete*, i.e. tenancy and lease, but vary in their specific use, e.g. "contract of tenure" vs. "lease agreement" and "lease" vs. "commercial lease agreement" (see table above in the section on Baeck).

The Eschigs' glossary is an excellent source of terminology and consultation even for translating the provisions in the Czech Civil Code dealing with *nájem* (Miete) and "*pacht*". See Chromá 2014 below for more on these terms.

B. Recommendation: *Verjährung* and *Ersitzung*

Another terminological pair taken up in the Eschigs' glossary and discussed above by the other translators (Brickdale and Baeck) is *Verjährung* and *Ersitzung*.

The glossary provides the following entries:

Verjährung = lapse of time
Ersitzung = adverse possession

For reference purposes, here is a table comparing all four of the authors' translations of the terms in context.

Winiwarter (1866)	**Brickdale (1896)**	**Baeck (1972)**	**Eschigs (2013)**
Of the prescription and usucaption. §. 1451. The prescription is the loss of a right, which has not been exercised during the time fixed by the law.	1451. Prescription is the loss of a right which has not been exercised during a period fixed by law for the purpose.	Limitation and adverse possession Limitation Article 1451. A limitation is the loss of a right which has not been exercised during the time fixed by the law.	**About the lapse of time and adverse possession.** **Lapse of time.** § 1451. The lapse of time is the loss of a right which has not been used during a certain period determined by law.
§. 1452. If the prescriptive right devolves at the same time upon another person on the ground of his legal possession; it is called	1452. If the right which has been lost owing to prescription devolves at the same moment on another person by virtue of	Adverse possession (usucapio) Article 1452. If a right lost by limitation devolves at the same time upon another person on the basis of his legal	**Adverse possession** 1452. If the lapsed right is being transferred to someone else at the same time due to the legal possession, it is called an

a right gained by usucaption, and the mode of acquisition, usucaption.	lawful occupation, it is called a possessory right, and the mode of acquisition, title by possession.	possession, it is called a right acquired by adverse possession	adversely possessed right and the type of acquisition adverse possession.
German original: §. 1451. Verjährung. Die Verjährung ist der Verlust eines Rechtes, welches während der von dem Gesetze bestimmten Zeit nicht ausgeübt worden ist. §. 1452. Ersitzung. Wird das verjährte Recht vermöge des gesetzlichen Besitzes zugleich auf jemand Anderen übertragen; so heißt es ein ersessenes Recht, und die Erwerbungsart, Ersitzung.			

For a discussion on the term *Ersitzung* and Czech terminology, see the section below on Chromá (2014).

C. Recommendation: *Obereigentümer* and *Nutzungseigentümer*

Nutzungseigentümer = owner with the right to use
Obereigentümer = dominant owner

Winiwarter (1866)	**Baeck (1972)**	**Eschig (2013)**
§. 363. The same rights enjoy also imperfect proprietors, both lords paramount as well as usufructuary proprietors; only the one dare not undertake anything, which is in contradiction to the right of the other.	Restrictions Article 363. Imperfect owners, both superior and usufructuary, enjoy the same rights, except that neither may undertake anything which impairs the rights of the other.	**Limitations of such ownership.** § 363. Precisely the same rights are enjoyed by partial as well as dominant owners and owners with the right to use, however, one [owner] cannot do anything that would conflict with the rights of another.
Original German: §. 363. Beschränkungen derselben. Eben diese Rechte genießen auch unvollständige, so wohl Ober- als Nutzungseigenthümer; nur darf der Eine nichts vornehmen, was mit dem Rechte des Anderen im Widerspruche stehet.		

As mentioned above, Brickdale translated the terms *Obereigenthum* and *Nutzungseigenthum* as well, but this provision was repealed in 1939. Below is a comparison of this clause for Brickdale and Winiwarter.

Winiwarter (1866)	**Brickdale (1896)**
§. 629. The right of property in the fortune under entailment is divided between all expectants, and the possessor of the entailment for the time being. The former have the right of lord paramount alone; but the latter also the usufructuary property.	629. The ownership of the entailed property is divided between the remaindermen and the person entitled for the time being. The former have only dominium*, and the latter has usufruct* as well.

Original German:
§. 629.
Grundsatz über die Rechte der Anwärter u. des Inhabers des Fideicommisses.
Das Eigenthum des Fideicommiß-Vermögens ist zwischen allen Anwärtern und dem jedesmahligen Fideicommiß-Inhaber getheilet. Jenen kommt das Obereigenthum allein, diesem aber auch das Nutzungseigenthum zu.

Although the Eschigs define "usufruct" in § 509 of their translation as "the right to use someone else's asset without any limitations", the same as Winiwarter and Baeck, they only use the term in sections where the term *Fruchtnießung* is in the original German text.

Winiwarter (1866)	**Baeck (1972)**	**Eschig (2013)**
§. 509. The usufruit [sic] is the right of enjoying without any restriction a thing belonging to another, supposing the enjoyment does not injure the substance.	2. Usufruct. Article 509. The usufruct is the right of using the property of another without any restriction, assuming that the use does not injure the substance of the property.	**2) of usufruct.** § 509. Usufruct is the right to use someone else's asset without any limitations subject to the preservation of the substance.
§. 511. The usufructuary has a right to the full produce, both ordinary and extraordinary; therefore the clear gain of the shares of a mine, which has been obtained in observing the existing laws for mining, and the wood felled according to the forest-regulations belong to him. He has no claim to a treasure, which is found in the land intended for the usufruit [sic].	Rights and duties of the usufructuary Article 511. The usufructuary has a right to the full profits of the property, whether ordinary or extraordinary, including capital gain of the share of a mine, which has been obtained pursuant to the existing laws for mining, and lumber felled according to forest regulations. He has no claim to a treasure which is found in land subject to the usufruct.	**Right and obligations of the usufructor.** § 511. The usufructor is entitled to the full, ordinary as well as extraordinary profit; hence he is also entitled to the mere profit from mining shares subject to the applicable mining regulations and the felled forest wood. He is not entitled to a treasure which is found on the land designated for the usufruct.

German original:
§. 509.
der Fruchtnießung.
Die Fruchtnießung ist das Recht, eine fremde Sache, mit Schonung der Substanz, ohne alle Einschränkung zu genießen.

§. 511.
Rechte und Verbindlichkeiten des Fruchtnießers.
Der Fruchtnießer hat ein Recht auf den vollen, sowohl gewöhnlichen als ungewöhnlichen Ertrag; ihm gehört daher auch die mit Beobachtung der bestehenden Bergwerksordnung erhaltene reine Ausbeute von Bergwerksantheilen und das forstmäßig geschlagene Holz. Auf einen Schatz, welcher in dem zur Fruchtnießung bestimmten Grunde gefunden wird, hat er keinen Anspruch.

Similar clause in the Czech Civil Code, based on the ABGB:
§ 1285
Služebností požívacího práva se požívateli poskytuje právo užívat cizí věc a brát z ní plody a užitky; požívatel má právo i na mimořádný výnos z věci. Při výkonu těchto práv je požívatel povinen šetřit podstatu věci.

Section 1285
Usufruct grants the usufructuary the right to use a thing of another and take its fruits and revenues; the usufructuary also has the right to extraordinary yield from the thing. In the exercise of these rights, the usufructuary is obliged to preserve the substance of the thing.

* Notice the similarity between this clause in the Czech Civil Code and §509 of the ABGB.

§ 1286
Na skrytou věc nalezenou v pozemku požívatel právo nemá.

Section 1286
A usufructuary has no right to a hidden thing found in the tract of land.

* Notice the similarity between this clause and the last sentence of §511 in the ABGB. The German text uses the word "*Schatz*", which is literally translated as "treasure" in all three English versions, and sounds rather awkward in English. A more dynamic translation could be "natural resource". In Czech, the term has been reinterpreted as "*skrytá věc*" (hidden thing), which suggests the idea of a "treasure" or something valuable underground, such as a natural resource.

In the second clause, the Eschigs, in essence, have created a new word in English ("usufructor"), which has most likely been inspired by the German original *Fruchtnießer* based on the productive "-er/-or" suffix commonly shared by German and English to indicate a person.

The sample texts above could be consulted when translating similar clauses in the Czech Civil Code, e.g. §§1285–1296 (see the clauses from the Czech Civil Code in the table above). See also the discussion below on "usufruct" in the section on Chromá (2014).

The above terms can be summarized as follows:
Fruchtnießung = *usufructus* (Latin) = *požívací právo* (Czech) = usufruct (Winiwarter, Baeck, Eschig)
Fruchtnießer = *usufructuarius* (Latin) = *poživatel* (Czech) = usufructuary (Winiwarter, Baeck) = usufructor (Eschig)

Progress in translating new Czech civil legislation into English (2012 and beyond)

As mentioned several times in this dissertation, the introduction of the new Czech Civil Code in 2012 brought with it many uncertainties about how to translate terminology and phrasing based on the ABGB tradition that had not been seen or used by Czech legal practitioners or the general public for more than half a century.

One of the first Czech legal scholars to systematically explore how to translate Czech civil law into English after the new legislation was introduced was **Dr Marta Chromá** from the Faculty of Law of Charles University. In fact, in 2014, Chromá published a book in Czech entitled *Právní překlad v teorii a praxi: Nový občanský zákoník* [Legal Translation in Theory and Practice: The New Civil Code] presenting her theoretical reasoning and practical recommendations for translating the new Czech legislation into English.

One of Chromá's objectives in writing the book was to introduce translators to the terminology and phrasing of the new code and to guide them in finding solutions to effectively and accurately translating the new civil legislation into English.

> Our goal is not to provide a complete translation of the code, but to lead translators in a direction that can help them find solutions to situations that might appear to be difficult from their perspective, to help translators achieve a sufficient amount of translation proficiency …[38]
>
> (Chromá 2014: 90)

As will be apparent from the discussion below, Chromá relies on similar principles for translating Czech civil legislation into English as I am proposing here (i.e. consulting and using the experience of past translators of civil legislation and their translations). However, in addition to the translations available in central Europe, such as the ABGB and the BGB, she also looks at other translations of civil codes from around the world (e.g. the Louisiana Civil Code, the Civil Code of Québec, or the Civil Code of Japan).

Below are a few examples of the commentaries provided by Chromá in her book for translating the terminology of the Czech Civil Code into English that relate to the recommendations and strategies of Winiwarter's successors discussed above.

A. *nájem* (Miete) and "*pacht*"

In a commentary on the word "*pacht*" in Czech, which is a direct borrowing from the German term "*Pacht*" in the ABGB, Chromá (2014: 214–215) explains that the term was reintroduced to the Czech legal system after more than 70 years and that the basic difference between *nájem* and *pacht* is that, with *pacht*, the lessee (*Pächter* in German, *pachtýř* in Czech; translated as "usufructuary lessee" by Chromá and "commercial lessee" by Eschig) "enjoys the fruits and benefits of the leased thing".

Chromá continues in the commentary by recommending the most appropriate translation for "*pacht*" taking into consideration the actual meaning of the term in Czech law and the historical development of the word in past translations.

She points out that the Roman-law concept *emphyteusis* would not be appropriate because it only relates to immovable property, and the Czech term "*pacht*" covers both immovable and movable property[39].

Baeck (1972) would agree with Chromá's conclusion, insofar as he states that both *Pacht* and *Miete* are used in Austrian civil law for movable and immovable property (Baeck 1972: 212).

After explaining that the English term "usufruct" would also not cover the term "*pacht*" because usufruct does not entail the basic terminological attribute of *pacht* (i.e. the lease of a thing), Chromá turns to other past translations of civil codes for assistance, including Winiwarter's 1866 translation, which translates the term *Pacht* as "lease".

In conclusion, she logically adopts a combination of "usufruct" and "lease" in order to cover the full meaning of the term "*pacht*" in Czech and settles on the term "usufructuary lease" – the term used by the English translation of the BGB.

[38] My translation

[39] Note that the Eschigs actually use the term "emphyteusis agreements" for *Erbpachtverträgen* (see the table above under Baeck).

So it is clear from the above analysis, that Chromá has consulted past translations and takes advantage of the terminological evolution of civil law in Europe and other parts of the world as a strategy for translating the Czech Civil Code into English.

B. Požívací právo (usufruct/Fruchtnießung)

In a commentary on page 147 and 148, Chromá hashes over the issue of how to translate into English the terms in Czech "*právo užívání*" and "*právo požívání*". The term "*právo užívání*" can be translated in a straight-forward manner as "right to use". This is in contrast to "*právo požívání*" or "*požívací právo*", which infers the notion "the right to take the natural and civil fruits". To summarize her argument, Chromá continues by stating that, since this is a term specific to civil law, a term needs to be selected in English that communicates its particular civil-law character, i.e. the Latin-based term "usufruct" could be used.

Chromá also points out that "usufruct" could cause certain problems with respect to translation because no verb form exists for the term as in Czech (*požívat*). In this particular case, she suggests using the phrase "take the natural and civil fruits" or a shortened version "enjoy the fruits".

Another lesson that has been provided in this context is that it is important not to confuse in any of the languages the terms *pacht* and *usufruct*.

So it would be beneficial to summarize the terms as follows:

Fruchtnießung = *ususfructus* (Latin) = *požívací právo* (Czech) = usufruct (Winiwarter, Baeck, Eschig, Chromá)

in contrast with

Pachtvertrag = *pactum* (Latin) = *pacht* (Czech) = lease (Winiwarter, Baeck) = commercial lease agreement (Eschig) = usufructuary lease (Chromá)

C. "Věc" (Thing/Sache)

As discussed above in the section on Baeck, another terminological issue to consider when translating civil law into English is the Latin term *res*, which is used copiously in the civil codes of Europe. To translate this term, Winiwarter used "thing", Baeck decided to use "property", and the Eschigs settled on "asset".

Chromá (2014) discusses the use of this term in a commentary in her book on page 117. She recommends using the simple term "thing" when translating continental law for the following reason in particular. The term "thing" in common law is rarely used when dealing with rights in rem. The term "property", on the other hand, is used frequently in common law. However, since "property" has many meanings and its interpretation can be ambiguous, it

should not be used for the civil-law concept *res* (*věc*/*Sache*). So to avoid any ambiguity, it is justifiably better to use the term "thing" in this context.

D. *Promlčení* and *Prekluze*

In a commentary on page 124, Chromá discusses the terms *promlčení* and *prekluze* taken up in the Czech Civil Code in sections 609 to 654 (see the discussions above relating to Baeck and the Eschigs). Chromá explains that the standard term in common law for *promlčení* is "statute of limitations" and provides various synonyms for the term, including the one used by Baeck "limitation" and the one used by the Eschigs "lapse of time".

Similar to my discussion in the section on Baeck above, she has misgivings about the general use of "prescription" for the term "*prekluze*", due to its association in common law with the idea of "*vydržení*", i.e. *usucapio* in Latin. To avoid this problem, she suggests translating *prekluze* as "lapse" or "lapse of claim".

The problematic term *Ersitzung* in German is nearly identical to the meaning of the term *vydržení* in Czech, which Chromá (2014) translates as "positive prescription" or "acquisitive prescription". The Czech Civil Code does not pair up the term *Ersitzung* with "Verjährung" as in the case of the ABGB, but "vydržení" (Ersitzung) is set out in separate provisions (§§ 1089–1098).

From all the examples presented above, we can logically summarize the terminology as follows:

Ersitzung = *usucapio* (Latin) = *vydržení* (Czech) = usucaption (Winiwarter) = title by possession (Brickdale) = adverse possession (Baeck and Eschig) = positive prescription or acquisitive prescription (Chromá)
Verjährung = *præscriptio* (Latin) = *promlčení* (Czech) = Prescription (Winiwarter and Brickdale) = limitation (Baeck, Chromá) = lapse of time (Eschig, Chromá) = statute of limitations (Chromá)
Präklusion = *præclusio* (Latin) = *prekluze* (Czech) = lapse of claim, negative prescription, extinctive prescription (Chromá) = statute of repose (my suggestion)

Hence, it is ultimately up to the translators which of the above English alternatives they find most appropriate to use, taking into account the context and purpose of the translated text.

Closing remarks

A logical conclusion from the above discussions would be that it is important to properly research knowledge and experience from the past (or at least consult someone who has already done this) when translating civil law in order to contextualize your translation and produce the most effective and accurate results. In addition to using our own knowledge and experience as translators, one method for accomplishing this would be to consult past versions

of the text that is being translated and to compare instances of the problematic terms and concepts.

If the text has never been translated and there are no precursor texts, it could still be beneficial to consult similar texts with similar terms and concepts, e.g. civil codes and related texts from other jurisdictions. Even if precursor texts exist, it may still be of use to consult texts from other countries or jurisdictions, as for example, Chromá (2014) has done with the Czech Civil Code.

The framework I have outlined above, based on the Winiwarter tradition, is a method of achieving this goal, and it is based on the following guidelines:

- **Learn from the past and investigate the history of the text you are translating.**
  - When translating legislation, your text will almost always have a past, and if you do a little digging, you might be surprised at all of the practical information you find.
  - Connecting to the text's past will also help you better understand and contextualize the legislation, and in turn, will make the translation process easier.

- **Use this history and your findings to carefully research what resources you can make use of to translate your text**
  - In addition to legal dictionaries, glossaries, legal databases, etc., you might find a past translation to help you with the terms and phrasing. If you are dealing with traditional legislation, such a civil code or constitution, you might even discover an older translation of your text, as in the case of the ABGB.

- **Compare the terms and phrases you want to use in context.**
  - Once you have identified the sources and gathered all the information, start organizing and comparing the important terms and phrases in context.
  - To accomplish this, it might be useful to create tables to compare the terms in the clauses where they originally appear (see above in Chapter 4 and Chapter 5 for examples of comparison tables).
  - Comparing the terms in their original context can help you differentiate the various nuances of the terms and can ultimately make it easier to select the appropriate terms and phrases.
  - In addition to past translations, consulting and comparing the original source texts of these translations may also help with contextualization and provides quick and invaluable reference materials.
  - After looking at the terms in context, a helpful exercise might be to place the different translations of a term side by side. This could also be used as a reference glossary for making quick decisions about what translation of a term to use. Example:

    Ersitzung = usucapio (Latin) = vydržení (Czech) = usucaption (Winiwarter) = title by possession (Brickdale) = adverse possession (Baeck and Eschig) = positive prescription or acquisitive prescription (Chromá)

- Take advantage of prefaces, notes, and commentaries
  - When using past translations, it might be helpful to look at the paratextual information (e.g. translators' prefaces and notes). These are often filled with recommendations and strategies that can help you when translating your text.

In the case of the translating the ABGB into English, Winiwarter's translation can provide an excellent base for consulting terminology and phrasing, and the texts of his successors can be used as a means of modernizing some of the terminology and phrasing so that it reflects contemporary legal usage.

When translating the Czech Civil Code, the Winiwarter tradition can be used to research terminology and to find the most appropriate translations, and in turn, connect the text to its legal and historical roots.

As demonstrated in one of the key examples above, *Miete* and *Pacht* ("*nájem*" and "*pacht*"), translators can benefit from a combination of recommendations, notes, and terminological choices of past translators.

The Winiwarter tradition and the framework presented above is an approach based on the historical continuity of legislative texts and their translations. It can provide translators with the context and terminological grounding essential for producing a dynamic translation that is not only jurilinguistically accurate but also historically engaged.

The objective of this framework is not to provide an exhaustive method for translating civil law, but to guide translators towards a more meaningful approach to legal translation and to historically engage legal translators in the texts they are translating. Thus the ultimate aim is practical: to assist translators in choosing the most accurate terminology and phrasing for translating civil legislation into English. Although the focus is on expressing civil-law concepts in English, the overall principles and guidelines of the framework are more universal and can be applied to other language contexts as well.

Engaging in this type of research will guide us towards future directions in our efforts to effectively translate civil law. In this respect, a future academic endeavour of mine is to use this framework in the context of the Winiwarter tradition to carry out more in-depth research and to offer more systematic methods for translating civil law into English.

6

Conclusion

An underlying theme in this dissertation is that when someone produces a translation of an important text, such as a civil code, it does not just disappear, even if most of the tangible clues of its existence have been lost or forgotten. The text in some way lives on, and in some shape or form, is reinvented by people who understand its usefulness (e.g. Brickdale) or by other translators who use it as reference or who retranslate the original source text (e.g. Baeck). In some cases, making use of a translation may be unintentional or not acknowledged at all (e.g. the Eschigs).

Thus, a goal of this dissertation was to explore, by way of Winiwarter, how this phenomenon plays out and what strategies are used in the process.

In my specific context, the importance of investigating the life of Josef Winiwarter and his translation of the ABGB is clear, and the influence he has had on the phrasing and vocabulary of civil legislation in English should be properly understood and acknowledged.

Let's briefly revisit the notion of "importance" discussed in Pym (1998).

As Pym points out,

> *If intellectual work is to be done purposefully and for more than aesthetic contemplation, the aim must surely be to answer questions of importance.*

He goes on by explaining,

> *... if such work is to be done with some degree of involvement or even passion, the aim must be to tackle questions that are relatively close to our lives. Historians of translation have no real reason to be different in this regard.*
>
> (Pym 1998: 24)

The key questions of importance that I have tried to answer in this study are

- 1. Who was Josef Winiwarter and how was he important as a legal translator?
- 2. Why did Winiwarter translate the ABGB into English in the first place?
- 3. Has his translation influenced other translators or legal practitioners and their texts? And if so, how?
- 4. How is this knowledge important to contemporary legal translators and to legal translation practices in general?

The answers to these questions, which were developed throughout this dissertation, can be expressed in terms of my academic contribution to translation studies and the field of translation history.

So what is the outcome of this PhD project and what has it contributed to the field of translation history and legal translation in general?

Firstly, it introduces to the public an important legal translator who was practically unknown until now. This, in and of itself, is a significant contribution to the field of legal translation history and translation studies as a whole.

As my research demonstrates, Winiwarter was, in many respects, a pioneer of legal translation in the environment of nineteenth-century central Europe. He was the first person to translate the Austrian Civil Code into English, and as such, established a benchmark for future English translations of continental law.

Chapter 3 answers the first two questions of importance above. This chapter not only provides previously unknown details of Winiwarter's life and relationships, it creates a rich portrait of a unique legal translator in nineteenth-century Europe who influenced the development of legal translation. Without this research, many detailed aspects of Winiwarter's life and achievements would have remained unknown.

Secondly, my research reveals how the pioneering work of Winiwarter in translating the key civil legislation of a powerful empire had influenced other translators and legal practitioners in central Europe, England, and the United States. It also points to the importance of Winiwarter's translation in developing and establishing a reliable model for translating the terminology and concepts of civil legislation into English.

The third question of importance above is answered in Chapter 4. This chapter takes us on a journey through the nineteenth and twentieth centuries and shows the different facets of Winiwarter's influence, from a travelling English registry officer using Winiwarter's translation to explain the central-European system of registration (Brickdale), various legal scholars in Europe and the United States citing Winiwarter's translation in legal journals, to an adaptation of Winiwarter's translation of the ABGB in the United States in the mid-twentieth century (Baeck). We end up in the twenty-first century with the Eschigs' new translation of the ABGB in Austria and Dr Chromá in the Czech Republic consulting the past translations of civil codes in order to cope with the new terminology and concepts of the Czech Civil Code.

This again is a noteworthy contribution to translation history, demonstrating how a translation travels through time and space and influences other people and texts

Thirdly, taking a more practical turn, my dissertation shows in Chapter 5 how Winiwarter's text and the texts of his successors can be consulted and used today to translate the complicated terminology and phrasing of continental legislation into English. This chapter answers the fourth question of importance above. It offers an historical approach to translating important civil legislation into English based on what I refer to as the Winiwarter tradition and provides a framework for applying this approach.

This is undoubtedly an important practical contribution to jurilinguistics and translator training and proficiency in general.

The Czech Civil Code is used as an example for illustrating this framework. By using this example, the study focuses on putting translation strategies into practice – taking advantage of Winiwarter's translation, the texts of his successors, and other past translations when dealing with the problematic terms and concepts in the Czech Civil Code. The insight and work of Chromá (2014) has been instrumental in this area. Although her book consults a wide variety of civil legislation from several jurisdictions, she has also looked to Winiwarter's translation as a source of potential knowledge for translating the terms and concepts in the Czech Civil Code.

To clarify the overall organization of ideas in my dissertation, I provide below an outline of the main chapters in relation to the questions of importance and contribution:

Chapter 3 *(Winiwarter's life)*	Question of importance 1 *Who is Winiwarter?* Question of importance 2 *Why did he translate the ABGB?*	Outcome/contribution *Introducing an important legal translator of 19th-century central Europe*
Chapter 4 *(Winiwarter's influence)*	Question of importance 3 *Did Winiwarter influence other translators and texts? And how?*	Outcome/contribution *Winiwarter influenced legal translators and experts in Europe, England, and U.S. and helped create a model for translating civil law into English*
Chapter 5 *(Practical translation framework)*	Question of importance 4 *How is this knowledge important to legal translators and legal translation practices?*	Outcome/contribution *Winiwarter's text and successor texts can be consulted to translate the terms and phrasing of civil law into English*

Each of the main chapters have been structured according to the questions of importance that this dissertation has answered. The answers to these questions, in turn, offer three principal outcomes or contributions. And these ultimately encapsulate the motivating force and purpose of my entire PhD project.

The story of Josef Maximilian Winiwarter is a unique narrative that maps out the life and influence of an important legal translator in central Europe and his ground-breaking translation of the Austrian Civil Code. This translation has had a lasting impact on legal translators, scholars, and practitioners in Europe and North America throughout the nineteenth and twentieth centuries.

Through a qualitative approach of context-oriented research, network mapping, social causation, and agency, set within a framework of interrelated case studies, this project has gradually uncovered and made sense of all of the connections and relationships shaping Winiwarter's story.

It clearly demonstrates that Winiwarter's English translation of the ABGB has been an important contributing factor in establishing a reliable model for civil-law terminology and phrasing in English for future generations of translators.

> … and this is important not only to legal translation practice and legal translation history, but to the field of translation studies in general.

In closing, it seems only fitting to cite the humble words of Josef Winiwarter himself:

> *The experiment showed me that there are no insurmountable obstacles in the end that would oppose such work. This gave me the courage to undertake a similar greater translation, which will also be published & which I will submit shortly. Your proven generosity ensures that my translation will always be welcome.*
>
> *I, therefore, close this letter with a request to accept my assurance of unchanged esteem,*
>
> *with which I remain,*
>
> *Yours*
>
> *sincerely,*

(excerpt from Winiwarter's letter to Alexander Bach, dated 27 June 1865)

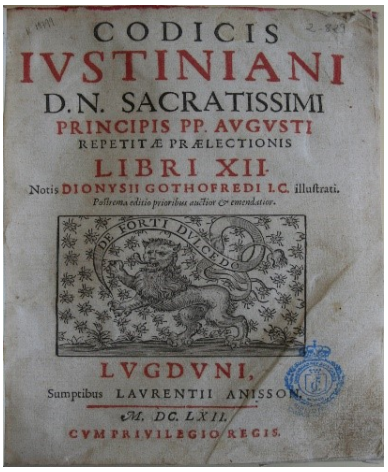
7

Appendices

Appendix 1

Brief survey of the history of civil codes in the Habsburg Monarchy, the Austrian Empire, Austria-Hungary, Czechoslovakia, and the Czech Republic from the mid-1700s to 2012

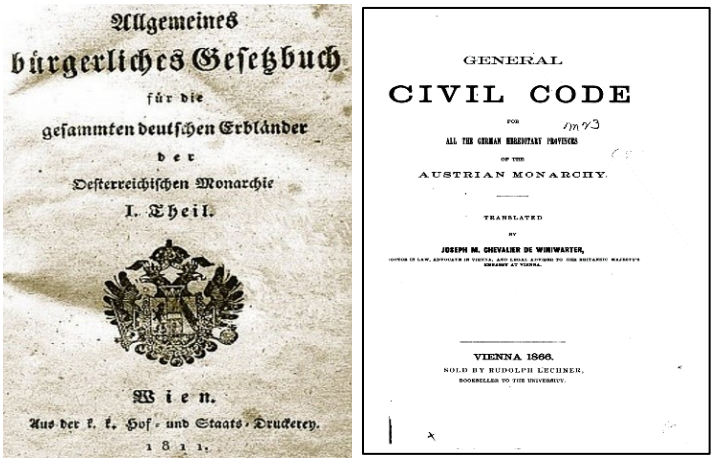
Written law has a long tradition in the Czech lands under Habsburg rule stretching as far back as the sixteenth century, at which time the monarchy was established. The tradition of civil law in Europe dates back even further to the Roman Empire and the *Code of Justinian*.


CODICIS
IVSTINIANI
D.N. SACRATISSIMI
PRINCIPIS PP. AVGVSTI
REPETITÆ PRÆLECTIONIS
LIBRI XII.
Notis DIONYSII GOTHOFREDI I.C. illustrati.
Postrema editio prioribus auctior & emendatior.
LVGDVNI,
Sumptibus LAURENTII ANISSON.
M. DC. LXII.
CVM PRIVILEGIO REGIS.

Title page of the Code of Justinian from 1662

As a direct lineage from Roman law, the tradition of civil law in the Czech lands, which were part of the Austrian Monarchy and later the Austro-Hungarian Empire, was firmly established in the mid-eighteenth century. The Austrian monarch, Maria Teresia, made one of the first attempts to codify law by creating the Compilation Committee in 1753, This led to the drafting of the *Codex Theresianus*. The code was finished in 1766, but was never successfully put into force. It wasn't until 1786 that the first general civil code was adopted under Emperor Joseph II, referred to as the *Civil Code of Joseph II*. Although successfully implemented, it only encompassed general legal provisions and family law.

Civil law in the Austrian Empire was then expanded and codified in 1811 under The General Civil Code (*Allgemeines bürgerliches Gesetzbuch* – ABGB) (Czech Ministry of Justice, June 2013). The English translation of this code, the topic of this dissertation, was entitled General Civil Code for All the German Hereditary Provinces of the Austrian Monarchy.


Allgemeines
bürgerliches Gesetzbuch
für die
gesammten deutschen Erbländer
der
Oesterreichischen Monarchie
I. Theil.
Wien.
Aus der k. k. Hof- und Staats-Druckerey.
1811.

GENERAL
CIVIL CODE
FOR
ALL THE GERMAN HEREDITARY PROVINCES
OF THE
AUSTRIAN MONARCHY.
TRANSLATED
BY
JOSEPH M. CHEVALIER DE WINIWARTER,
VIENNA 1866.
SOLD BY RUDOLPH LECHNER,
BOOKSELLER TO THE UNIVERSITY.

Titles pages of the original German ABGB (1811) and the Winiwarter's English translation of the ABGB (1866)

The ABGB was valid in the Czech lands, which belonged to the Austrian Empire, and later in Czechoslovakia until 1950. With many amendments and modifications, the code is still to this day legally in force in Austria and Liechtenstein. It was valid in Hungary (and Slovakia) only for a short period of time in the middle of the nineteenth century (1852 to 1861).

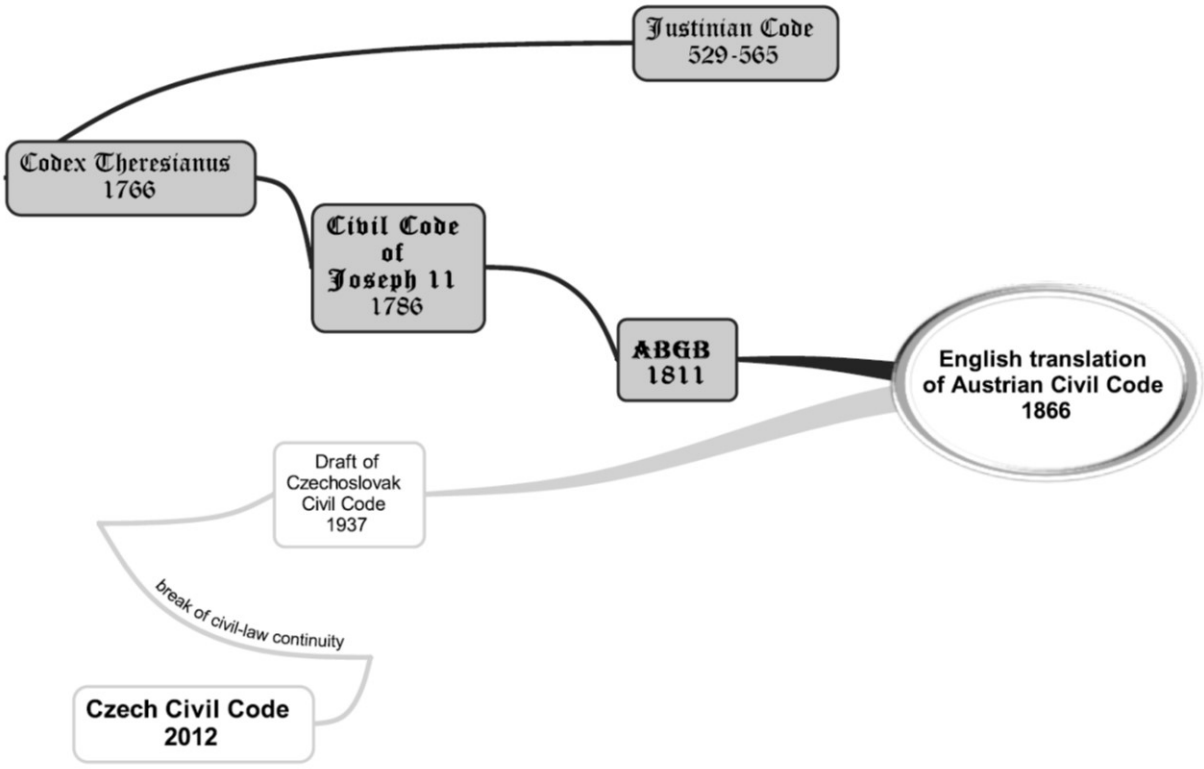
Remnants of the ABGB survived well into the twentieth century in Czechoslovakia with the government's draft of the *Czechoslovak Civil Code* of 1937. However, the code was not put into effect and force due to the political situation surrounding the start of World War II. After the war, only certain sections of the 1937 Czechoslovak Civil Code were adopted in 1947 and 1948 relating to private international law and real estate law.

After the overthrow of the government in 1948 and the change in the political regime in Czechoslovakia, the legal system and legislation was revised and recodified, and a Soviet socialist model gradually replaced the conventional central-European tradition of civil law.

It wasn't until the early twenty-first century that a full return to the traditions of civil law based on the ABGB was re-established in the Czech Republic. The new Czech civil code (*občanský zákoník*) came into effect in 2012.

The new Czech Civil Code was effective from 22 March 2012 and came into force on 1 January 2014.

Network map:
Winiwarter's translation
in the context of the chronological development of civil codes
in central Europe and the Czech lands

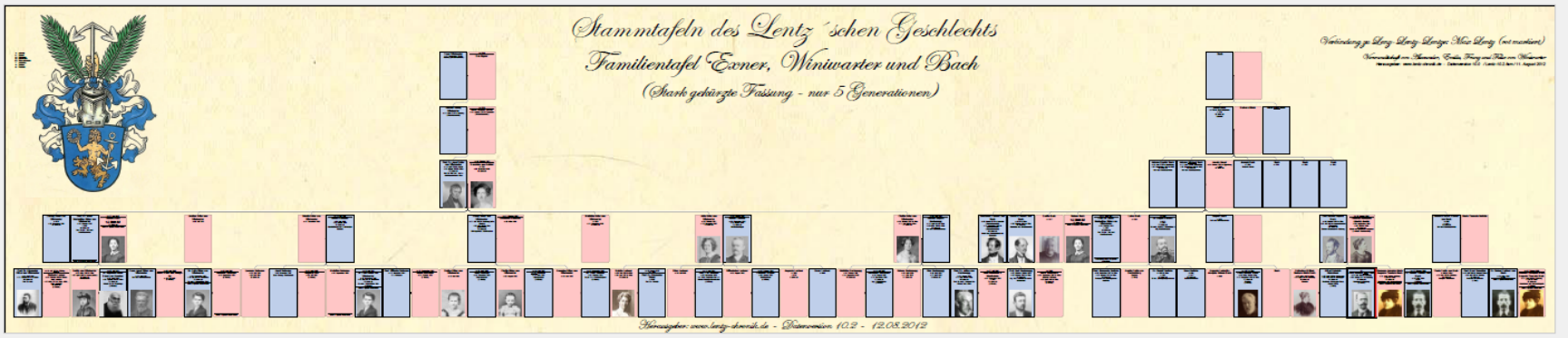


Appendix 2

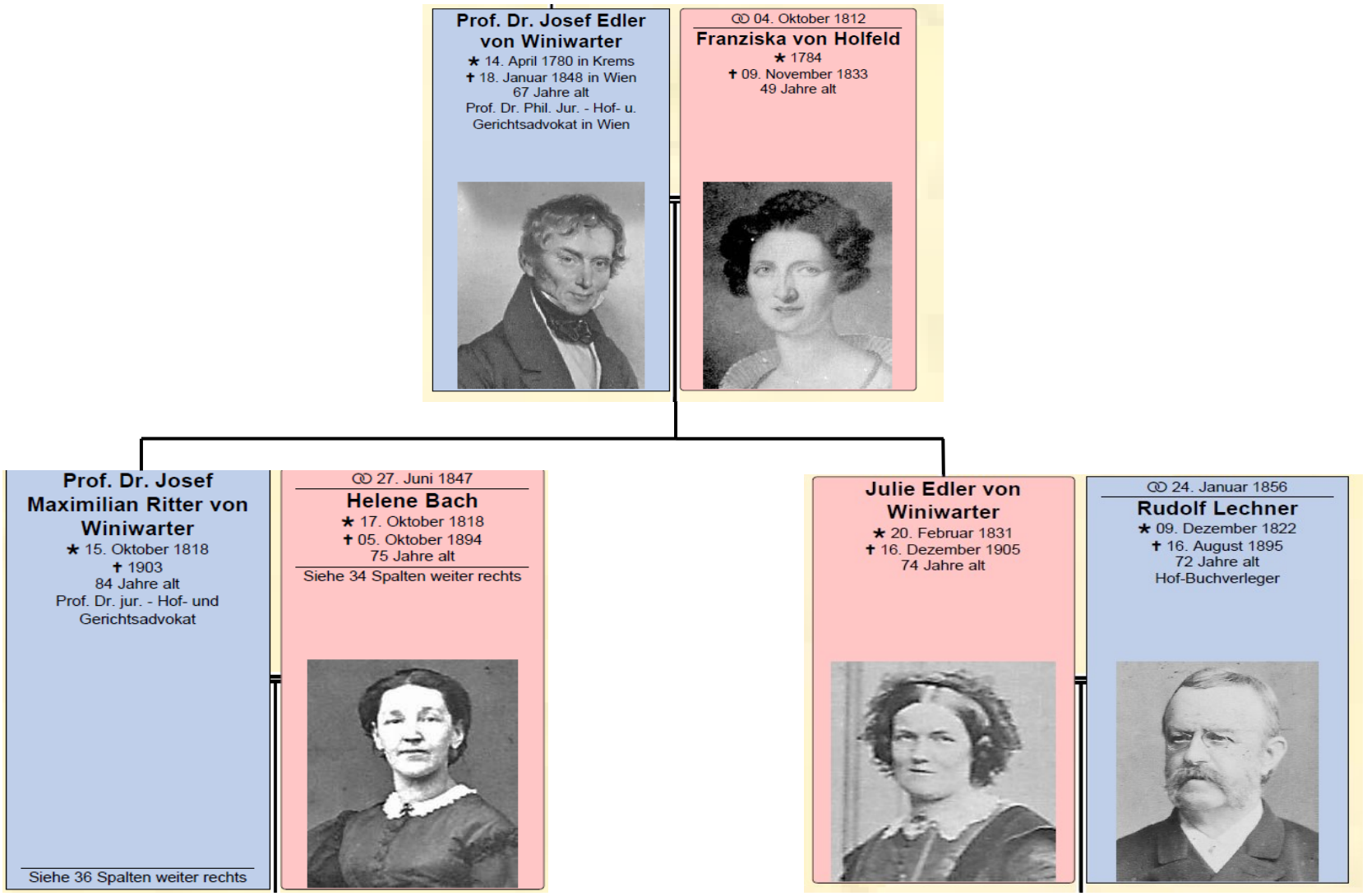
Genealogical connections between the Winiwarter, Bach, and Exner families

Lenz, Michael (2012). Lenz-Chroniken online – Verwandtschaft von Alexander, Emilie, Franz und Felix von Winiwarter [Relationship of Alexander, Emilie, Franz and Felix von Winiwarter].
pdf file: http://www.lentz-chronik.de/download/Familientafel--Emilie-von-Winiwarter--V10.2.pdf

Complete family tree

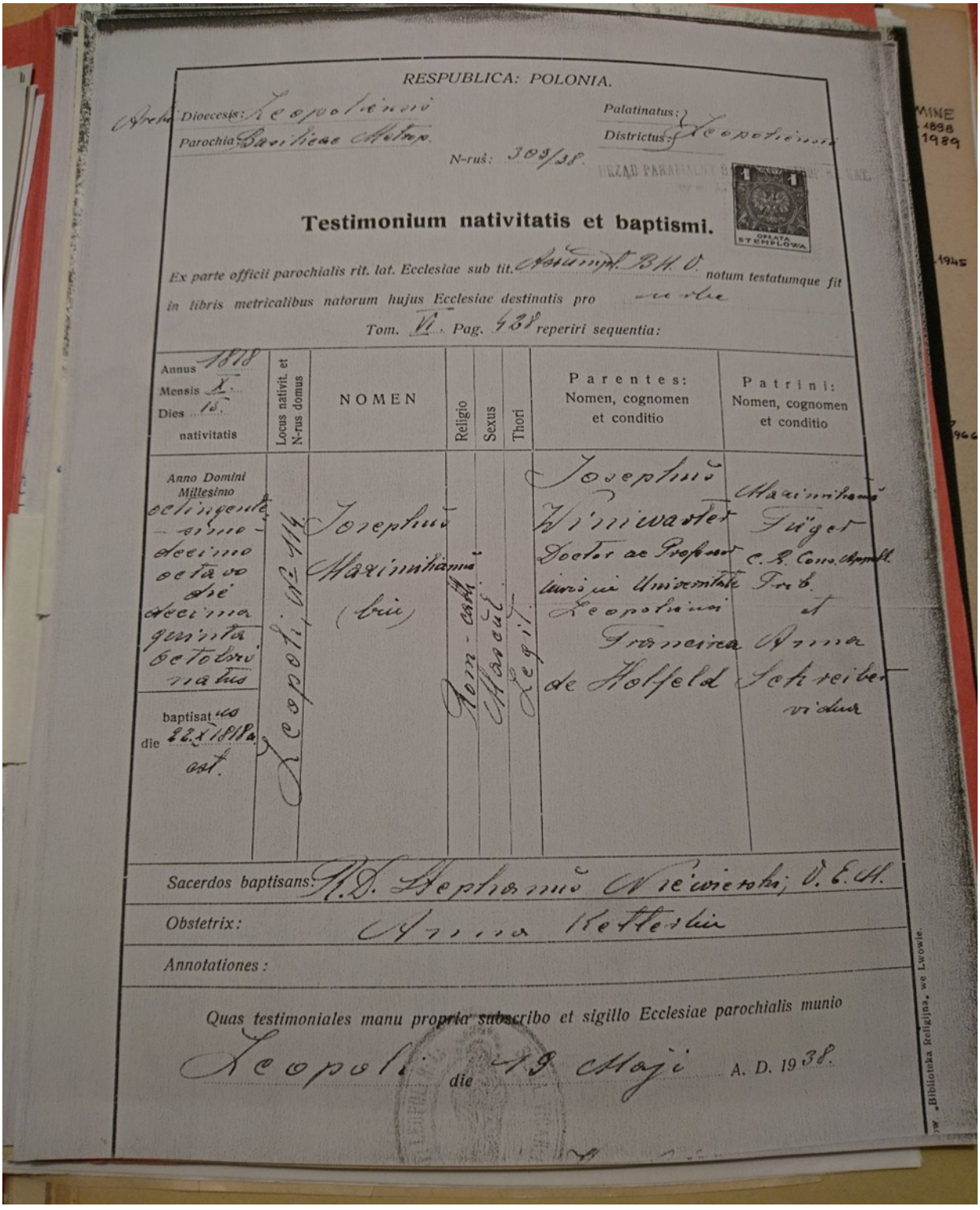


Section of the Winiwarter family tree relevant to my dissertation



Appendix 3

Record of Winiwarter's birth and baptism in Lemberg, Galicia (L'viv, Ukraine)
Birth: 15 October 1818; Baptism: 22 October 1818



RESPUBLICA: POLONIA.

Archidioecesis: Leopoliensis — Palatinatus: —
Parochia: Basilicae Minor. — Districtus: Leopoliensis
N-rus: 303/38.

Testimonium nativitatis et baptismi.

Ex parte officii parochialis rit. lat. Ecclesiae sub tit. Assumpt. BMV notum testatumque fit in libris metricalibus natorum hujus Ecclesiae destinatis pro anno Tom. VI. Pag. 438 reperiri sequentia:

Annus 1818 Mensis X. Dies 15. nativitatis	Locus nativit. et N-rus domus	NOMEN	Religio	Sexus	Thori	Parentes: Nomen, cognomen et conditio	Patrini: Nomen, cognomen et conditio
Anno Domini Millesimo octingentesimo decimo octavo die decima quinta octobris natus	Leopoli, N. 114	Josephus Maximilianus (hic)	Rom. cath.	Masculi.	Legit.	Josephus Winiwarter Doctor ac Professor Universitatis Leopoliensis de Holfeld	Maximilianus Füger C. R. Cons. Aulae Dr. et Francisca Anna Schreiber vidua

baptisatus die 22. X. 1818 a. ast.

Sacerdos baptisans: R. D. Stephanus Wiewiorski, O. E. M.
Obstetrix: Anna Rotterin
Annotationes:

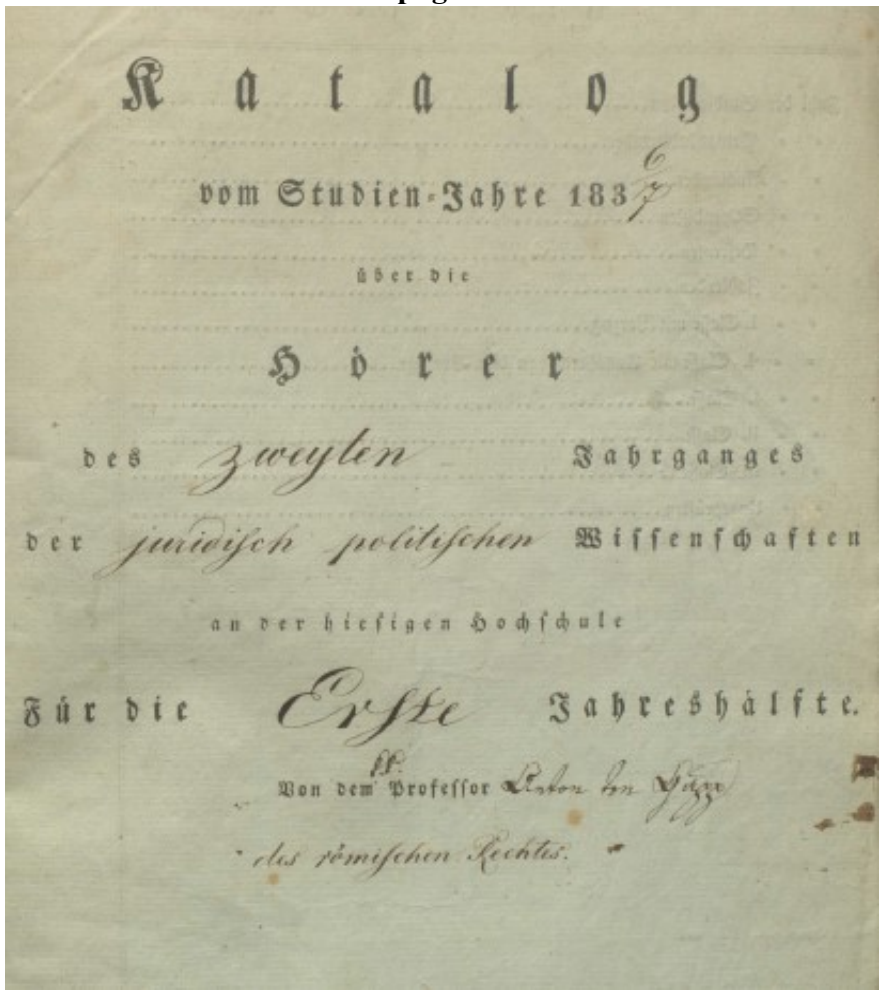
Quas testimoniales manu propria subscribo et sigillo Ecclesiae parochialis munio

Leopoli die 19 Maji A. D. 1938.

Appendix 4

Katalog vom Studien
Archives – University of Vienna (microfilm + originals)

Title page 1836/7



Katalog

vom Studien-Jahre 1836/7

über die

Hörer

des zweyten Jahrganges

der juridisch politischen Wissenschaften

an der hiesigen Hochschule

Für die Erste Jahreshälfte.

Von dem Professor Dr. Leopold Ritter von Pezzl

des römischen Rechtes.

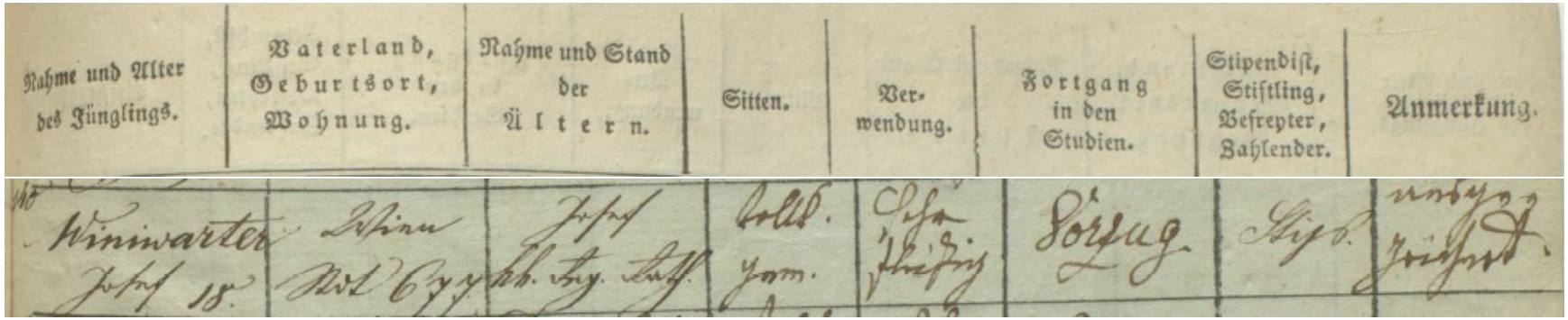
Katalog

vom Studien-Jahre 1836/7
über die
Hörer
des zweyten Jahrganges
der juridisch politischen Wissenschaften
an der hiesigen Hochschule
für die Erste Jahreshälfte.
Von dem Professor Anton von ?a??
des römischen Rechtes.

Catalogue

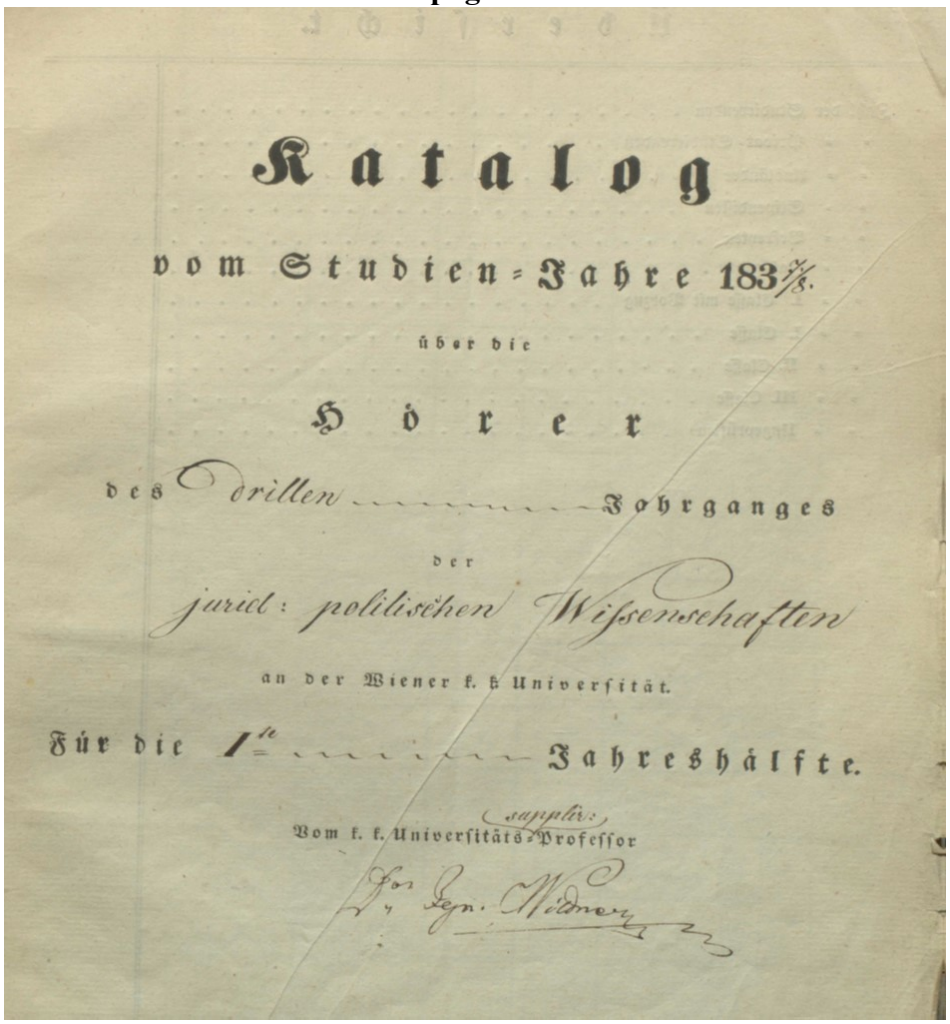
of the study year 1836/37
concerning the
students
of the second year
of juridical-political sciences
at the local university
for the first half of the year.
From Professor Anton von [*illegible name*]
of Roman law.

1836-1837



Nahme und Alter des Jünglings	Vaterland, Geburtsort, Wohnung	Nahme und Stand der Ältern	Sitten	Verwendung	Fortgang in den Studien	Stipendist, Stiftling, Befreyter, Zahlender	Anmerkung
Name and age of the youth	*Native country, birthplace, residence*	*Name and status of elders*	*Customs*	*Work/application*	*Progress in studies*	*Scholarship, Foundation, Exempt, Paying*	*Note*
Winiwarter Josef 18.	Wien? ??? 677	Josef k.k. Reg[ierungs-]Rath	???	Sehr fleißig	Vorzug	Stip.	ausgezeichnet
Winiwarter Josef 18	*Vienna? ??? 677*	*Josef Imperial Government advisor/official*	*???*	*Very diligent*	*Merit/ excellence*	*Scholarship*	*Excellent*

Title page 1837/8



Katalog

vom Studien-Jahre 183$^{7}/_{8}$.

über die

Hörer

des dritten Jahrganges

der

juridisch-politischen Wissenschaften

an der Wiener k. k. Universität.

Für die 1te Jahreshälfte.

Vom k. k. Universitäts-Professor

(supplirt:)

Joh. Widmer

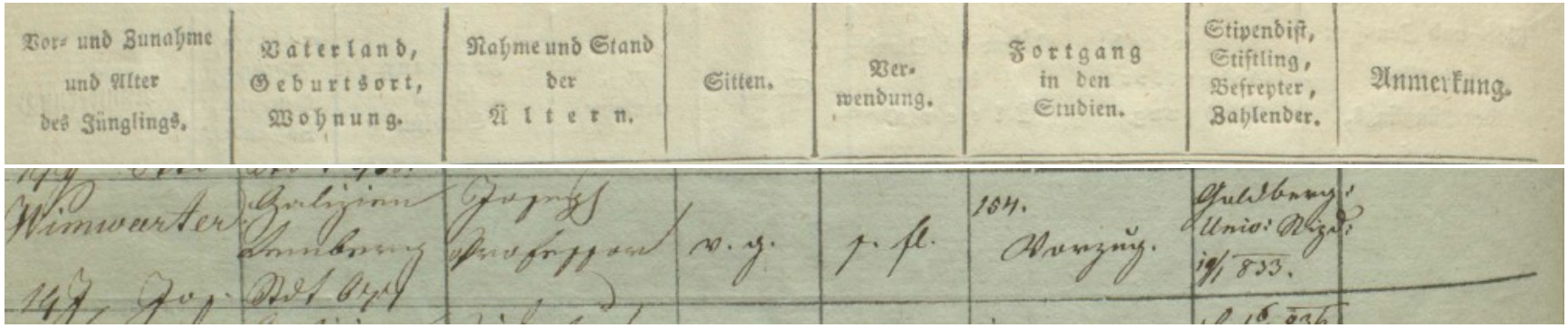
Katalog

vom Studien-Jahre 1837/8
über die
Hörer
des dritten Jahrganges
der juridisch politischen Wissenschaften
an der Wiener k. k. Universität
Für die 1te Jahreshälfte.
Von k. k. Universitäts-supplir-Professor
Dor Ign[az]?? Wildner[-Maithstein].

Catalogue

of studies: years 1836/37
about the
Students
of the drill year
of juridical-political sciences
at the Vienna Imperial University
for the first half of the year.
From Imperial University Professor
???

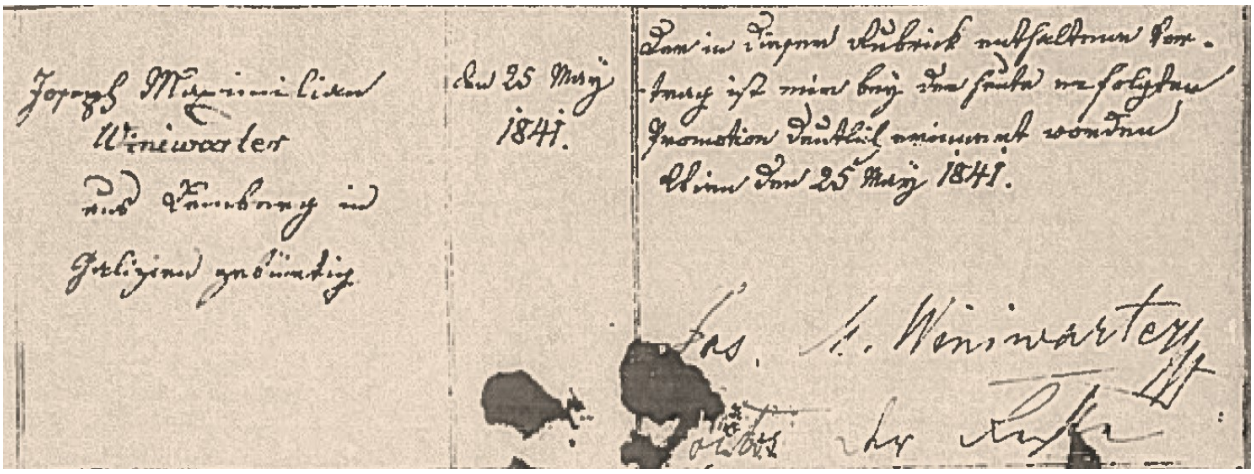
1837-1838



Vor- und Zunahme und Alter des Jünglings	Vaterland, Geburtsort, Wohnung	Nahme und Stand der Ältern	Sitten	Verwendung	Fortgang in den Studien	Stipendist, Stiftling, Befreyter, Zahlender	Anmerkung
First and surname and age of the youth	*Native country, birthplace, residence*	*Name and status of elders*	*Customs*	*Work/application*	*Progress in studies*	*Scholarship, Foundation, Exempt, Paying*	*Note*
Winiwarter 19 J Jos.	Galizien Lemberg ???	Josef Professor	r.g./v.g. ??	?? fl.	104. Vorzug	Geldbe[t]r[a]g??? Univ- Stip[en]d[ium]. 19.1.[1]833	ausgezeichnet
Winiwarter 19 years old Jos.	*Galicia Lemberg ???*	*Josef Professor*	*???*	*???*	*104. Merit/ excellence*	*Amount of money University stipend ??? 1833*	

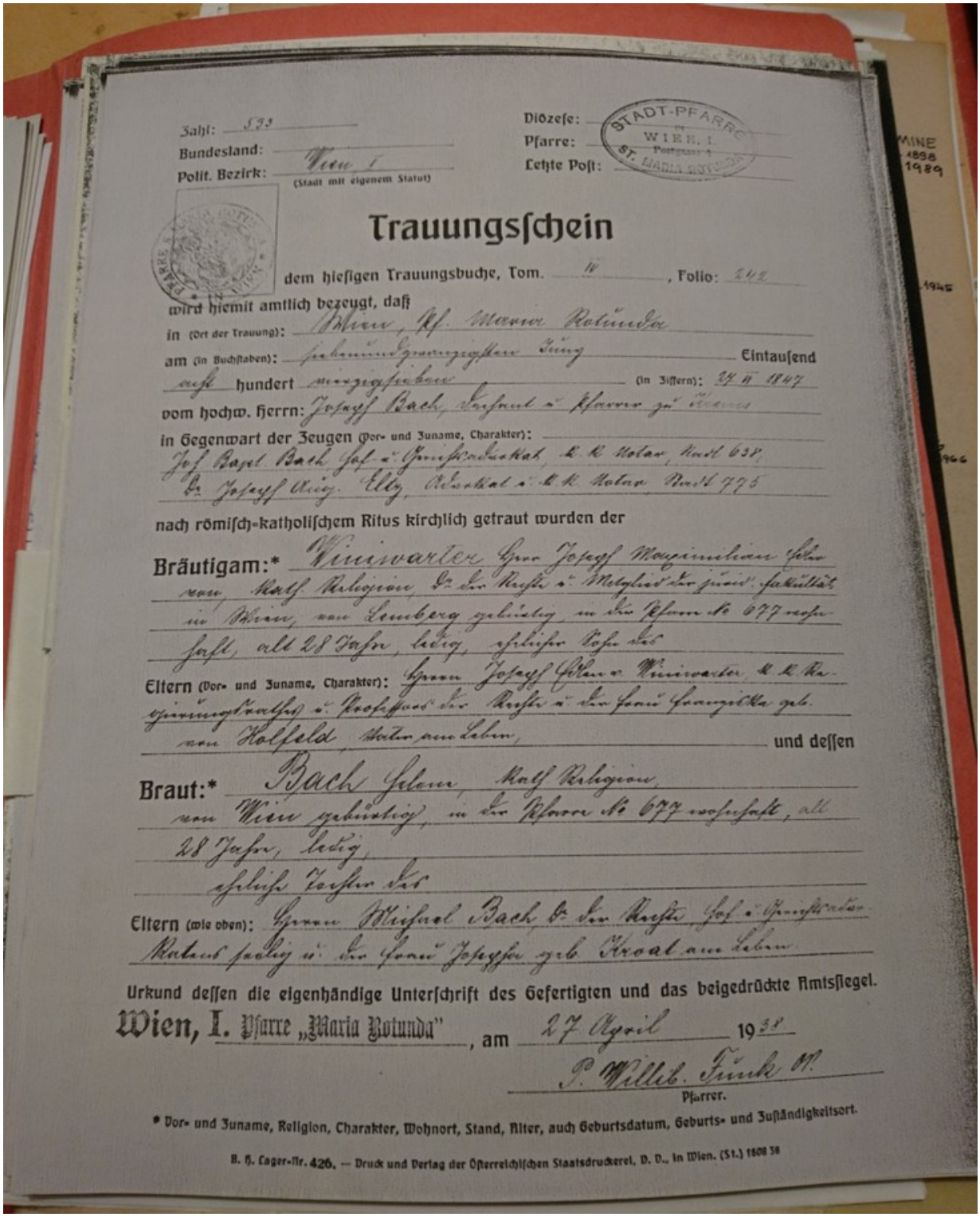
Appendix 5

Winiwarter's graduation register
(with Winiwarter's signature)



Appendix 6

Josef and Helene's marriage certificate reproduced at a later date (27 April 1938)
Date of marriage in Vienna: 27 June 1847



Zahl: 533
Bundesland: Wien
Polit. Bezirk: I (Stadt mit eigenem Statut)
Diözese:
Pfarre:
Letzte Post:

STADT-PFARRE WIEN I. Postgasse 4 ST. MARIA ROTUNDA

Trauungsschein

dem hiesigen Trauungsbuche, Tom. IV, Folio: 242
wird hiemit amtlich bezeugt, daß
in (Ort der Trauung): Wien, Pf. Maria Rotunda
am (in Buchstaben): siebenundzwanzigsten Juny Eintausend
acht hundert siebenundvierzig (in Ziffern): 27 VI 1847
vom hochw. Herrn: Joseph Bach, Cooperator & Pfarrer zu Wien
in Gegenwart der Zeugen (Vor- und Zuname, Charakter): Joh. Nepomuk Bach, Hof- & Gerichtsadvokat d. K. Notar, Nr. 638
Dr. Joseph Aug. Eltz, Advokat & d. K. Notar Nr. 775
nach römisch-katholischem Ritus kirchlich getraut wurden der

Bräutigam:* Winiwarter Herr Joseph Maximilian Sohn
von kath. Religion, d. der Rechte & Mitglied der hies. fakultät
in Wien, von Lemberg gebürtig, in der Pfarre Nr 677 wohnhaft,
alt 28 Jahre, ledig, erster Ehe des

Eltern (Vor- und Zuname, Charakter): Herrn Joseph Heinr. Winiwarter d. d. Rechte
Universität & Professors der Rechte & der Frau Franziska geb.
von Holfeld, beide am Leben, und dessen

Braut:* Bach Helene, kath. Religion,
von Wien gebürtig, in der Pfarre Nr 677 wohnhaft, alt
28 Jahre, ledig,
erster Ehe des

Eltern (wie oben): Herrn Michael Bach d. d. Rechte, Hof- & Gerichtsadvokaten
Ritters pflg & der Frau Josepha geb. Kraal am Leben

Urkund dessen die eigenhändige Unterschrift des Gefertigten und das beigedrückte Amtssiegel.

Wien, I. Pfarre „Maria Rotunda", am 27 April 1938

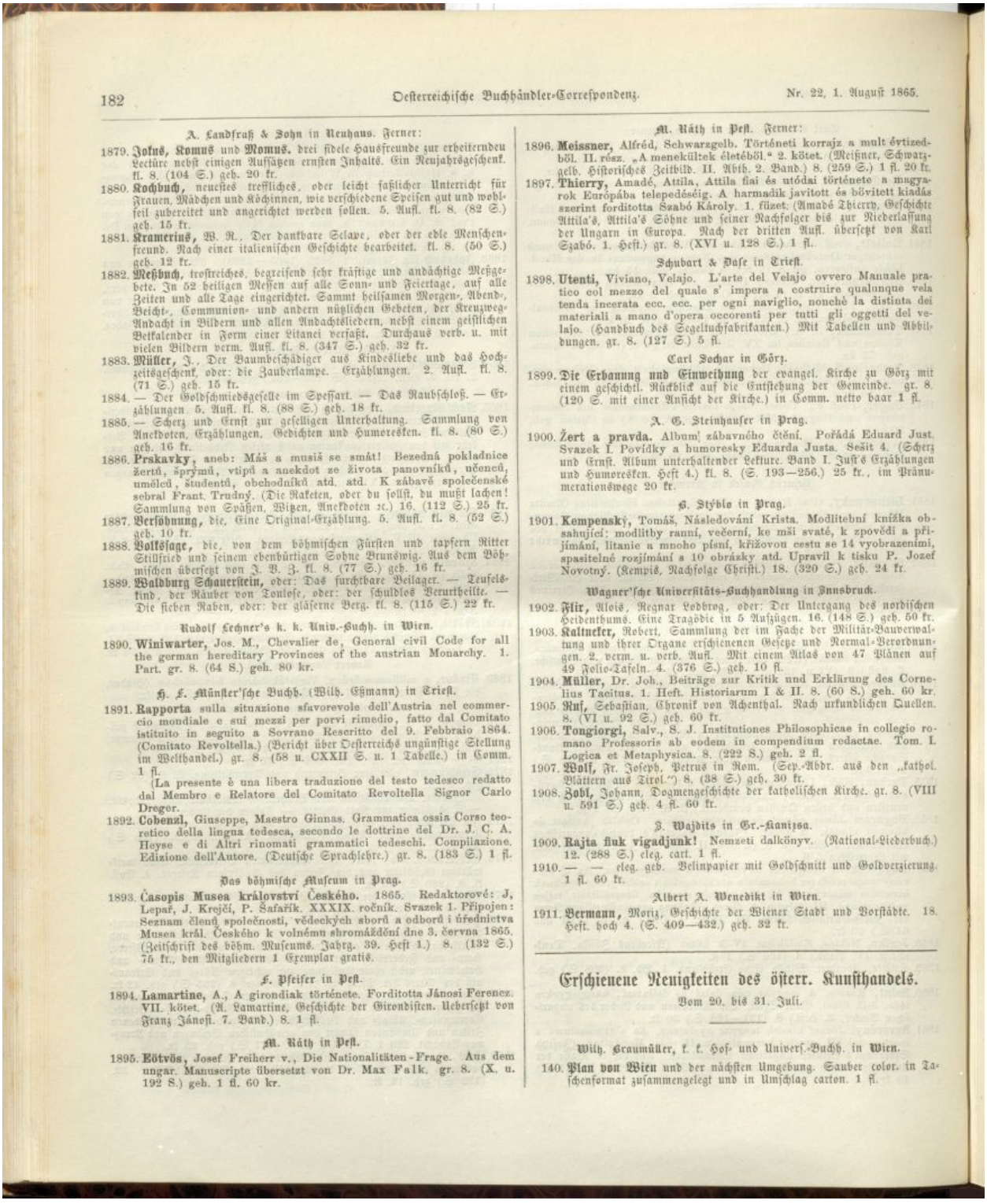
P. Willib. Funk O.P.
Pfarrer.

* Vor- und Zuname, Religion, Charakter, Wohnort, Stand, Alter, auch Geburtsdatum, Geburts- und Zuständigkeitsort.

B. H. Lager-Nr. 426. — Druck und Verlag der Österreichischen Staatsdruckerei, U. V., in Wien. (St.) 1608 38

Appendix 7

Original pages from Österreichische Buchhändler-Correspondenz of the publication of Winiwarter's translation



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Allen Handlungen, welche das Glück haben mit der löbl. Aug. Hesse'schen Bchg. in Gratz in Verbindung zu stehen, kann ich nur rathen, etwaige Rechnungsdifferenzen so schnell als möglich zu begleichen.

Obwohl seit meinem Etablissement stets bemüht, meinen Verbindlichkeiten rein und voll nachzukommen — wie dies alle geehrten Geschäftsfreunde wissen — hatte ich das Unglück mit Herrn Aug. Hesse's Bchg. in eine Rechnungsdifferenz von — **10 kr.; sage: Zehn Neukreuzer österr. W.** zu gerathen. Selbstverständlich war dieser „Riesen-Uebertrag" in der gegenwärtigen bewegten Zeit meinem Gedächtnisse entschwunden. Herrn Aug. Hesse's Bchg. beliebte es nun eine höchst originelle Gelegenheit zur Kühlung ihres Müthchens zu wählen:

indem sie als Antwort auf meine Bitte um einige Bücher für Verwundete diesen meinen Aufruf im buchstäblichen Sinne des Wortes dazu mißbrauchte, nebst einer höchst malitiösen Bemerkung noch Folgendes darauf zu setzen:

„Aus Rechnung 1865 schulden Sie uns noch — 10 kr. (!!); sollen wir Sie öffentlich zu deren Berichtigung auffordern?"

Die Sache wäre zu komisch, wenn sie nicht zugleich ein neuer trauriger Beweis des ....Tones wäre, welcher immer noch in der buchhändlerischen „Correspondenz" zu finden ist und der wahrlich einem Stande am Wenigsten zur Ehre gereicht, der sich so gern den „Träger der Wissenschaft und Bildung (?)" nennt!

Unbefangene Collegen werden Herrn Aug. Hesse's Verfahren zu würdigen wissen; daß meinerseits das ominöse „Sechserl" sofort nach Gratz expedirt wurde, versteht sich von selbst.

Jedenfalls ist es mein letztes „Geschäft" mit Herrn Aug. Hesse's Bchg. gewesen.

Mit Leuten, die über die ersten Regeln des Anstandes noch nicht hinausgekommen zu sein scheinen, habe ich Nichts zu schaffen.

Wien, 12. Juli 1866. **Karl Czermak.**

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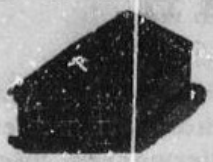

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Winkelmann Michael, Seidenzeug- u. Sammtfab., VI. Liebgasse 7.
— Nikol. jun., Fischbein-, Sonn- u. Regenschirmfab., Wollzeile 11, F. N. B. Winkelmann's Sohn, fab. IV. Wdn. Hauptstr. 2, G. Graben 12.
— Nikolaus sen., Sonn- u. Regenschirmfab., beeid. Handelsgerichts-Schätzm., II. Ferdinandsstr. 27.
Winkelmayer Anna, Putzwarenhändlerin, Am Bergl 2.
— Karl, Gasthofbes. u. Bierverfilderer, Bhschg. Ob. Fischerg. 102.
— Karl, Kriegsministerial-Off., III. Ldst. Hptstr. 3.
— Karoline, Bergolder-Wwe, VII. Lerchenfelderstraße 49.
— Rudolf Tapezirer, IX. Strumpergg. 12.
Winkelmüller Franz, E., Rbf. Prinz Karlg. 30.
— Franz, Greißler, III. Löweng. 43.
— Karl, Fragner, III. Löweng. 42.
— Karoline, Architekten-Wwe, IV. Wiktorg. 18.
Winker Anna, Privat, Seilerstätte 10.
— Heinrich, Weizen-Stärkeb. u. Parfumeur, IX. Alserstr. 26, G. VI. Gumpendorferstr. 21.
— Johann, Weißwarenhandlung, F. J. G. Winker & Söhne, Bandfab.-Niederlage Seidenstetterg. 5.
— Josef, Vermischtwarenhdlr., VII. Mariahilferstraße 54, F. Schopp & Winker.
Winkler A., Holzhändler, V. Franzerg. 15.
— A., Buchhalter, IV. Schaumburgerg. 3.
— Adolf, Expeditsadjst. d. Nordb., II. Mayerg. 6.
— Albert, Drechsler, E., V. Johannag. 25.
— Alois, Schilder- u. Schriftenmaler, VI. Liniengasse 35.
— Alois, Schuhmacher, IX. Rußdorferstr. 73.
— Alois, Steindrucker, VI. Liniengasse 35.
— Anna, Privileg.-Inhaberin, VII. Neustiftg. 17.
— Anton, Fragner, IX. Garnisong. 12.
— Anton, Gastwirth, E., VII. Neustiftg. 103.
— Anton, Gelbarbeiter, IV. Wiedner Hauptstr. 24.
— B., Seilerwaaf., VI. Liebg. 20.
— Barbara, Beamten-Wwe, III. Diagog. 1.
— Benjam., Bergbeamter, III. Traung. 5.
— Eduard, Schneider f. H., III. Ldstr. Hptstr. 28.
— Elisabeth, Eisentrödlerin, VI. Blaug. 1.
— Eugen Kationa'bank-Beamter, Grashof 5.
— Ferdinand's Löwe, Schlosserin (Tapezirarbeiten), IV. Margarethenstr. 29.
— Ferdinand, Schneider f. H., Himmelspforg. 6.
— Filipp, Gastwirth, V. Huntsthurmerstr. 79, „zum weißen Rößl".
— Franz, k. k. Beamter, IV. Wdn. Hauptstr. 36.
— Franz, fürstl. Beamter, Rojeng. 4.
— Franz, Buchhalt. Ingrossist, Korbierg. 3.
— Franz, Fragner, VIII. Benneg. 13.
— Franz, Hufschmied, Fd. Schönbr. Hauptstr. 41.
— Franz, Mehlverschleißer, VIII. Benneg. 15.
— Franz, Musikdirektor, Wbrg. Hauptstr. 138.
— Franz, Schiffer, VII. Bandg. 24.
— Franz, Schneider f. D., II. Taborstr. 45.
— Franz, Schuhmacher, VII. Kirchberg. 11.
— Franz, Steueramts-Off., E., III. Seidlg. 1.
— Franz, mag. Steueramts-Off., III. Ungarg. 52.
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— Gottlieb, Mechaniker, II. Circusg. 2.
— Gustav, Mechaniker, III. Barichg. 24.
— Heinrich, Fleischhacker, E., Bhschg. Kirchenq. 18.
— Heinrich, Liqueur- u. Spiritusfab., Bhschg. 197.
— Heinrich, Uhrmacher, Rbf. 120.
— Jakob, Produktenhändler, II. Praterstr. 43.
— Ignaz, k. k. Beamter, III. Rudolphg. 30.
— Ignaz, Graveur, VI. Kandlg. 11.
— Ignaz, Schuhmacher, II. Gr. Sperlg. 29.
— Johann, Betriebs-Assistent d. Südb., Brunn 58.
— Johann, Fleischhauer, E., VII. Kirchenq. 47 u. VII. Neustiftg. 31.
— Johann, Fragner, III. Ungarg. 59.
— Johann, Friseur, IV. Margarethenstr. 30.
— Johann, Gärtner, E., Smrg. 122.
— Johann, E., VII. Lindeng. 21.
— Johann, Korbmacher, II. Schiffg. 8.
— Johann, Lebergalanteriewarenfab., VII. Kaiserstraße 58.
— Johann, Sattler, III. Wällischg. 29.
— Johann, Schuhmacher, IX. Pfluggg. 6.
— Johann, Rchgs. Off., Rothenhof 6.
— Johann, Schreiblehrer u. Kalligraf, Bäckerstr. 7.
— Johann, Telegrafist, III. Barichg. 23.
— Johann, Tischler, II. Glockeng. 5.
— Johann, k. k. Beamter, IX. Porzellang. 24.
— Johann, Wirth, VII. Sigmundg. 16.
— Josef, E., Beigittenau Jägerstr. 4.
— Josef, Handlungs-Ges., VI. Mariahilferstr. 59.
— Josef, Nordbahnbeamter, II. Novarag. 13.
— Josef, Nordbahn-Exped., II. Pillersdorfg. 2.
— Josef, Fleischhauer, IV. Schleifmühlg. 9, Bank IV. Wiedner Hauptstr. 31.
— Josef, Fragner, VIII. Auerspergstr. 13.
— Josef, Rchgs. Off., VIII. Pfeilgasse 9.
— Josef, Ingrossist, Bugt. Linzer Poststr. 13.
— Josef, akad. Maler, VII. Kirchenq. 41.
— Josef, Gastwirth, E., Smrg. 17, „zum goldnen Löwen".
Winkler Josef, Min. Accessist, VI. Gumpendorferstraße 67.
— Josef, Rchgs. Off., Korresp. der geol. Reichs-Anstalt, Fleischmarkt 20.
— Josef, Seidenzeugfab., Rstd. 54.
— Josef, Schneider f. H., Krugerstr. 11.
— Josef, Schneider f. D., Kurrentg. 12.
— Josef, Tischler, VII. Seidenq. 33.
— Josef, Uhrmacher, III. Ungarg. 36.
— Josefa, E., IX. Rußdorferstr. 17.
— Josefa, erste Mimikerin am Hof-Operntheater, IV., Neumanng. 7.
— Juditha, Schneider-Wwe, VII. Schottenhofg. 6.
— Karl, Gastwirth, III. Hint. Zollamtsstr. 13, „zum goldnen Kegel".
— Karl, Stadtlohnkutscher, V. Hundsthurmerstr. 76.
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— Karl, Privat-Beamter, IV. Paniglg. 16.
— Karl, mag. Praktikant, VIII. Laudong. 33.
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— Konrad, Lehrer, V. Matzleinsdorferstr. 12.
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— Leopold, Schneider, VI. Engelg. 10.
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— Ludwig, Schneider f. D., IX. Wasserg. 4.
— Marie v., Mag. R.-Wwe, Lobkowitzpl. 1.
— Mathias, Geschäftsführer, IX. Türkenstr. 21.
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— Michael, Metallguß-Schilder-Aufschriften- und Blechdruckwaren-Fab., E., VI. Millerg. 42.
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— Peter, k. k. Beamter, Fd. 129.
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— Theresia, Drechsler-Wwe, III. Rochusg. 25.
— Theresia, Hofttischler-Wwe, E., II. Rothen-Sterngasse 14.
— Thereje, Kaufmann-Wwe, Ballg. 4.
— Wilhelm, Schneider f. H., VII. Schottenhofg. 6.
— Vincenz, Bergolder, VIII. Josefstädterstr. 54.
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— — Franz, E., k. k. Hof-Eisenhändler, IV. Schmöllerig. 8, G. Kärntnerstr. 21.
— Franz Söhne, k. k. Hof-Eisengußwaren-Fabriksniederl. Kärntnerstr. 21.
Winklmayer Elisabeth, Bergolderin, VII. Neubaugasse 42.
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— Josef, Juwelenarbeiter, Goldschmiedg. 9.
— Josef, Silberarbeiter, VI. Gumpendorferstr. 41.
Winnisch Anton, Sattler, Bgst. Alserg. 305.
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Winsch Franz, Schuhmacher, VIII. Josefstädterstraße 53.
Winscher Alois, Mag. Concipist, IV., Hundsthurmerstraße 2.
— Martin, Decken- u. Matratzenmacher, V. Hundsthurmerstr. 2.
Winspeare Anton Freih. v., k. sicil. Gesandter und bevollmächtigter Minister, Karlsplatz-Ring 13.
Winter Abraham, Privat, IX. Seeg. 8.
— Adalbert, Schuhmacher, IX. Rußdorferstr. 35.
— Adolf, Fürst Lobkowitzischer Kasse-Kontrolor, Lobkowitzpl. 3.
— Alois, Stadtbaumeister, IX. Rußdorferstr. 66.
— Georg, Stadtbaumeister, Architekt und Jud. des gold. Verd. Krz., E., IX. Thurng. 4.
— Andreas, Mil. Beamter, VII. Lindeng. 31.
— Anna, E., IX. Sechsschimmelg. 3.
— Anna, Beamten-Wwe, IX. Servitengasse 12.
— Anton, Holzhändler, Bgstr. Wintergasse 79.
— Ant., Schauspieler d. Theaters a. d. Wien, VI. Magdalenenstr. 5.
— Anton, Tischler, IX. Servitengasse 5.
— Anton, Bergolder, VII. Lerchenfelderstr. 31.
— Anton, Zuckerbäcker, E., VIII. Blindeng. 9.
— Antonia, Weberkammmacherin, VIII. Alserg. 2.
— Aug., Friseur u. Perrückenmacher, VI. Gumpendorferstr. 16.
— Barbara, Beamten-Wwe, III. Rochusg. 25.
— Bernhard, Oelhändler, VII. Blindeng. 12.
— C. H., Kammniederl., Johannesg. 9, G. Kärntnerstr. 9.
— C. H., Leinwandhändler, Freiung 1.

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Windisch Franz, Milchmeier, VII. Kaiserstr. 18.
— Johann, Greißler, III. Salesianerg. 8.
— Josef, Piaristen-Ordens-Priester, Lehrer am akad. Gymnasium, III. Hemmar. 7.
— Josef, Tischler, VII. Dreilaufserg. 8.
— Josefa, Buchhalter-Wwe, Schulerstr. 4.
— Michael, Tischler, VII. Kaiserstr. 104.
Windischbauer Franz, Eisentröpler, E., III. Rennweg 34.
Windisch-Grätz Alfons Fürst zu, Renng. 12.
— Alfred Fürst zu, k. k. G. M., R. d. österr. Leopold-O. u. d. Mil. Verd. Krz., Renng. 12.
— August Fürst zu, k. k. Obst., Ramtscmdt., Kämmerer, R. d. russ. Stan.-, d. russ. Wlad.-, d. pr. roth. Adl.- u. d. sächs. ern. Haus-O., erster Stallmeister Sr. Maj. d. Kaisers, III. Rennweg 12.
— Eleonora Fürstin zu, geb. Fürstin Lobkowitz, St. Krz. O.- u. Palast-Dame, VIII. Langeg. 62.
— Mathilde Fürstin zu, St. Krz. O.- u. Palast-Dame, Bankg. 2.
Windischmann Josef, Klaviertischler, V. Schloßg. 16.
Windmeiser Michael, Naturstuden-Inh., III. Lstr. Hauptstr. 9.
Windpassinger Joh., Fab.-Werkführer, IV. Wdn. Hptstr. 61.
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Wineczky Josef, akad. Maler, VIII. Lederereg. 25.
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Wingard Karoline, IV. Favoritenstr. 8.
Wingelmüller Mathias, E., IX. Schubertg. 9.
Winheim Johann, Reißzeugmacher, E., VI. Gumpendorferstr. 44.
Winhofer Anton, Wagner, III. Marxerg. 8.
— Ferdinand, Privatagent, IV. Weyringerg. 4.
— Josef, Handelsgerichtsrath, Neuer Markt 17.
— Katharina, k. k. Major-Wwe, III. Beatrixg. 5.
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— Ferdinand, Rchgs. Off., III. Salesianerg 17.
— Josef, IV. Hungelbrunng. 23.
Winiwarter Georg Rit. v., Civil-Ingen. u. Eigenthümer der Blech- u. Bleiwarenfab. in Gumpoldskirchen, Rdige. Riemerg. 16.
— G., Blech- u. Bleiwarenfab. in Gumpoldskirchen, Rdige. Riemerg. 16. siehe Inserat.
— Josef Max Rit. v., J. Dr., Hof- u. Ger. adv. u. beeideter k. k. Gerichtsdolmetsch für franz. und engl. Sprache, Officier d. kais. franz. O. d. Ehrenlegion u. d. papstl. Gregor-O., Verwaltgs.-R. d. Leders- u. Rentenversicherungs-Anstalt „Anker" u. „Vindobona", Singerstr. 13.
— Leopold, k. k. Beamter, III. Gartenerg. 19.
Winka Anton, Schuhmacher, IX. Marianneng. 24.
Winkelbauer Georg, Current-warenhandler, F. Winkelbauer & Wimmer, Augustinerstr. 12, G. Rotenthurmstr. 9.
— Georg, Schuhmacher, III. Gärtnerg. 32.
— Johann, Potamentirer, VII. Halbgasse 3.
— Karl, Handelsg.-Schätzm., E., Hnis. Hptstr. 10.
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— Michael, Seidenzeug- u. Sammtfab., VI. Webgasse 7.
— Nikol. jun., Fischbein-, Sonn- u. Regenschirmfab., Wollzeile 11, F. N. B. Winkelmann's Sohn, Fab. IV. Wiedn. Hauptstr. 2, G. Graben 12.
— Nikolaus sen., Sonn- u. Regenschirmfab., II. Ferdinandsstr. 27.
Winkelmayer Anna, Putzmdlerin, Rabenpl. 2.
— Elisabeth, Bergolderin, VII. Neubaug. 49.
— Franz, Kuchenbacker, III. Lstr. Hptstr. 80.
— Georg, Strohhut-Appreteur, VII. Neustiftg. 28.
— Karl, Gasthofbes. u. Bierverführer, Rdisch. Kirchenq. 28.
— Karoline, Bergolder-Wwe, VII. Lerchenfelderstraße 49.
— Marie, Strohhutmacherin, V. Wehrg. 18.
— Wilhelm, Rchgs. Off., III. Marxerg. 7.
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— Franz, Greißler, III. Löwenq. 43.
— Karoline, Architekten-Wwe, IX. Mariannengasse 12.
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Winker Eduard, Hdigs. Gesellsch., Seitenfetterg. 5.
— Eleonore, E., VI. Mariahilferstr. 59.
— Franziska, Seilerstatte 10.
— Johann, Weißwarenhandler, F. J. G. Winker & Söhne, Bauerfab.-Rdige. Seitenwetterg. 5.
— Josef, Kurzwarenhdlr., VI. Mariahilferstr. 59, G. Seitenwetterg. 5.
Winkler A., Kaffeesiedr. u. Ob. Donaustr. 4.
— Adolf, Exped.-Bstd. d. Nordb., II. Schwemmgasse 2.
— Albert, Drechsler, E., Johannag. 25.
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— Anton, Dr., o. ö. Prof. d. Mathematik am polytechn. Institt., Phil. Dr., Mitgl. d. Unterrichts-Rathes, wirkl. Mitgl. d. k. k. Akad. d. Wissenschaften, IV. Wohllebeng. 13.
— B., Seidenzeugfab., VI. Webg. 20.
— Benjamin, Bergbaubeamter, III. Beatrixg. 12.
— Eduard, s. Nachweis V, Schneider.
— Eleonore, Gruenangerg. 6.
— Elisabeth, Eisentröpelein, VI. Blaug. 1.
— Eugen, Nationalbankbeamter, Schulaterng. 5.
— Ferdinand's Wwe, Schlosserin (Tapezirarbeiten), IV. Margarethenstr. 29.
— Ferdinand, Schneider s. H., Himmelpfortg. 6.
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— Franz, k. k. Beamter, Körblerg. 3.
— Franz, Fragner, VIII. Bennog. 13.
— Franz, Hufschmied, Fh. Schenkr. Hauptstr. 41.
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— Franz, Schuhmacher, VII. Kirchbergg. 11, G. Seileig. 19.
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— Ignaz, Horn- u. Leimlederhdlr., II. Gr. Schiffgasse 15.
— Johann Gottlieb, Rudolfspl. 6.
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— Johann, Fleischhauer, E., VII. Kirchenq. 47.
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— Johann, Lebergalanteriewarenfab., VII. Kaiserstraße 58.
— Johann, Schuhmacher, IX. Pflugg. 6.
— Johann, Rchgs. Off., VIII. Rother Hof 8.
— Johann, k. k. Obertelegraffit, III. Barichg. 1.
— Johann, k. k. Beamter, IX. Porzellang. 34.
— Josef, Apotheker, Hitzing 17.
— Josef, Kuchengärtner, E., Bzgt. Jägerstr. 4.
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— Josef, Nordbahn-Adjkt., II. Pillersdorfg. 2.
— Josef, Fleischhauer, IV. Margarethenstr. 18, Bank IV. Wiedner Hauptstr. 31.
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— Josef, Rchgs. Off., VIII. Piaristeng. 9.
— Josef, akad. Maler, VII. Kirchenq. 43.
— Josef, Gastwirth, E., Smrg. 12, „zum goldenen Löwen".
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— Josef, Schneider s. H., Krugerstr. 11.
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— Josefa, E., IX. Rußdorferstr. 17.
— Karl, Gastwirth, III. Hint. Zollamtsstr. 13, „zum goldnen Kegel".
— Karl, Stadtlohnkutscher, V. Hundsthurmerstr. 76.
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— Leopold, Pfarrer bei St. Johann, Schul-Dir., II. Nepomukg. 1.
— Leopold, Polizei-Accessist, VII. Breiteg. 7.
— Leopold, s. Nachweis V, Schuhmacher.
— Leopoldine, Hebamme, III. Adamsg. 7.
— Ludwig, Schneider s. D., IX. Radieg. 4.
— Magdalena, E., VI. Webg. 20.
— Marie v., Magistrats-R.-Wwe, Lobkowitzpl. 1.
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— Theresia, Hofstichler-Wwe, E., II. Rothen-Sterng. 14.
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— Wenzel, Schneider f. H., VII. Lerchenfelderstr. 33.
Winkler's Franz Söhne, Guß-, Hammer-, Streck-, Metall-, Messing- u. Eisenwarenfab. zu Eberedorf, Hof-Eisenhändler, Kärnthnerstr. 21.
Winkler v. Forzest Josef, Chef d. F. Franz Winkler's Söhne, handelsgerichtl. Inventur- und Schätzungscmsr., k. k. Hof-Eisenhandl., Kärnthnerstraße 21.
— v. Forzest Franz, E., k. k. Hof-Eisenhändler, IV. Schmöllerg. 9, G. Kärnthnerstr. 21.
— v. Forzest Karl, Fab.-Mitdel., Kärnthnerstr. 21.
Winkthofer Anton, Seidenappreteur, V. Mitterssteig 15.
Winklmeier Josef, Möbeltransportwagen-Inh., IV. Favoritenstr. 1.
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Winsch Franz, Schuhmacher, VIII. Josefstädterstraße 53.
Winscher Alois, mag. Concipist, IV. Hundsthurmerstraße 2.
— Martin, IV. Hundsthurmerstr. 2.
Winspeare Anton Freih. v., Kärnthnerring 13.
Winter Abraham, IX. Seeg. 8.
— Adalbert, Lehrer, VI. Magdalenenstr. 33.
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G. Winiwarter, WIEN, Riemergasse Nr. 16.

1870 listings

Willner Kath., Cravatent. b., VII. Schottenfeld. 51.
Willot's Mich. Wwe., Tischlerin, VIII. Alserg. 9.
Wilkrader Aloisia, Hebamme, V. Schloßg. 2.
Wilkreder J., Posamentir, VII. Kaiserstr. 8.
— Karl, Posamentir, VII. Neustiftg. 87.
Willvonseder Ed., Privat-Lehrer, II. Taborstr. 41.
— Johann, k. k. Telegraphist, III. Gärtnerg. 24.
Willwerth Margar., Geschirrdrin., IV. Rainerg. 8.
Willy Helene, Kleinfuhrw. Wwe., III. Schimmelgasse 6.
— Karl, Ingenieur, Lobkowitzpl. 1.
Wilsch Josef, Fragner, IV. Goldegg. 26.
Wiledorf Arthur, Baron, Jugen.-Eleve d. Südb., IV. Favoritenstr. 31.
— Cenci, Schauspielerin, VIII. Fuhrmanng. 14.
Wilson Charles, Baumwoll-Einfuh. und Agent.-Geschäft, Kärnthnerring 13.
— Marie, V. Larenburgerstr. 20.
Wilt Anton, Maurer, Wnb. an der Türkenschanze 50.
— Franz, Min. Ingen. u. Architekt, R. d. Frz. Jos.-O., IX. Nadlerstr. 11.
— Josef, p. k. k. Kanzellmeister, III. Radetzkystr. 11.
Wiltauer Leopoldine, Schauspielerin, VI. Engelg. 5.
Wildhann Josefa, VIII. Blindeng. 10.
Wildhum Ferd., Gastwirth, IX. Michelbeurerng. 5.
Wiltim Franz, Beamter, d. Frz. Jos. B., IX. Nußdorferstr. 88.
Wiltscha Clementine, Bmt.-Wwe., III. Daricha. 4.
Wiltschek Aloisia, Hebamme, VIII. Strozzig. 41.
— Johann, Agent, Sh. Hptstr. 75.
— Regine, Fleckwasser-Erz., Fh. Josefg. 35.
Wiltschko Josef, Beamter d. Südb., IX. Rainerg. 9.
Wilzek Leopold, Hutmacher, IX. Nußdorferstr. 3.
Wimadinovic Spiridion, p. k. k. Hauptmann, VIII. Langeg. 12.
Wimberger Karl, Gastw., Fh. Mariahilfer Gürtel 39, „z. neuen Hühnerstriegel".
— Rudolf, k. k. Assistent, VII. Neustiftg. 8.
Wimbsser Josef, Privatbeamter, VI. Mirg. 10.
Wimlatil Antonia, Kleidermacherin, IX. Schwarzspanierstr. 5.
— Wenzel, Schneider, VIII. Lercheng. 15.
Wimmer Ambros, Cmfr. d. magist. Cimentirungsamtes, V. Hundsthurmerstr. 2.
— Agnes, Beamt.-Wwe., VI. Engelg. 6.
— Andreas, Sparcassebeamter, Hadsburgerg. 9.
— Andreas, Hauptschaffner, Wdrg. 430.
— Anna, VII. Mariahilferstr. 52.
— Anna, VIII. Langeg. 51.
— Anna, Milchmeierin, Obdt. Schönbrunner Hauptstraße 83.
— Anton, Trödler, VIII. Josefstädterstr. 52.
— August, Beamter d. „Phönix", Wollzeil. 15.
— A. J., Zeigenfabrikant, Franziskanerpl. 5, Gh. Rauhensteing. 7.
— Barbara, Schauspielerin, VIII. Kaiserpergerstr. 9.
— Cäcilia, Fragnerin, VII. Neustiftg. 20.
— Christian, Schuhm., V. Margaretnergürtel 67.
— Franz, Advocat.-Konzipist, Hnls. Jiswng. 45.
— Franz, Einspänner, IV. Jgelg. 1.
— Franz, Fleischhauer, III. Thong. 13.
— Franz, Fragner, III. Beatrixg. 14.
— Franz, Gastwirth, IV. Larenburgerstr. 31.
— Franz, Fleischhacher, III. Schimmelg. 10.
— Franz, Goldarbeiter u. Zahnkünstler, VII. Sigmundg. 13.
— Franz, Holzhdlr., Hgnst. Fasanengasse 92.
— Franz, akad. Zimmermaler, Ob. am M., II. Praterstraße 25.
— Franz, E., III. Landstr. Hptstr. 124.
— Franz, III. Salzng. 14.
— Franz, Schuhmacher, Rhd. 116.
— Franz, Trödler, Ostl. Hptstr. 51.
— Franz, Int. eines Commissionsgesch., Schulerstraße 17.
— Franziska, III. Erdbergerstr. 25.
— Friederike, Handelsm.-Wwe., E., VIII. Kochg. 10.
— Georg, Agent, IV. Himbergerstr. 24.
— Heinrich, Nationalb.-Bmt., Ust. Sievering 6.
— Helene, Zwirnhdlerin, III. Gärtnerg. 34.
— Jakob, Obert-Auditor, Adthcil.-Vorstand im Reichs-Kriegsministerium, Stiftng. 6.
— Ignaz, Gastwirth, Fdrg. 159.
— Johann, Milchmeier, Nied. Reichg. 28.
— Johann, M. u. Chir. Dr., Mag. d. Geburtshilfe, VIII. Langg. 7.
— Johann Cap., p. Min. R., R. d. Leopold-O., Bäckerstr. 1.
— Johanna, Hebamme, II. Kl. Ankerg. 8.
— Johanna, Fleischmarkt 12.
— Josef, Journalist, VIII. Kochg. 10.
— Josef, V. Ziegelofengasse 19.
— Josef, Lederwarenfab., VI. Mariahilferstr. 77.
— Josef, Agent, IV. Hzng. 64.
— Josef, Appreteur, VI. Linieng. 30.
— Josef, Einspänner, IV. Prechg. 22.
— Josef, Mir. Instrumentenmacher, IX. Michelbeurerg. 1.
— Josef, Fleischhacker, E., Bes. d. Franz Josef-O. u. d. gold. Vdt. Krz. m. d. Kr., III. Rennweg 67.
— Josef, Fragner, Brgt. Tamag. 228.
— Josef, Handelsagent, VI. Mariahilferstr. 81.
— Josef, Holzhdlr., Rhd. 158.
— Josef, Kleinfuhrmann, Hnls. 679.
Wimmer Josef, Leinwäschhändler, berd. Invent und Schätzungs-Cmfr., Bauernmarkt 13, G. Rothenthurmstr. 4, „zum blauen Ungar".
— Josef, Tischler, E., IV. Heumühlg. 7.
— Josef, Vermischtwarenhdlr., VI. Barnabiteng. 2, „zum goldenen Degen".
— Josef, Wirthsch.-R., Herreng. 4.
— Josef, Factor i. d. Hof- u. Staatsdruckerei, Maler u. Lithograph, VII. Siebensterng. 5.
— Josefa, Seidenzeugfabrikantin, Sh. Hauptstr. 59.
— Josefa, Weißwarengeschäft, Woll- und Zwirnhändlerin, VII. Westbahnstr. 5.
— Karl, Inspector d. c. k. Bank „Patria", Rothenthurmstr. 25.
— Karl, Rchgs. Off., IX. Hahng. 16.
— Karl, Nationalb. Bmt., IX. Fechtensteinstr. 1.
— Karl, Pfaidler, Tiefer Graben 16.
— Karl, Spediteur, III. Steing. 16.
— Karoline, Fragnerin, III. Beatrixg. 14.
— Karoline, Wildprethdlrin, VII. Neubaug. 84.
— Karoline, Rchgs.-R.-Wwe., VIII. Josefsg. 5.
— Leonhard, Sonn- u. Regenschirmfab., VII. Siegmundsg. 16.
— Leopold, Gem. Secr., O. Thl. Theresien. 19.
— Leopold, Preßhefehdlr., Grünangerg. 10.
— Leopold, Fragner, VII. Kirchg. 46.
— Leopold, Hutmacher, E., II. Unt. Augartenstr. 9.
— Leopold, E., VI. Gumpendorferstr. 147.
— Leopold, Elisabetstr. 3, Spezereiwarenhandlg., Strauchg. 2, „zum goldenen Hirschen".
— Lorenz, Appreteur, VI. Handng. 1.
— Lorenz, Buchhalter, IV. Hechteng. 8.
— Magdalena, VI. Barnabiteng. 15.
— Marie, Oberamtm.-Wwe., IX. Nußdorferstr. 7.
— Marie, IV. Prechg. 5.
— Martin, Fragner, Fldstr. 33.
— Mathias, Hausverwalter d. Creditanstalt, III. Matthäusg. 12.
— Michael, Milchmeier, V. Wiererstr. 79.
— Moriz, k. k. Cab. Conc. Secr., VII. Neustiftg. 19.
— Moriz, Börse-Arrangeur, III. Kolonitg. 8.
— Moriz, Geschäftsführer, II. Glockeng. 50.
— Paul, Schuhmacher, VI. Millerg. 51.
— Philipp, Briefträger, Wollzeile 15.
— Raymund, Tischler, VII. Breiteg. 20.
— Rosalie, Kaffeehaus- und Hnls.-Inhaberin, 561 Rudolf, k. k. Kanzlist, III. Barichg. 10.
— Therese, V. Hundsthurmerstr. 116.
— W., VII. Westbahnstr. 35.
Wimsiert Josefa, Schofferin, Zb. Stiegeng. 5.
Wimpffen Franz, Graf, k. k. W., Gh. R. u. Kämmerer, Inh., Comd. d. Mil. Max. Theresien-O., Großkr. d. Leop.-O., Bes. d. Mil. Verd.-Krz., R. d. russ. Georgs-, d. russ. Annen-O. 1. Cl. u. d. Johanniter-O., Großkr. d. Schl. Mil. St. Georgs-O., d. bad. O. v. Zähringer Löw., d. päpstl. St. Gregor- u. d. parm. Constantin Georgs-O., IX. Tiefestr. 15.
— Franz, Freih. v., k. k. Gen. d. K., Oberstl. i. d. Armee, Oberstkämmerer Sr. k. k. Hoh. Erzh. Ludwig Victor, R. d. kön. preuß. Kr. O. 2. Cl., Comth. II. Kl. d. sächs. Albrechts-O., d. großh. hess. Philipp-O., R. d. großh. sächs. Ludwig-O. 1. Cl. u. d. belg. Leop.-O., Offiz. der k. franz. Ehrenlegion, Hofburg 1.
— Heinrich E., Graf v., Ritm. i. d. R., Herreng. 1
— Victor, Graf, k. k. Corvetten-Capitän i. d. R., Administrator d. k. k. priv. ersten Donaudampfschiffahrts-Gesellsch., E., IX. Türkenstr. 15.
Winarsky Anton, Beamter der Credit-Anst., VIII. Schlösselg. 5.
— Johann, Tischhdlr., VI. Favoritenstr. 17.
Winarz Josef, Schneider, VII. Lerchenfelderstr. 10.
Winkelmann Heinrich, Kartonnagearbeiter u. Kartonfabrik-Fabrikant, Landhausg. 7.
Winckler Anton, Ph. Dr., o. ö. Prof. d. Mathematik am polyt. Institute, wirkl. Mitgl. d. k. k. Akad. d. Wissensch., IV. Ob. Alleeg. 14.
— Johann, Concepts-Beamter d. Obst. Controlsbehörde, VII. Neustiftg. 131.
Wind Christian jun., Trödler, IV. Wbg. Hptstr. 12.
— Georg, Schneider, VI. Gumpendorferg. 7.
— Franz, Hutmacher, IX. Nußdorferstr. 12.
— Josef, Zimmerpatier, VI. Hofmühlg. 16.
— Ludwig, Musik- u. Gesangslehrer, IV. Wiedstr. 15.
— Therese, Leinwandhändlerin, VII. Kircheng. 25.
Windafkevich Emma, Beamten-Wwe., III. Reisnerstraße 10.
Windauer Joh., Buchbinder, V. Kettenbrückeng. 7.
Windberger Anna, Cartonnagearbeiterin u. Bildereinfafferin, L. Pfl. Hauptstr. 46.
— Franz, Lampenschirm-Fab., VII. Burgg. 71.
— Franz jun., Trödler, VII. Ziegleng. 63.
— Franz sen., Trödler, VII. Neustiftg. 105.
— Johann, Broncearbeiter u. Gürtler, VII. Richtergasse 3.
Windbrechinger Anton, II. Mauerg. 5.
— Barbara, Kaufmann-Wwe., Lobkowitzpl. 1.
— Karl, Handelsmann, Hnls. Bergsteiggasse 50.
— Rudolf, Vermischtwarenhdlr., VIII. Schlösselg. 19.
Winder Berthold, Maler u. Lehrer, IV. Prechg. 28.
Winderl Josef, Spängler, IV. Schleifmühlg. 20.
Windhab Anna, III. Neulingg. 12.
— Josefa, Tabaktrafik, III. Ldstr. Hptstr. 134.
Windhaber Barbara, E., II. Siev. 42.
— Eva M., E., II. Siev. 25.
— Jakob, E., II. Siev. 28.
— Johann, E., II. Siev. 84.
— Johann, Gastwirth, E., II. Siev. 48–51.
— Josef, k. k. Beamter, Rauhensteing. 7.
Windhager Georg, Schneider f. T., VII. Kandlg. 6.
— Leopold, p. k. k. Thierarzt, Hnls 445.
Windhofer Franz, Einspänner, III. Neulingg. 5.
— Rudolf, Claviermacher, V. Wiedstr. 39.
Windisch Anton, Assec. Inspector, IV. Margarethenstraße 2.
— Johann, Fragner, III. Sauerhofg. 8.
— Josef, Piaristen-Ordenspriester, Lehrer am akad. Gymnasium, III. Heumarkt 7.
— Josef, Tischler, VII. Neustiftg. 66.
— Josefa, Buchhalter-Wwe., Schulerstr. 4.
— Michael, Tischler, VII. Kaiserstr. 104.
— Theodor Johann, Beamter, III. Postr. Hptstr. 12.
Windischbauer Franz, E., III. Rennweg 34.
Windisch-Grätz Alfons, Fürst zu, Reung. 12.
— Alfred, Fürst zu, k. k. Gh. R., R. d. öst. Leopold-O. u. d. Mil. Verd. Krz., Reung. 12.
— Aug., Fürst zu, k. k. Obst., Käm., Ramts.-Embt., R. d. russ. Stan., d. russ. Wlad., d. kön. pr. roth. Adl. u. s. sächs. ern. Haus-O., ers. Stallmeister Sr. Maj. d. Kaiserin, VIII. Lerchenfelderstr. 6.
— Eleonore, Fürstin zu, geb. Fürstin **Lobkowitz**, St. Kr. O. u. Palast-Dame, VIII. Langeg. 62.
— Mathilde, Fürstin zu, St. Kr. O. u. Palast-Dame, Bankg. 2.
Windischmann Josef, Clavierntischler, V. Schloßg. 16.
Windmaier Michael, Branntwein-Erzeuger, III. Kriegleg. 15.
Windmüller Michael, Nastrstuben-Inh., III. Ldstr. Hauptstr. 8.
Windpassinger Elisabeth, Hebamme, VIII. Alserstraße 29.
Winds Johann, Nordbahnbeamter, II. Novarag. 35.
Windsberger Karl, Beamter, VII. Neubaug. 75.
Windschal Leopold, Comfortable, V. Siebenbrunnengasse 66.
Windschek Karl, Concipist d. Tabakab.-Centr.-Dir., VII. Bernardg. 34.
— Marie, Fragnerin, IX. Fechtensteinstr. 51.
Windischgwin Thomas, Seiler, Fh. Stadieng. 30.
Windsor Wilh., Off. d. Carl Ludwigbahn, III. Gärtnerg. 33.
Windyperger Anton, Buchhalter, IV. Schleifmühlgasse 11.
Windsteig Franz, Bäcker, Ostl. Hptstr. 14.
— Josef, Tabaktrafikant, Ostl. Hptstr. 59.
Wine Anton, Fahnfabrikant, V. Schlosg. 1.
Winenky Josef, akad. Maler u. Photograph, VIII. Laudong. 29.
Wingard Karoline, IV. Favoritenstr. 8.
Wingat Josef, Agent, Obdt. Plankeng. 59.
Winhofer Anton, Wagner, III. Marxerg. 8.
— Ferdinand, Privatbuchhalter, V. Grüng. 24.
— Josef, Handelsgerichtsrath, III. Hintere Zollamtsgasse 3.
— Katharina, k. k. Major-Wwe., III. Salmg. 1.
Wininger Franz, Fragner, VII. Neustiftg. 91.
Winiwer Cekar, IV. Wiedner Hauptstr. 59.
Winisky Apollonia, Hebamme, IX. Seniceng. 6.
— Ferdinand, Rchgs. Off., Wbrg. Wienerstr. 37.
— Josef, IV. Hungelbrunng. 5.
Winkaerter Georg, Rit. v., Tirol Ingen. u. Eigenthümer der Blech- u. Bleiwarenfab. in Gumpoldskirchen 89, unter d. F. G. **Winkwarter**, Rdlgr. Riemerg. 16.
— G., Blech- u. Bleiwarenfab. in Gumpoldskirchen, Rdlgr. Riemerg. 16.
— Josef, Rit. v., J. Dr., Hof- u. Ger. Adv. u. beeid. k. k. Gerichtsdolmetsch für franz. u. engl. Sprache, Offizier d. k. franz. O. d. Ehrenlegion u. d. päpstl. Gregor-O. Berw. M. d. Lebens- u. Rentenversicherungs-Anstalt „Anker", Berw. M. der Waggons- und Tramway-Baugesellschaft der Wiener Tramway-Gesellschaft, Administ. d. allgem. Versorgungs-Anst., Hof-Blechwaren- und Waffen-Verfr., Proc. d. F. G. **Winkwarter**, Blech- und Bleiwarenerzeugung in Gumpoldskirchen, Singerstr. 13, Rdlgr. Riemerg. 16.
— Leopold, k. k. Beamter, III. Ungarg. 5.
Winke Anton, Schuhm., IV. Margarethenstr. 75.
Winke Wilibald, Gh. Singerstr. 13.
Winkelbauer E., Bergolder, VII. Neubaug. 49.
— F., Posamentir, VII. Haidg. 24.
— Georg, Kaufmann, Rothenthurmstr. 9, F. G.
Winkelbauer, G. Stefansplatz 6 (Zweitlhof).
— Johanna, IV. Zimmerng. 25.
— Johanna, VIII. Lerchenfelderstr. 140.
— Karl, Handelsg. Schätzm., E., Hnls. Hptstr. 10.
— Karl, Beamter der Creditanstalt, Rothenthurmstraße 9.
Winkelhöfer August, Fragner, V. Garteng. 16.
Winkelkat Ludwig, II. Ob. Donaustr. 53.
Winkelmann Alexander, Mis. Off., III. Lerberg. 5.
— Eduard, Buchhalter, III. Neulingg. 8.
— Mich., Seidenzeug- und Sammtfab., VI. Webgasse 7.
— Michael, Fragner, VI. Mollardg. 67.

Appendix 9

London review of Winiwarter's translation in *The Law Magazine and Law Review; or, Quarterly Journal of Jurisprudence.*

THE

LAW MAGAZINE

AND

LAW REVIEW;

OR,

Quarterly Journal of Jurisprudence.

NOVEMBER, 1865, TO FEBRUARY, 1866.

VOLUME XX.

LONDON:
BUTTERWORTHS, 7, FLEET STREET,
Law Publishers to the Queen's Most Excellent Majesty.
EDINBURGH: T. & T. CLARK, AND BELL & BRADFUTE.
DUBLIN: HODGES, SMITH, & CO.
MELBOURNE: GEORGE ROBERTSON.
CAPE TOWN: SAUL, SOLOMON, & CO.

1866.

arrangement in view of developing the subject according to the procedure of a more scientific method. It has long been the reproach of the English law, that it is in fact almost destitute of institution. In law, everything depends upon a clear apprehension of leading principles. The student's first book should rest the general principles of English law upon the general principles of jurisprudence, and should treat the entire system, so that it may be readily grasped in its totality.

Such a mode of handling the Law of England would, on the one hand, necessitate a vigorous analysis and definition of elementary notions and principles; and on the other, would demand the consistent application of a truly scientific method by which both to determine the nature and limits of its several departments, and to lay down fixed rules for the distribution of the materials appropriate to each.

General Civil Code for all the German hereditary provinces of the Austrian monarchy; translated by Joseph M. Chevalier de Winiwarter, LL.D., and legal adviser to Her Britannic Majesty's Embassy, at Vienna. First part. Vienna: Rudolph Lechner, 1865. London: N. Trübner & Co.

ANY attempt to make the laws of a foreign country intelligible deserves acknowledgment and support. The task which the author of such work has before him is the more arduous, as every system of law has its own technology, and the transfer of such terms in another language, without any explanations, always remains imperfect. Dr. Von Winiwarter, the learned author and well-known advocate in Vienna, has certainly felt this difficulty, considering that there is so little analogy between English and German Law terms, and we do not think that the value of the translation would have been diminished if the same had been a little less literal. However, we receive with pleasure a valuable work which opens a complete system of law to the large community of English lawyers all over the world, who are deeply interested in the question of codifying laws, and will avail themselves of any opportunity to test the system of codification. The book here offered will therefore be also of particular value to the profession of this country, where all attempts at codifying the laws have so signally failed; and if, as we understand, there is a new scheme in hand, namely, of digesting all cases in a system of law, we are almost afraid that that will be in its effects and in its defects something analogous to the "*Corpus juris Justinianei, i.e., Corpus juris Anglicani.*" The modern view, and, in our opinion, the more advanced view of the true object of a code of laws is to lay down the principles of law. That fundamental view has been followed in framing the Code Napoleon, which comprises in 2,281 articles, the civil law. But what in France was the result of a sanguinary revolution, and partly carried out by a despotic ruler, was in Austria

the work of peace. It was Maria Theresa who, already in the year 1753, publicly announced to the different nations she ruled, that one systematical code should secure to all provinces a certain equal law, and one uniform procedure. The lawyers set to work, and, after 14 years' labour, presented the empress with a code of eight big folio volumes. The empress rejected that; and, after 60 years' further work, in the year 1811, the present civil code was published in Austria, the translation of which has now made it accessible to the English reader. It is only one moderate 8vo. volume, containing the civil law in 1,502 articles, comprised in three parts, of which the first treats of the law of persons, the second of personal and real property (in two sections); the second, comprising the law of contracts, as dealing with personal or real property; and the third, of such enactments, which are common to both the aforesaid branches. In order to show of what importance the investigation of other systems of law might be, we may mention one point of the Austrian law, which, especially to English jurists, must be of particular interest on account of its diametrical opposition to the principles of English law.. We mean the Austrian law as regards the legal position and rights of married women relating to property. The leading principle is, that a wife may deal with her personal or real estate as independently as her husband with his. We have before us at present only the first part of the code treating of the law of persons. We sincerely trust that the remainder will soon follow, when we shall take a further opportunity to notice this valuable publication. If it cannot be denied that every code shows the true spirit of its age, the Austrian code certainly makes no exception, and will amply repay the trouble any one may take in the investigation of its leading features. We confidently recommend the study of the work.

The Recognition of Rebel Belligerency, and our Right to Complain of it. By George Bemis. Boston, U.S. 1865.

THIS publication, as the author acknowledges, "is both controversial and American," yet we agree with him in thinking that it contains "something besides controversy and Americanism." We all know how persistently the United States complained, during the whole of the war, of the precipitancy of this country in recognising the Confederate States as a belligerent power. We all know equally well the grounds on which this recognition was originally put—viz., "That a certain degree of force and consistency, acquired by any mass of population engaged in war, entitles that population to be treated as a belligerent." This had been the ground taken by Mr. Canning, in 1825, in recognising the Provisional Government of Greece; and it was expressly referred to by Lord John Russell, on May 6, 1861, as the principle on which he proposed to act with respect to the Confederate States. Of late, however, his lordship has put forward another ground for the recognition, and has vindicated the step then taken by what was done by the United States in blockading the coasts of the Southern States.

Mr. Bemis has endeavoured to show (1) that the new position of

Appendix 10

Title page of the original ABGB in German (1811)

Allgemeines
bürgerliches Gesetzbuch
für die
gesammten deutschen Erbländer
der
Oesterreichischen Monarchie
I. Theil.

Wien.
Aus der k. k. Hof- und Staats-Druckerey.
1 8 1 1.

Appendix 11

Title pages of Winiwarter's English translation

Original version at Österreichische Nationalbibliothek (First Part, 1865)

GENERAL

CIVIL CODE

FOR

ALL THE GERMAN HEREDITARY PROVINCES

OF THE

AUSTRIAN MONARCHY.

TRANSLATED

BY

JOSEPH M. CHEVALIER DE WINIWARTER,

DOCTOR IN LAW, ADVOCATE IN VIENNA, AND LEGAL ADVISER TO HER BRITANNIC MAJESTY'S EMBASSY AT VIENNA.

FIRST PART.

VIENNA 1865.

SOLD BY RUDOLPH LECHNER,

BOOKSELLER TO THE UNIVERSITY.

Original version at Österreichische Nationalbibliothek (all parts, 1866)

GENERAL

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VIENNA 1866.

SOLD BY RUDOLPH LECHNER,

BOOKSELLER TO THE UNIVERSITY.

Harvard University copy

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VIENNA 1866.

SOLD BY RUDOLPH LECHNER,

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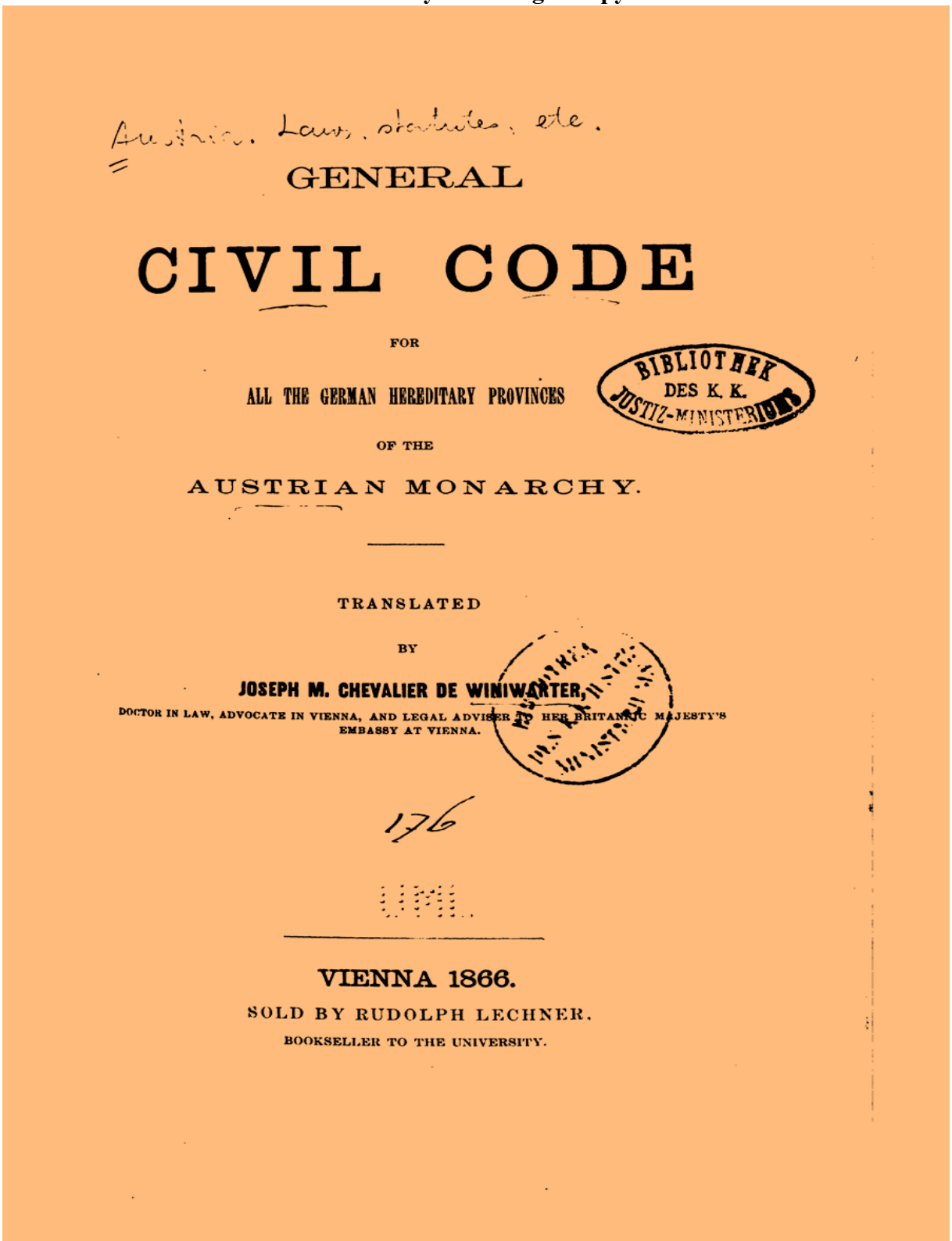
University of Michigan copy



Austrian. Laws, statutes, etc.

GENERAL

CIVIL CODE

FOR

ALL THE GERMAN HEREDITARY PROVINCES

OF THE

AUSTRIAN MONARCHY.

TRANSLATED

BY

JOSEPH M. CHEVALIER DE WINIWARTER,

DOCTOR IN LAW, ADVOCATE IN VIENNA, AND LEGAL ADVISER TO HER BRITANNIC MAJESTY'S EMBASSY AT VIENNA.

VIENNA 1866.

SOLD BY RUDOLPH LECHNER.

BOOKSELLER TO THE UNIVERSITY.

Appendix 12

Comparison of selected clauses from Winiwarter, Baeck, and Eschig (full transcripts)

Introductory provisions of the ABGB		
Winiwarter (1866)	**Baeck (1972)**	**Eschig (2013)**
Introduction. Of the civil laws in general. §. 1. The complex of the laws, by which the private rights and obligations of the inhabitants of the State towards one another are determined, constitutes the Civil Right (Law) in it.	Introduction The civil laws in general Definition of civil law Article 1. The totality of the laws, by which the private rights and obligations of the inhabitants of the State towards one another are determined, constitutes the Civil Law.	**Introduction.** **About civil law in general.** **Definition of civil law.** **§ 1.** The essence of the laws providing for the private rights and obligations of the state's residents among themselves constitutes the civil law.
§. 2. As soon as a law has been properly published, no one can excuse himself, that he had no cognizance of it.	Article 2. As soon as a law has been properly published, no one may be excused on the ground that he had no knowledge of it.	**§ 2.** No one can claim to be unaware of a law as soon as such law has been duly published.
§. 3. The operation of a law and the juridical consequences arising from it, begin immediately after the publication of it, unless in the published law itself, the term of its efficacy be further postponed.	When laws enter into effect Article 3. The effect of a law and the legal consequences arising therefrom begin immediately after the publication thereof unless, in the published law itself, the date of its entry into effect is further postponed.	**Commencement of the effectiveness of a law.** **§ 3.** The effectiveness of a law and the legal consequences arising therefrom commence [promptly upon publication]; unless the published law provides for its effectiveness at a later date. [ ] No effect
§. 4. The civil laws are binding for all the citizens of the countries, for which they have been published. The citizens remain likewise bound by these laws in their acts and business, which they undertake beyond the territory of the State, as far as their personal capacity for undertaking them is limited by them, and as far as these acts and the business	Extent of the law Article 4. The civil laws are binding upon all the citizens of the provinces for which they have been published. The citizens are also bound by these laws in their acts and affairs which they undertake beyond the territory of the State, to the extent their personal capacity to undertake such acts and affairs is restricted and to the extent that such	**§ 4.** repealed

at the same time are to produce juridical consequences in these countries. How far strangers are bound by these laws, is determined in the following chapter.	acts and affairs may produce legal consequences in these provinces. The extent to which aliens may be bound by these laws is set forth in the following chapter. (See Articles 33 to 38 and 300).	
§. 5. Laws are not retro-active; they have therefore no influence on acts, which have taken place before, and on rights, which have been acquired before.	Article 5. Laws are not retroactive; they have, therefore, no influence on acts which have taken place before and on rights which have been acquired before.	**§ 5.** Laws do not have retrospective effect; thus, they have no effect on prior actions and earlier acquired rights.
§. 6. Ne [sic] other construction can be attributed to a law in the application, than that, which is apparent from the peculiar meaning of the words in their connection, and from the clear intention of the legislator.	<u>Interpretation</u> Article 6. No other interpretation shall be attributed to a particular provision of the law than that which is apparent from the plain meaning or the language employed and from the clear intention of the legislator.	**§ 6.** No meaning must be inferred from a law other than the meaning which is evident from the genuine meaning of the words in their context and the clear intention of the legislator.
§. 7. If a case cannot be decided either from the words, or from the natural construction of a law, similar cases, which are distinctly decided in the laws, and the motives of other laws allied to them, must be taken into consideration. Should the case still remain doubtful; it must be decided, with regard to the carefully collected and well considered circumstances, according to the natural principles of right.	Article 7. If a case can be decided neither from the language nor from the natural sense of a law, similar situations which are determined by reference to the laws and the purpose of related provisions must be taken into consideration. Should the case still remain doubtful, then it must be decided upon the carefully collected and well-considered circumstances in accordance with the natural principles of justice.	**§ 7.** If a matter can neither be determined by the wording nor by the natural meaning of a law, similar matters which have been regulated by law and the purpose of other related laws have to be considered. If the matter still remains ambiguous, it has to be decided based on the diligently gathered and thoroughly considered facts in line with the natural legal principles.
§. 8. The Legislator alone has the power to interpret a law in a generally binding manner. Such an interpretation must be applied to all the cases still to be decided, as far as the Legislator does not declare, that his interpretation cannot have reference to the decision of cases, the object of which are acts undertaken and rights claimed, before the interpretation was given.	Article 8. The legislator alone has the power to interpret a law in a generally binding manner. Such an interpretation must not be applied to pending cases unless the legislator states that his interpretation must be applied in the decision of cases involving acts performed and rights claimed before the interpretation was given.	**§ 8.** Only the legislator has the power to interpret a law in a generally binding way. Such interpretation must be applied to all pending matters, provided that the legislator has not stated that its interpretation shall not be applied to any matters relating to actions undertaken and rights alleged prior to such interpretation.
§. 9. Laws are obligatory till they have been either altered, or expressly abolished by the Legislator.	<u>Duration of the law</u> Article 9. Laws are binding until they have been either altered or expressly repealed by the Legislator.	**Applicability of the law.** **§ 9.** Laws remain in force until they are amended or expressly abolished by the legislator.

§. 10. Customs can only be taken into consideration in cases referred to by a law.	Other kinds of rules: a) Custom and usage. Article 10. Customs and usage can be taken into consideration only when referred to by a law.	**Other kinds of regulations, such as:** **a) Practice and customs.** **§ 10.** Practice and customs can only be considered to the extent they are referred to in a law.
§. 11. Only those statutes of single provinces and districts of the country have obligatory force, which after the publication of this Code have been expressly confirmed by the Sovereign.	b) Provincial statues. Article 11. *Repealed.*	**[b) Statutes of provinces.]** **§ 11.** [Only such statutes of individual provinces and counties have legal effect, which have been expressly sanctioned by the local ruler after publication of this law.] [ ] No effect
§. 12. The determinations issued in single cases and the sentences passed by the courts in particular law disputes, have never the power of a law; they cannot be extended to other cases, or to other persons.	c) Judicial decisions. Article 12. The decisions issued in individual cases and the opinions handed down by the courts in particular litigations never have the force of a law; they cannot be extended to other cases or to other persons.	**c) Court decisions.** **§ 12.** Court orders in relation to individual cases and decisions rendered by courts relating to specific lawsuits never have legal effect, they cannot be extended to other cases or to other individuals.
§. 13. The privileges and immunities granted to individuals or to corporations, are to be judged of the same as other rights, so far as the political ordinances do not contain any particular determination on the subject.	d) Privileges. Article 13. The privileges and immunities granted to individuals or to corporations are to be determined in the same manner as other rights, to the extent that political ordinances do not contain particular relevant provisions.	**d) Privileges.** **§ 13.** Privileges and exemptions granted to individuals or also to whole corporations have to be assessed in the same way as other rights unless regulations provide specific rules.
§. 14. The prescriptions contained in the civil Code have for their object the law of the rights of persons, the law of the rights of things and the determinations, which are common to both of them.	Main Division of Civil Law Article 14. The provisions contained in the Civil Code establish the law of personal and property rights and the procedures which apply to both.	**Main categories of the civil law.** **§ 14**. The regulations provided in the civil code relate to personal rights, property law and to those regulations which apply to both.

Winiwarter(1866)	Baeck (1972)	Eschig (2013)
§. 18. Every one is capable of acquiring rights under the conditions prescribed by the laws.	Acquirable rights Article 18. All persons are capable of acquiring rights under the conditions prescribed by the laws.	**Acquirable rights.** § 18. Everyone is capable of acquiring rights subject to the conditions provided by law.

Winiwarter(1866)	Baeck (1972)	Eschig (2013)
§. 455. If the proprietor has been informed of the further pledging; he can only repay his debt with the consent of the person, who possesses the under-pledge, or he must deposit it judicially, otherwise the pledge remains liable to the holder of the under-pledge.	Article 455. If the owner has been informed of the sub-pledging, he can repay his debt only with the consent of the person who possesses the sub-pledge or by deposit of the amount in court; otherwise, the pledgor remains liable to the holder of the sub-pledge.	§ 455. If the owner is notified of such further pledge, he can satisfy his debt only with the approval of the person who possesses the pledge or the pledge or he has to deposit it at court, otherwise the pledged asset remains pledged in favour of the holder of the pledge of the pledge.

Chapter 8 concerning inheritance		
Winiwarter (1866)	**Baeck (1972)**	**Eschig (2013)**
First subdivision of the laws concerning the rights to things. Of real rights **Chapter the Eighth.** Of the right of inheritance. §. 531. The complex of the rights and obligations of a deceased person, so far as they are not founded on mere personal relations, is called his succession (assets).	FIRST SUBDIVISION OF THE LAWS CONCERNING PROPERTY RIGHTS: real rights. Eighth Chapter The right of inheritance Decedent's Estate Article 531. The totality of the rights and obligations of a deceased person, insofar as they are not founded on mere personal relations, is called his estate or inheritance.	**First section of property law.** **About rights *in rem*.** **Eighth Chapter** **About the inheritance law.** **Estate.** **§ 531.** The essence of the rights and obligations of a deceased person to the extent these rights are not only based on personal relationships is called his estate.

§. 532. The exclusive right to take possession of the whole succession, or a part of it determined in regard to the whole, (for instance the half, a third part) is called the right of inheritance. It is a real right, which is efficacious against every one, who will arrogate the succession. He, to whom the right of inheritance is due, is called heir, and the succession in regard to the heir, is called inheritance.	Inheritance right and estate Article 532. The exclusive right to take possession of the whole estate, or a part of it in proportion to the whole, (for instance one-half or one-third) is called the right of inheritance. It is a right in rem which is enforceable against anyone who might contest the succession. He to whom the right of inheritance is due is called the heir, and the estate in relation to the heir is called his inheritance.	**Right to an inheritance and inheritance.** **§ 532.** The exclusive right to acquire possession of the whole or a part of an estate which is determined in relation to the whole (e.g. a half, a third), is called the right to an inheritance. It is a right *in rem* which is effective against everyone who alleges to be entitled to the estate. An heir is a person who is entitled to a right to an inheritance and the estate with respect to such heir is called inheritance.
§. 533. The right of inheritance is founded on the will of the testator declared according the legal provision; on a hereditary contract admissible according to the law (§. 602), or on the law itself.	Title to inheritance right Article 533. The right of inheritance may be based on the will of the testator declared in accordance with legal provisions, on a hereditary contract admissible according to the law (Article 602) or on the law itself.	**Title to a right to an inheritance.** **§ 533.** A right to an inheritance is based on the will of the testator which is declared in accordance with the legal regulations, a testamentary contract which is permitted pursuant to law (§ 602) or [based] on law.
§. 534. The three above mentioned descriptions of the right of inheritance can also exist at the same time, so that a part determined in regard to the whole is due to one heir from the last will, to another from the contract, and to a third from the law.	Article 534. The three above bases of the right of inheritance can exist simultaneously, so that a proportional part of the estate may be due to one heir based upon a last will, to another based upon a contract, and to a third based upon the law.	**§ 534.** The mentioned three types of the right to an inheritance can co-exist so that one heir is entitled to a part determined in relation to the whole pursuant to a last will, another [part] due to a contract and a third [part] due to a law.
§. 535. If no such hereditary share, which has reference to the whole succession, but only a single thing, one or more things or a certain sort, a sum, or a right is bequeathed to some one; [t]he thing bequeathed, although its value constitutes the greatest part of the succession, is called a legacy, and he, to whom it has been left, is not to be considered as an heir, but only a legatee.	Distinction between inheritance and legacy Article 535. Where a single thing, one or more things or a certain sort, a sum, or a right in contrast with an hereditary share in proportion to the whole succession, is bequeathed to some one, the property so bequeathed, even if its value constitutes the greatest part of the succession, is called a legacy, and he to whom it has been left is not considered as an heir but only a legatee.	**Difference between inheritance and legacy** **§ 535.** If someone is not entitled to such distributive share which relates to the whole estate but only to a single asset, one or more assets of a specific type, an amount or a right, the asset(s) intended for such person, even if their value equals a major part of the estate is called a legacy and the person entitled to it is not regarded as an heir but only as a legatee.
§. 536. The right of inheritance only takes place after the death ot [sic] the testator. If a presumptive heir dies before the	Vesting of the estate Article 536. The right of inheritance vests only after the death of the decedent. If a presumptive heir dies before the	**Time of the effectiveness of an [sic] right to an inheritance** **§ 536.** The right to an inheritance becomes effective only after the death of the testator. If a supposed heir dies

testator, he was not able to transfer the right of inheritance, which he had not yet obtained, to his heirs.	decedent, the right of inheritance which he had not yet obtained does not pass to his heirs.	before the testator, he could not have transferred the not yet acquired right to an inheritance to his heirs.
§. 537. If the heir has survived the testator, the right of inheritance, even before the reception of the inheritance, passes over, like other free inheritable rights, to his heirs; if otherwise if had not yet expired by renunciation, or in another way.	Article 537. If an heir survives the decedent, the right of inheritance, even if not yet accepted, passes like other free, inheritable rights to his heirs provided however it has not expired by renunciation or otherwise.	**§ 537.** If the heir has survived the testator, the right to an inheritance is transferred to his heirs also prior to acquiring the inheritance like other freely inheritable rights, provided that it [i.e. the right to an inheritance] has not ceased due to rejection or any other way.
[PROVISION ADDED AT A LATER TIME]		**Registered partners and inheritance law** **§ 537a.** The provisions of this chapter and the ninth to the fifteenth chapter in relation to spouses apply to registered partners and registered partnerships accordingly.
§. 538. Whoever is authorized to acquire property, can, as a rule, inherit. If some one has in general renounced the right to acquire something, or has validly resigned a determined inheritance; he has forfeited by it the right of inheritance in general, or the right to a determined inheritance.	Capacity to inherit Article 538. Whoever is legally capable of acquiring property can also inherit property. If a person has generally renounced his right to acquire something, or has validly refused to accept a certain inheritance, he forfeits thereby the right of inheritance in general or the right to a specific estate.	**Capacity to inherit.** **§ 538.** Whoever is entitled to acquire assets is generally also entitled to inherit. If someone generally rejected the right to acquire something or validly relinquished an inheritance [to which he would have been entitled], this person generally lost the right to an inheritance or the right to a specific inheritance.
§. 539. The political ordinances determine how far clerical communities, or their members are capable of inheriting.	Article 539. The political ordinances determine the capacity of religious communities, or their members, to inherit property.	**§ 539.** Law determines the extent to which sacred communities or their members are capable to inherit [sic].
§. 540. Whoever has injured or has attempted to injure the testator, his children, parents or spouse from a bad intention in regard to his honour, his body or property, in such a manner, that one can proceed against him ex officio, or at the request of the person in jured [sic] according to the criminal laws; is unworthy of the right of inheritance as long as it is not to be inferred from the circumstances, that the testator has pardoned him.	Reasons for incapacity Article 540. Any person who commits a felony against the decedent is unworthy to inherit from him as long as it does not appear from the circumstances that the decedent has forgiven him. [MISSING TEXT?]	**Reasons for incapacity.** **§ 540.** Whoever has committed a criminal offence which can only be committed intentionally and is subject to imprisonment of more than one year, or whoever grossly neglected his obligations resulting from the legal relationship between parents and children with respect to the testator is unworthy of the right to an inheritance as long as it is not obvious from the circumstances that the testator forgave such person.

§. 541. The descendants of the person, who has made himself unworthy, are, if the latter has died before the testator, not excluded from the right of inheritance.	Article 541. In case of intestacy, the descendants of a person who has made himself unworthy to inherit are excluded from the inheritance even if the unworthy person has survived the decedent.	**§ 541.** In case of intestacy rules, the descendants of someone unworthy of inheriting are entitled to inherit in his place even if he survived the testator.
§. 542. Whoever has compelled the testator to the declaration of the last will, or has induced him to this declaration in a deceiptful manner, or prevented him from declaring or modifying the last will, or suppressed a last will already made by him, is excluded from the right of inheritance and remains answerable for all the damage caused by it to a third person.	Article 542. Any person who coerces a testator to execute a last will, fraudulently procures the making thereof, prevents the declaring or modifying of a last will, or suppresses a last will already executed is excluded from the right of inheritance and becomes liable for any damages caused thereby to third persons.	**§ 542.** Whoever forced the testator to declare his last will or fraudulently misled him to prevent him from declaring or changing his last will or suppressed a last will which has already been declared by him, is not entitled to a right of an inheritance and is liable for all damages to third parties caused by this.
§. 543. Persons who have judicially confessed, or have been convicted of adultery or incest, are excluded among one another from the right of inheritance on the ground of a declaration of the last will.	Article 543. Parties who have judicially confessed to or have been convicted of adultery or incest are excluded from the right of inheritance from each other on the basis of a last will.	**§ 543.** repealed
§. 544. The political ordinances determine, how far natives of the country, who have left their country or the military service without proper permission, lose the right of inheritance.	Article 544. The political ordinances determine to what extent natives of the country who have left their country or the military service without proper permission lose the right of inheritance.	**§ 544.** Law provides the extent to which citizens who left their home country or military service without due permission lose the right to an inheritance.
§. 545. The capacity of inheriting can only be determined according to the moment of the real falling of the succession to a person. This moment is in general the death of the testator (§. 703).	<u>Determination of capacity</u> Article 545. Capacity to inherit can only be determined as of the moment of the vesting of the estate in a person. This moment is, in general, the death of the testator (Article 703)	**At which time the capacity has to be assessed.** **§ 545.** The capacity to inherit can only be assessed at the time of the actual effectiveness of the right to an inheritance. As a general rule, such time is the death of the testator (§. 703).

§. 546. A capacity of inheriting acquired later, does not give a right of withdrawing from others that, which has already fallen to them in a legal manner.	Article 546. An after-acquired capacity to inherit does not permit divesting from others that which has already vested in them in a legal manner.	**§ 546.** A later acquired capacity to inherit does not grant a right to deprive someone else of what he already lawfully received.
§. 547. The heir represents, as soon as he has accepted the inheritance, in regard to it the testator. Both of them are considered as one person in regard to a third. Before the acceptance of the heir the succession is considered as if it were still possessed by the deceased.	Effect of acceptance of the estate Article 547. Upon the acceptance of the inheritance, the heir represents the testator in regard to it. Both of them are considered as one person in regard to a third party. Before the acceptance by the heir the estate is considered as if it were still possessed by the decedent.	**Effect of the acceptance of the inheritance.** **§ 547.** The heir replaces the testator with respect to the inheritance as soon as he accepts the same. Both are deemed to be one person in relation to any third party. Prior to the acceptance by the heir, the estate is deemed to be possessed by the deceased person.
§. 548. The heir takes upon himself obligations, which the testator would have had to fulfil from his property. Fines inflicted by the law, to which the deceased was not yet sentenced, do not pass over to the heir.	Article 548. The heir assumes all obligations which the decedent would have had to fulfill from his property. Fines imposed by the law to which the decedent was not yet sentenced do not pass over to the heir.	**§ 548.** The heir assumes obligations which the testator would have had to cover with his assets. Any fines to be paid imposed by law and the payment of which the deceased person hat [sic] not yet been sentenced to are not assumed by the heir.
§. 549. To the burdens incumbent on an inheritance belong also the expenses for the funeral suitable to the customs of the place, the station in life, and the property of the deceased.	Article 549. The burdens incumbent on an inheritance include the expenses for the funeral suitable to the customs of the place, the station in life, and the property of the deceased.	**§ 549.** The expenses for the funeral which are reasonable considering the local customs, the status and the assets of the deceased person are part of the debts of the estate.
§. 550. Several heirs are considered in regard to their common right of inheritance as one person. In this quality they stand good, before the judicial delivery of the inheritance, all for one, and one for all. The chapter treating of the taking possession of the inheritance determines how far they are answerable after the delivery has taken place.	Article 550. Several heirs are considered in regard to a common right of inheritance as a single person. Before the judicial delivery of the estate (transfer of succession) they are jointly and severally liable. The extent to which they are liable after the said transfer had taken place is determined in the chapter concerning taking possession of the estate. (Articles 820 and 821).	**§ 550.** Multiple heirs are considered as one person with respect to their joint right to an inheritance. They are jointly and severally liable prior to the court transfer of the inheritance (devolution). The chapter relating to taking possession of the inheritance provides the extent to which they are liable after the transfer.
§. 551. Whoever can himself validly dispose of his right of inheritance, is also authorized in renouncing it beforehand.	Renunciation of the inheritance right Article 551. A person who is capable of disposing validly of his inheritance right is also entitled to waive it in advance through an agreement with his predecessor. To be	**Waiving of a right to an inheritance** **§ 551.** Whoever can validly dispose of his right to an inheritance is also entitled to contractually waive his right to an inheritance in advance. Such contract has to be

[PROVISION AMENDED AT A LATER TIME] Such a renunciation operates also on the descendants.	valid such an agreement must be made in the form of a notarial contract, or it must be recorded in court. In the absence of contrary agreement such a waiver is binding upon the descendants.	made in the form of a notarial deed or certified by court protocol in order to be valid. Such waiver is also binding for the descendants unless agreed otherwise.

Chapter 23 concerning contracts of exchange		
Winiwarter (1866)	**Baeck (1972)**	**Eschig (2013)**
Second Part. **Second Subdivision of the laws concerning the rights to things.** Of the personal rights to things. **Chapter the twenty-third.** Contracts of exchange. §. 1045 Exchange is a contract, by which one thing is given for another. The actual delivery is not necessary for the conclusion, but only for the fulfilment of the contract of exchange, and the acquisition of the property.	SECOND PART SECOND SUBDIVISION. PERSONAL RIGHTS IN PROPERTY Twenty-third Chapter Contracts of barter <u>Definition</u> Article 1045. Barter is a contract under which one thing is exchanged for another. Actual delivery is not necessary for the making of a contract of barter, but only for the performance thereof and the acquisition of ownership.	**Second division.** **About personal rights.** **Twenty-third chapter.** **About the barter agreement.** **Barter.** **§ 1045.** A barter [agreement] is a contract by which one asset is transferred in exchange for another asset. The actual transfer is not required for the conclusion but only for the performance of the barter agreement and the acquisition of ownership.
§. 1046 Money is not an article if the contract of exchange; still gold and silver can be exchanged in the quality of goods, and even as coin, as far as they are only to be changed for other kinds of coin, namely gold for silver-coin, smaller for larger sorts.	Article 1046. Money is not an article of barter; however, gold and silver can be exchanged as goods, and even as coin, insofar as they are exchanged only for other kinds of coin, namely gold for silver coin and smaller for larger sorts.	**§ 1046.** Money is not the subject of a barter agreement; but gold and silver can be bartered as goods and even as species to the extent they shall be bartered with other species, namely gold with silver, smaller with larger pieces.

§. 1047 Persons changing are, by virtue of the contract, bound, to deliver and accept for the free possession the things exchanged, according to the agreement, with their parts and all the accessions, at the right time, at the proper place and in the same state, in which they were at the time the contract was concluded. Whoever omits fulfilling his obligation, is answerable to the other for the damage and the profit, which is lost.	Rights and duties of the parties Article 1047. The parties to a contract of barter are bound by virtue thereof to deliver and accept for free possession the things exchanged according to the agreement with their parts and all their accessories, at the proper time and place, in the same state as at the time the contract was made. [SENTENCE DELETED AT A LATER TIME]	**Rights and obligations of the bartering parties;** **§ 1047.** Bartering parties are obliged pursuant to the contract to transfer and accept the bartered assets with their components and all ancillary assets at the right time, the right place and in the same condition as at the time of the conclusion of the contract as unencumbered possession. [SENTENCE DELERED AT A LATER TIME]
§. 1048 If a time has been stipulated, at which the delivery is to take place, and if in the meantime the exchanged individual thing has been withdrawn from commerce by prohibition, or has by chance been destroyed entirely or to an amount exceeding the half of its value; the exchange is to be considered as not having been concluded.	Risk Article 1048. If a time for delivery has been stipulated, and prior thereto the specific things to be exchanged have been withdrawn from commerce by prohibition, or have been accidentally destroyed entirely or to an extent exceeding one-half of the value, the barter is to be considered as not having been made.	**in particular with respect to risk,** **§1048.** If a time has been agreed at which the transfer shall take place and in the interim either the specific asset to be bartered cannot be marketed due to a prohibition or is completely destroyed or by more than one half of its value due to coincidence, the barter is deemed not to be concluded.
§. 1049 Other deteriorations of the thing, which have taken place by chance in the meantime, and charges are to be borne by the possessor. Still if things have been agreed for in the lump; the receiver must bear the accidental destruction of separate pieces, supposing in this way the value of the whole has not been altered to the extent of more than one half.	Article 1049. Other deteriorations of the things which occur accidentally before delivery and encumbrances thereon are to be borne by the transferor. However, if things have been agreed for “as is”, the transferee must bear the accidental destruction of separate pieces provided, however, that the value of the whole is not diminished by more than one-half thereby.	**§ 1049.** Other deteriorations of assets due to coincidence and burdens are to be accounted for by the possessor. However, if assets have been treated outright the transferee is responsible for the destruction of specific assets provided that the value of the whole has not been changed by more than half.
§. 1050 The produce of the exchanged thing belongs to the possessor till the stipulated moment of delivery. From this moment the produce as well as the accessions belong to the receiver, although the thing has not yet been delivered.	Enjoyment of the profits before the transfer Article 1050. The profits of the items to be exchanged belong to the transferor until the specified time of delivery. Thereafter, the produce and accretions belong to the transferee, even though the property has not yet been actually delivered.	**and the benefits prior to transfer.** **§ 1050.** The possessor is entitled to the benefits of the bartered assets until the agreed time for transfer. From this time onwards, they belong, together with accession, to the transferee even though the asset has not yet been transferred.
§. 1051 If no time has been stipulated for the delivery of the individual thing, and if no fault can be imputed to either	Article 1051. If no time is specified for the delivery of the specific items of property, and if no fault can be imputed to	**§ 1051.** If no time has been agreed for the transfer of a specific asset and no party is negligent, the above

party; the above mentioned dispositions concerning the risk and produce (§§. 1048–1050) are to be applied to the moment of the delivery itself; unless the parties have come to some other arrangement.	either party, the above provisions concerning risk and profits (Articles 1048-1050) are to be applied as of the moment of actual delivery, unless otherwise agreed by the parties.	provisions in relation to risk and benefits (§§ 1048–1050) apply to the time of the transfer to the extent the parties have not provided otherwise.
§. 1052 Whoever will insist on the delivery, must have fulfilled his obligation, or be ready to carry it out. [NEW PHRASES ADDED AT A LATER TIME]	Article 1052. A person who insists upon delivery must either have performed his obligation or be ready to perform it. A party who must perform in advance may delay his performance until the other party gives security for his counter-performance where there is a risk of non-performance thereof due to the deteriorating financial situation of the other party, of which the first party was innocently unaware at the time of the making of the contract.	**§ 1052.** Whoever intends to demand the transfer, has to have satisfied or be ready to satisfy his obligation. Also the party obliged to advance performance can refuse his performance until performance of, or security for, the counter-performance if such prejudiced due to the negative financial situation of the other party, which he did not have to know about at the time of the conclusion of the contract.

Winiwarter (1866)	**Baeck (1972)**	**Eschig (2013)**
§. 21. Those, who for want of years, infirmities of the mind, or other circumstances are themselves unable to take proper care of their affairs, stand under the peculiar protection of the laws. To this class belong : children, who have not yet reached their seventh year; those, who have not attained the age of discretion, namely their fourteenth year; minors, who have not completed the twenty fourth year of their life; then: raving persons, mad persons and idiots, who are either entirely deprived of the use of their reason, or are at least incapable of understanding the consequences of their actions; further those, whom the judge, as declared prodigals, has forbidden the further administration of their property; lastly persons, who are absent, and communities.	II. Personal rights based upon age or metal deficiency Article 21. Those who, for want of years, infirmities of the mind, or other reasons, are unable to take proper care of their affairs have special protection under the laws. To this class belong: children less than seven years of age; persons less than fourteen years of age; minors less than twenty-one years of age; then lunatics, insane persons and imbeciles, who are either entirely deprived of their reason or are at least incapable of appreciating the consequences of their actions; those who have been adjudged spendthrifts and forbidden further to administer their property; and, persons who are absent and municipal bodies.	**II. Personal rights of minors as well as those having otherwise limited capacity to act.** § 21. (1) Minors and individuals who are not capable of taking care of all or some of their matters on their own due to a reason other than being a minor, are specifically protected by law. (2) Minors are individuals who are not yet 18 years old; if they are not yet 14 years old, they are under age.

In the German text, minors = Minderjährige

Winiwarter (1866)	Baeck (1972)	Eschig (2013)
§. 272. Should legal disputes arise between two or several minors, who are under one and the same guardian, this guardian dare not represent either of the minors, but he must apply to the tribunal to appoint another curator for each separately.	Article 272. Should legal disputes arise between two or more minors who have a common guardian, the guardian must not represent any of the minors and he must apply to the court to appoint a separate curator for each.	§ 272. If the interests of two or more minor [persons] or persons not having full capacity to act otherwise who have the same legal representative are in conflict with each other, he must not represent either of the mentioned persons. The court has to appoint a special trustee for each of them.
In German: Minderjährigen (1811) minderjähriger Personen (2013)		

Winiwarter (1866)	Baeck (1972)	Eschig (2013)
§. 569. Persons under the age of puberty are not capable of making a testament. Minors, who have not yet exceeded their eighteenth year, can only make a testament by word of mouth before the tribunal. The tribunal must endeavour to convince itself by a suitable enquiry, that the declaration of the last will takes place freely and with consideration. The declaration must be inserted in a protocoll and whatever has resulted from the enquiry, must be added to it. After the completion of eighteen years a last will can be declared without further restrictions.	3. Lack of age maturity. Article 569. Persons under the age of puberty are not capable of making a testament. Minors not more than eighteen years of age can only make an oral testament before the court. The court must ascertain by a suitable enquiry that the declaration of the last will takes place freely and with consideration. The declaration must be recorded and the results of the enquiry must be added thereto. A last will can be declared without further restrictions by persons more than eighteen years of age.	**3) immature age** § 569. Minors are unable to establish a will. Minors having reached the age of discretion can, unless 597 applies, only establish a will orally at court or in front of a notary public. 568 second and third sentence apply accordingly.
In German: Unmündige; Minderjährige (1811) Unmündige; Mündige Minderjährige (2013)		

Winiwarter (1866)	Baeck (1972)	Eschig (2013)
§ 1494. The time of usucaption or prescription cannot commence against such persons, who from a defect of their mental powers are not themselves capable of administering their rights, against persons under guardianship, mad persons, or idiots, so far as no legal representatives are appointed for these persons. The time of usucaption or prescription, which has already commenced, is continued; but it can in no way be completed before the expiration of two years after the impediments have been removed.	Tolling of limitation Article 1494. The period of adverse possession or limitation cannot commence against persons who through a mental defect are incapable of managing their rights, against persons under guardianship or against insane or mentally deficient persons insofar as no legal representatives are appointed therefor. A period of adverse possession or limitation which has started to run shall be continued; however, such period can in no case be terminated less than two years after such impediments have been removed.	**Stay of the lapse of time.** § 1494. The period of adverse possession or lapse of time cannot start against such persons who are unable to manage their rights themselves due to a lack of mental capability, as against minors or persons who are mentally incapable to the extent no legal representatives have been appointed for these persons. Once started, a period of adverse possession or lapse of time continues but cannot be completed prior to expiry of two years after these circumstances have terminated.
In German: … wie gegen Pupillen, Wahn- oder Blödsinnige, kann die Ersitzungs- oder Verjährungszeit, dafern diesen Personen keine gesetzlichen Vertreter bestellt sind, nicht anfangen. (1811) … wie gegen Minderjährige oder Personen, die den Gebrauch der Vernunft nicht haben, kann die Ersitzungs- oder Verjährungszeit, dafern diesen Personen keine gesetzlichen Vertreter bestellt sind, nicht anfangen. (2013)		

Winiwarter (1866)	Baeck (1972)	Eschig (2013)
§. 460. If the creditor has pledged the pledge further, he is liable even for such an occurrence, by which the pledge would not have been destroyed or deteriorated, if it had remained in his custody.	Article 460. If the creditor has made a sub-pledge, he is liable for the loss of the pawn through such an event as would not have occurred if it had remained in his custody.	§ 460. If the creditor pledged the pledged asset further [to someone else], he is even liable for such coincidence whereby the pledged asset would not have been lost or deteriorated if it had been in his [possession].
In German: Hat der Gläubiger das Pfand weiter verpfändet; so haftet er selbst für einen solchen Zufall, wodurch das Pfand bey ihm nicht zu Grunde gegangen oder verschlimmert worden wäre.		

Winiwarter (1866)	Baeck (1972)	Eschig (2013)
§. 801. The consequence of an unreserved entrance on the succession is, that the heir must make himself liable to all the creditors of the testator for their demands, and all the legatees for their legacies, even when the assets are not sufficient to satisfy them.	Effect of the unconditional acceptance Article 801. Upon the unconditional acceptance of the estate, the heir becomes personally liable to all the creditors of the testator for their claims and to all the legatees for their legacies, even if the assets of the estate are not sufficient to satisfy them.	**Effect of the unconditional,** § 801. The consequence of the unconditional declaration of acceptance of inheritance is that the heir is liable to all creditors of the testator with respect to their claims and all legatees for their legacies, even if the estate is not sufficient.
In German: Die unbedingte Erbserklärung hat zur Folge, daß der Erbe allen Gläubigern des Erblassers für ihre Forderungen, und allen Legataren für ihre Vermächtnisse haften muß, wenn gleich die Verlassenschaft nicht hinreichet.		

Winiwarter (1866)	Baeck (1972)	Eschig (2013)
§. 891. If several persons promise one and the same whole, solidarily, in such a manner, that one binds himself expressly for all and all for one; each separate person is liable for the whole. …	Joint and several obligations (Korrealitaet) Article 891. If several persons promise jointly in regard to the same matter in such a manner that one obliges himself expressly for all and all for one, them each separate person is liable for the whole. …	**Relationship of debtors among themselves.** § 891. If multiple persons jointly and severally promise one and the same in a way that one is expressly obliged for all and all expressly for one, each individual person is liable for the whole. …
In German: Correalität. Versprechen mehrere Personen ein und dasselbe Ganze zur ungetheilten Hand dergestalt, daß sich Einer für Alle und Alle für Einen ausdrücklich verbinden; so haftet jede einzelne Person für das Ganze.		

Winiwarter (1866)	Baeck (1972)	Eschig (2013)
§. 895. It is to be determined according to the especial legal relations existing between the co-creditors, how far among several	Article 895. Specific legal relations existing among co-creditors who have received a joint promise of the same subject matter determine to what extent one who has	§ 895. The extent to which one of multiple co-creditors who has been promised the whole jointly and severally and who has received the entire clam for himself is liable to the other creditors has to be determined in accordance with the

co-creditors, who have received the solidary promise of the same whole, the one, who has obtained for himself the whole claim, is liable to the other creditors. If such a relation does not exist; the one is not answerable to the others.	obtained the whole is liable to the others. If no specific relation exists, the one is not accountable to the others.	specific legal relationship existing between the co-creditors. If no such relationship exists, one is not answerable to the other.
In German: Wie weit aus mehrern Mitgläubigern, welchen eben dasselbe Ganze zur ungetheilten Hand zugesagt worden ist, derjenige, welcher die ganze Forderung für sich erhalten hat, den übrigen Gläubigern hafte, muß aus den besonderen, zwischen den Mitgläubigern bestehenden, rechtlichen Verhältnissen bestimmet werden. Besteht kein solches Verhältniß, so ist einer dem anderen keine Rechenschaft schuldig.		

Winiwarter (1866)	**Baeck (1972)**	**Eschig (2013)**
§. 1397. Whoever cedes a demand without an equivalent, consequently makes a present of it, is not further liable for it. …	Liability of the assignor Article 1397. A person who assigns a claim gratuitously makes a donation thereof and has no further liability in regard thereto. …	Liability of the assignor. §. 1397. Whoever assigns a claim without consideration, hence donates, is no longer liable for the claim. …
Haftung des Cedenten. Wer eine Forderung ohne Entgeld abtritt, also verschenkt, haftet nicht weiter für dieselbe.		

Winiwarter (1866)	**Baeck (1972)**	**Eschig (2013)**
§. 1398. As far as the cessionary could inform himself from the public mortgage-registers, whether the demand is recoverable or not; no compensation is due to him from the circumstance, that it is irrecoverable. The transferror is also not liable for a demand, which was recoverable at	Article 1398. Insofar as the assignee could have discovered by inspection of the public mortgage registers that a claim is not recoverable, no compensation shall be due to him if the claim is in fact recoverable. The assignor shall also have no liability in regard to a claim which was recoverable at the	§ 1398. To the extent the assignee could have made himself aware of the collectability of the claim from the public registers, he is not entitled to compensation with respect to the uncollectibility. The assignor is also not liable for a claim which was collectible at the time of the assignment

the time of the cession, and has become irrecoverable from mere chance or from an inadvertence on the part of the cessionary.	time of the assignment but has become irrecoverable by mere chance or by inadvertence on the part of the assignee.	and has become uncollectible due to a mere coincidence or negligence of the assignee.
In German: In so fern der Uebernehmer über die Einbringlichkeit der Forderung aus den öffentlichen Pfandbüchern sich belehren konnte, gebührt ihm in Rücksicht der Uneinbringlichkeit keine Entschädigung. Auch für eine zur Zeit der Abtretung einbringliche, und durch einen bloßen Zufall oder durch Versehen des Uebernehmers uneinbringlich gewordene Forderung haftet der Ueberträger nicht.		

Winiwarter (1866)	**Baeck (1972)**	**Eschig (2013)**
§. 1366. If the business, for which a person has made himself liable as surety, is brought to an end, the final account and the annullation of the warranty can be demanded.	Article 1366. If a business for which a person has assumed liability as a surety is brought to an end, the final accounting and the termination of the guaranty can be demanded.	§ 1366. If the transaction for which the surety has been granted is terminated, the final account and termination of the surety can be demanded
Wenn das verbürgte Geschäft beendiget ist; so kann die Abrechnung, und die Aufhebung der Bürgschaft gefordert werden.		

Winiwarter (1866)	**Baeck (1972)**	**Eschig (2013)**
§. 1390. Sureties and pledges, which have been granted for the security of the whole right in dispute, are also liable for the part, which has been fixed by the composition. …	Effect on accessory obligations Article 1390. Sureties and pledges which have been made for the security of the whole of a right in dispute are liable for any part which has been determined by settlement. …	**Effect with respect to ancillary obligations.** § 1390. Surety guarantors and pledges which have been granted as security for the entire still disputed right also secure the part which has been determined by the settlement. …
In German: Wirkung in Rücksicht der Nebenverbindlichkeiten. Bürgen und Pfänder, welche zur Sicherheit des ganzen noch streitigen Rechtes gegeben worden sind, haften auch für den Theil, der durch den Vergleich bestimmt worden ist.		

Winiwarter (1866)	Baeck (1972)	Eschig (2013)
§. 1406. If the creditor assigned and the assignate have accepted the assignment, but if the latter does not pay at the proper time; the constituent is on that account answerable to the creditor assigned under the same restrictions, which the transferror is liable to the cessionary for the justness and the recovery of the demand (§§. 1397 and 1399).	Article 1406. (1) A third party may assume another's debt by contract with the creditor, even in the absence of any agreement with the debtor. (2) In case of doubt, however, the assumption of a debt, notified to the creditor, is to be considered as a joint liability with the original debtor rather than a sole liability in his stead.	§. 1406. (1) A third party can also assume the debt by agreement with the creditor even without agreement with the debtor. (2) If in doubt, the assumption declared towards the creditor is to be understood as liability in addition to the existing debtor, not in his place.
In German: Hat der Assignatar und der Assignat die Anweisung angenommen, letzterer leistet aber die Zahlung nicht zur gehörigen Zeit; so haftet der Assignant dem Assignatar dafür unter den nähmlichen Beschränkungen, unter welchen der Cedent dem Uebernehmer für die Richtigkeit und Einbringlichkeit der Forderung zu haften hat Auch ohne Vereinbarung mit dem Schuldner kann ein Dritter durch Vertrag mit dem Gläubiger die Schuld ubernehmen. Im Zweifel ist aber die dem Gläubiger erklärte Űbernahme als Haftung neben dem bisherigen Schulder, nicht an dessen Stelle zu verstehen.		

Appendix 13

Title page of the commentary on the ABGB written by Winiwarter's father (1839)

Transcription:
Das
österreichische
bürgerliche Recht,
systematisch dargestellt und erläutert
von
Dr. Joseph Winiwarter,
wirklichen k.k. Regierungsrathe und
Professor der Rechte
an der Universität Wien.

Zwenter Theil.

Zweite vermehrte und verbesserte
Auflage.

Wien.

Bei J. G. Ritter v. Mösle's Witwe und
Braumüller.
1839.

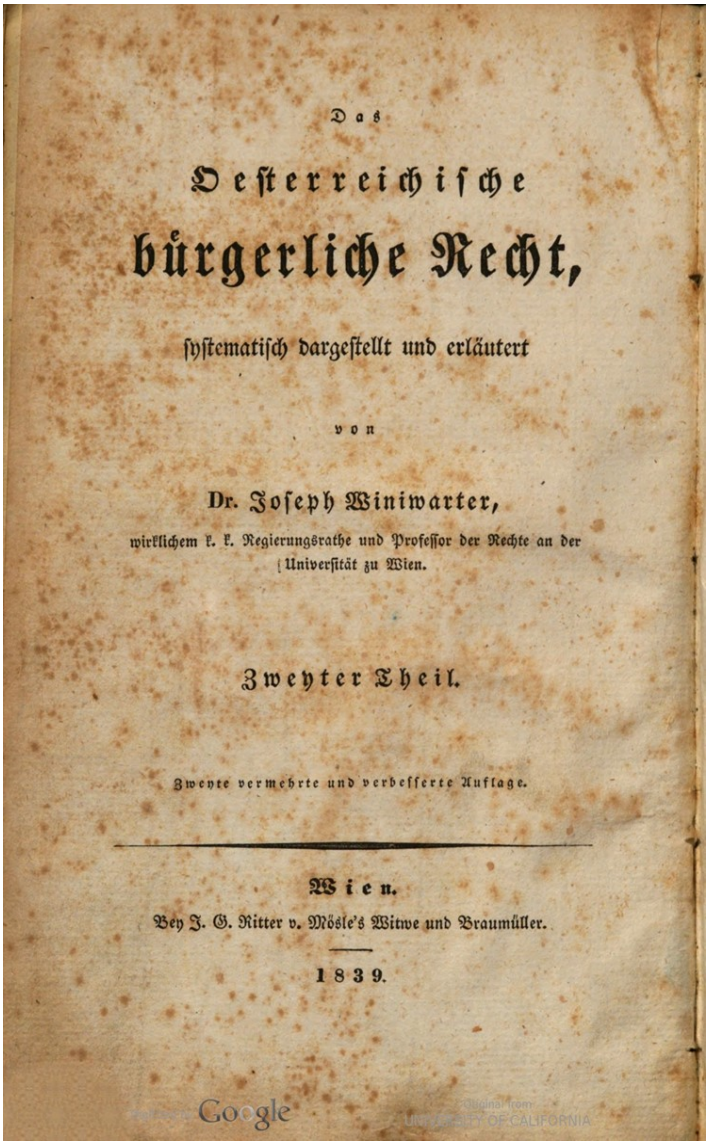
Translation:
Austrian
civil law,
systematically presented and explained
by
Dr. Joseph Winiwarter,
Royal Government Councilor and
Professor of Law
at the University of Vienna

Second Part

Second expanded
and improved edition

Vienna

By J. G. Ritter von Mösle's Witwe und



Das
Oesterreichische
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von

Dr. Joseph Winiwarter,

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Zweyter Theil.

Zweyte vermehrte und verbesserte Auflage.

Wien.

Bey J. G. Ritter v. Mösle's Witwe und Braumüller.

1839.

Appendix 14

Preface to the original editions of Winiwarter's translation
(First Part, 1865 and the integrated version with all parts, 1866)

PREFACE.

The translation of a civil code, which has already been in operation for more than fifty years, and which during this long period has sufficiently proved its great superiority, does not require in my humble opinion any justification. Moreover the intercourse with foreign countries, which is daily increasing, perhaps now makes the publication of a work of this description appear useful, although no one may have previously considered such a translation necessary.

I have therefore only to add some remarks in regard to the manner, in which I have proceeded in several parts of the translation. There are words, which are so peculiar to the German language, and conceptions to be found only in the institutions of Austria, that a corresponding word cannot exist in the English language. In such cases I have endeavoured to express the

meaning of the original as nearly, as possible in choosing an analogous english word, and I have added at the same time in brackets the latin translation of the words mentioned, which is taken from the official latin translation of the Austrian civil Code published at the Imperial State printing-office. I hope that my professional colleagues will conceive from the latin quotations, what is not sufficiently clear in my English translation.

Vienna January 1865.

J. Winiwarter.

Appendix 15

Comparison of clauses from Brickdale's translation/paraphrases + notes on land registry to Winiwarter's translation of the ABGB (full transcripts)

Winiwarter (1866)	Brickdale (1896)
	TRANSLATED* EXTRACTS FROM THE AUSTRIAN CIVL CODE OF 1811
	* In making this translation I have been greatly helped by Dr. von Winiwarter's translation (R. Lechner, Vienna, 1866), a copy of which he kindly presented to me, but I have found it advisable for the purposes of this Report to treat the text with rather more freedom than would have been admissible in Dr. von Winiwarter's work. The modern "Manz'sche annotated Edition of the Code is in the Lincoln's Inn Library.
1. The Land Registers.	
§. 321. Where so called provincial tables (tabulae provincials), records of a town, or registers of landed property or other similar public registers are introduced, the legitimate possession of a real right in immovable things is only attained by the proper entry in these public books.	Legal estates only to be acquired by registration. 321. Where Land Tafeln [lit. provincial tables], or towns, or land registers, or other similar public registers are in existence, the lawful possession of a real right in immovable property can only be obtained by the prescribed entry in the public register.
§. 431. For the transfer of the property of immovable things, the act of acquisition must be entered in the public books destined for the purpose. This entry is called intabulation.	431. For the transfer of ownership of real property the conveyance must be entered in the public register for the purpose. This entry is called registration.
§. 432. Before all it is necessary for the intabulation in the public book, that the person, from whom the property is to pass over to another, is himself inscribed as proprietor.	432. The first requisite for this registration is that the grantor be first registered as owner himself.
§. 433. For the further transfer by means of a contract it is sufficient for the estates belonging to peasants (praedia rusticorum), when deliverer and receiver, or even the deliverer alone appear before the tribunal, to which the estate belongs (forum rei sitae) and causes the intabulation of the act of acquisition in the public book.	433. [Peasant properties may be transferred on the mere appearance of the parties, or of the grantor only, before the Registrar for the purpose.] "Peasant properties" have now ceased to exist, and this mode of transfer is no longer permissible.
§. 434. But if the deliverer does not appear personally, and in all cases referring to estates belonging to the records of a town or to the provincial tables, a document in writing must be drawn up in regard to the act of acquisition, and must be signed both by the parties concluding the contract, and by two credible men as witnesses.	434. [In all other cases] a document in writing must be drawn up embodying the conveyance and must be signed by both parties and attested by two credible witnesses.

§. 435. In such a document the persons, who deliver and receive the property; the thing, which is to be delivered with its boundaries; the title of acquisition; further the place and the time of the contract concluded, must be precisely notified, and the deliverer must either in this document or in a separate document declare his consent, that the receiver be entered as proprietor.	435. [As to the form and contents of the conveyance, including the grantor's consent to the registration of the grantee as owner.]
§. 436. If the property of immovable things is to be transferred in consequence of a sentence valid in law, of a judicial deed of partition, or of a judicial surrender of an inheritance (adictio hereditatis); the intabulation of these documents is likewise necessary.	436. Registration also necessary when real property vests by order of Court, &c.
§. 437. In the same manner it is not sufficient in order to acquire the property of a bequeathed immovable estate, that the disposition of the testator in general has been entered in the public books. Whoever has a claim of this description must still obtain from the authority the especial intabulation of the legacy.	437. In the case of a devise by will, it is not sufficient to register the will generally ; the devisee must apply for the distinct and definite registration of the devise.
§ 438. If he, who, claims the property of an immovable thing, possesses in regard to it, it is true, a creditable document, but not a document provided with all the requisites prescribed for the intabulation in §§. 434 and 435; he can still, in order, that no one may obtain a preference over him, cause the conditional entry in the public book (*inscriptio conditionata*), which entry is called prenotation (*praenotatio*). He acquires by it a conditional right of property and he is considered, as soon, as he has justified the prenotation by virtue of a judicial sentence, the real proprietor from the time, he has handed in the application for prenotation according to the legal procedure.	438–9. [Where an owner claims under a document in which there is some informality, he may enter a prenotation to protect his property pending the judicial correction of the defect. If he does not take action within a fortnight, the prenotation may be discharged on the application of an adverse claimant.] *See* more fully as to prenotation, and the consequent action and discharge, in Sections 35–51 of the Land Registry law of 1871, translated above, p. 111, Appendix II.
§. 439. The prenotation, which has been granted, must be made known by means of intimation handed personally both to the one, who has applied for the prenotation, as well as to his adversary. The person applying for the prenotation must bring in within a fortnight, after having received the intimation, the proper complaint, in order to prove the right of property; otherwise the prenotation, which has been obtained, is to be annulled on the application of the adversary.	
§. 440. If the proprietor has alienated one and the same immovable thing to two different persons; it belongs to the one, who has applied first of all for the intabulation.	440. If an owner conveys the same property to two different persons, it belongs to the one who first applies for registration.

§. 441. As soon as the document concerning the right of property has been entered in the public book, the new proprietor enters into the legal possession.	441. The new owner is legally in possession from the time of the registration of the conveyance. But *see* below as to adverse possession, Sections 1451 to 1500, especially 1467 and 1468.
§. 443. The burdens charged on an immovable thing and noted in the public books, are taken upon one's self together with the property. Whoever does not inspect these books, suffers in all cases for his negligence. Other demands and claims, which some one has on the former proprietor, do not pass over to the new acquirer.	443. Registered incumbrances, but no others, are binding on a transferee of real property.
Ş. 444. The property can in general cease by the disposition of the proprietor ; by the law and by judicial sentence. But the property in immovable things only ceases, when it is struck out of the public books.	444. Ownership generally can be determined by the act of the owner, by operation of law, or by a judicial decree. But ownership of real property can be only be determined by cancellation in the public register.
§. 445. One must observe also for the other real rights referring to immovable things, the dispositions given in this chapter in regard to the mode of acquiring and the expiration of the right of property in immovable things.	445. [The provisions as to the acquisition and determination of the ownership of real property apply also to the acquisition and determination of real rights therein.]
§. 446. The special dispositions, which exist with regard to the organization of the provincial tables and registers for landed property, contain the manner and the precautions, which are to be observed in general for the intabulation of real rights.	446. [The mode of keeping the landtafeln and public registers is laid down in special laws.]
§. 1095. If the contract for hiring is entered in the public books; the right of the person hiring is to be considered as a real right, which the consecutive possessor must submit to for the remaining time.	1095. If an agreement for a tenancy is entered in the public registers, the rights of the tenant are to be deemed real rights, enforceable against the person for the time being entitled to the possession of the land.
2. Life Estates and Remainders.	
§ 608. The testator can bind his heir, that he must surrender the inheritance, which he has entered upon, after his death or in other definite cases, to a second heir nominated. This disposition is called an entailed substitution (*substitutio fideicommissaria*). The entailed substitution comprehends taciturnly the common substitution.	608. A testator can bind his devisee to surrender the inheritance, after his death, or in other named events, to a second named devisee. This disposition is called a "fideicommissary substitution."
§. 611. The rank, in which the heirs nominated in an entailed substitution are to follow one another, is not at all	

limited, if they are all contemporaries of the testator; they can extend to the third and fourth heir and still further.	611. Any number of persons contemporaries of the testator, may be named as successive devisees in a fideicommissary substitution.
§. 612. If they are not contemporaries, but such after-heirs, which have not yet been born at the time of the testament being made ; the entailed substitution can extend in regard to sums of money and other movable things to the second degree. In respect to immovable estates it is only valid in the first degree; still in determining the degrees only the after-heir is reckoned, who has obtained the possession of the inheritance.	612. In the case of persons unborn at the date of the will* a fideicommissary substitution may extend (*a*) in regard to sums of money and other movable things, to the second degree, (*b*) in regard to immovable estates, only to the first degree. In determining the degrees, only a devisee who actually obtains possession of the inheritance is to be reckoned. * It is not quite clear, from the code, how this fits in with the preceding section, which says, "contemporaries of the testator."
3. Strict Settlements and Entails	
§. 618. An entailment (family-entailment) is a disposition, by virtue of which property is declared as an unalienable estate for all future members, or at least for several members of a lineage.	618. A family entail (familien fideicommiss) is a disposition by virtue of which property is declared as an inalienable estate for all future members, or at least for several members, of a family line.
§. 619. The entailment is in general either a primogeniture, or a majorat (*majoratus*), or a seniority (*senioratus*); according as the founder of it has favoured with the succession, either the first-born of the elder line ; or the next of the family according to the degree, but among several equally near, the elder according to his years ; or lastly without regard to the line, the eldest of the family.	619. An entail is in general either (1) a "primogenitur," or (2) a "majorat," or (3) a "seniorat," according as the founder of it has conferred the succession ; either (1) on the first-born of the elder line ; or (2) on the next of the family according to degree, but among several equally near, the elder according to age ; or (3) on the eldest of the family without regard to the line.
§. 620. In case of doubt the primogeniture is to be presumed rather as a majorat or seniorat; or the majorat again rather as a seniorat.	620. In case of doubt a "primogenitur" is presumed rather than a "majorat" or "seniorat," and a "majorat" rather than a "seniorat."
§. 626. The female posterity has, as a rule, no claim to entailments. But if the founder has expressly ordained, that the entailment after the extinction of the male progeny is to pass over to the female lines; this takes place according to the order prescribed for the male successors; still the male heirs of that line, which has acquired the possession of the entailment, have the preference over the female heirs.	626. The female posterity has, as a rule, no claim under an entail [but the founder may ordain otherwise].
§. 627. No entailment can be established without the consent of the legislative power. When its erection takes place, a proper, certified inventory of all the articles belonging to the entailment is to be drawn up, and placed in judicial custody. This inventory serves as a direction in every	627. No entail can be created without the special consent of the legislative power. When it is created, a certified inventory of the whole subject-matter of the entail is to be drawn up and placed in judicial custody. This inventory serves as a direction on every change of the

change of the possession, and in the separation of the entailment from the free property. The tribunal has to care according to the especial provisions for the security of the entailment.	possession, and for distinguishing between the entailed and the free property, the tribunal has to take all the precautions specially prescribed for the security of the entail.
§. 629. The right of property in the fortune under entailment is divided between all expectants, and the possessor of the entailment for the time being. The former have the right of lord paramount alone; but the latter also the usufructuary property. §. 630. The right of lord paramount authorizes the expectants of the entailment, to demand that the bonds belonging to the entailment are deposited in the hands of the tribunal ; to give notice to the tribunal of a bad administration of the estates under entailment ; to propose a curator of the entailment in order to represent both the entailment and the posterity ; in general to take all the necessary measures for the security of the substance.	629. The ownership of the entailed property is divided between the remaindermen and the person entitled for the time being. The former have only dominium*, and the latter has usufruct* as well. The dominium authorizes the remaindermen (1) to require the documents belonging to the entail to be deposited with the tribunal ; (2) to give notice to the tribunal of maladministration of the entailed estate ; (3) to apply for the appointment of a curator of the entail to represent both the entail and the posterity ; and (4) in general to take all necessary measures for the protection of the inheritance. * “Obereigenthum” and “Nutzungseigenthum” have no exact equivalents in English, so I have used the Roman Law terms which correspond to them.
§. 631. The possessor of the entailment has all the rights and obligations of a usufructuary proprietor. The whole of the produce of the estate under entailment, and of the increase, but not the substance, belongs to him. On the other hand he has to bear all the charges. He is not answerable for a diminution of the substance, which has occurred without any fault on his part.	631. The person entitled for the time being under an entail has all the rights and obligations of a usufructuary proprietor. The whole of the produce and increase of the estate, but not the substance, belongs to him. On the other hand he has to keep down all charges. He is not answerable for any diminution of the substance occurring without fault on his part.
§. 632. A possessor of an entailment can, it is true, renounce his right for himself, but in no case for the posterity, even, if it does not exist. If he mortgages the produce of the entailment, or even the estate itself under entailment; the mortgage is only good for that part of the produce, which he is justified in collecting, but not for the estate under entailment, or for the share of the produce, which belongs to the successor.	632. [Limited owner can only deal with his own beneficial interest in the property.]
§. 633. The possessor of the entailment can under the restriction afterwards given change the immovable estate under entailment into a capital; he can exchange parcels of land for other parcels of land; or parcel them out for a suitable rent, or give them up on hereditary lease.	633. Subject to the following restrictions, the person entitled for the time being under an entail can change the settled real estate into money; he can effect exchanges of land, or let them out for a suitable rent, or grant them on lease at a rent.† † By Section 1122–4 this is defined to mean a substantial rent according to the produce; and, presumably, without premium or foregift.

§. 634. For these alterations he requires the approbation of the ordinary tribunal. The latter must take the advice of all the known expectants; or when they are minors or absent, the advice of their curators; then the advice of the curator of the entailment and the posterity; consider the importance of the motives; and especially in granting the parcelling out of the parcels of land take care, that the measure provided in the political ordinances is observed. The equivalent stipulated for, is to be invested as a capital belonging to the entailment.	634. For these dispositions he requires the approbation of the regular tribunal. The latter must communicate with all the known remaindermen, or when they are minors or absent, with their curators, and also with the curator of the entail and posterity. It must consider whether the proposal is justified, and especially, in authorizing any alterations of the parcels composing the estate, it must take care that the political ordinances as to the area of the property are observed.‡ The consideration paid is to be invested as capital belonging to the entail. ‡ See as to the Landtafel Estates, chapter IV., para. 227 of the Report.
§. 635. The possessor of the entailment can load the property under entailment with debts to the extent of one third of it; or, if it consists in capital, he can raise a third part of it. For this purpose he does not require the consent of the expectants or curators, but only the approbation of the ordinary tribunal.	635. The person entitled for the time being under an entail can charge one-third of the entailed property or, if it consists of money, he can raise a third part of it. For this purpose he does not require the consent of the remaindermen or curators, but only the approbation of the regular tribunal.
§. 636. In this third part all the charges bearing on the property under entailment, under whatever name they may be, are to be comprised in such a manner, that two thirds remain perfectly free.	636. In the above mentioned one-third all charges on the entailed property (under whatever name they may be entered) are to be reckoned, so that two-thirds of the property may always remain perfectly free.
§. 644. The entailment can be dissolved, if no posterity called to the entailment is to be presumed. But for the dissolution of the tie of entailment, together with the consent of the usufructuary proprietor and all expectants, who are to be summoned by an edict, the advice of the curator of the posterity and the judicial consent is required.	644. An entail can be dissolved, when it is to be presumed that no posterity entitled under the entail can come into existence. But for this the consent of the usufructuary proprietor and all remaindermen (who are to be summoned by an edict) must be given ; the curator of the posterity must also be heard, and judicial consent must be obtained.
§. 645. The entailment ceases, if it is ruined, or if all the lines named in the document of foundation, have died without any hope of posterity. In the latter case the right of the lord paramount is united with the usufructuary property and the possessor can dispose over the entailment at will.	645. An entail ceases, if [the subject matter of] it is destroyed, or if all the lines of descent named in the original settlement have been exhausted and there is no expectation of posterity. In the latter case the dominium* is united with the usufruct,* and the person for the time being entitled can dispose of the entailed property at will.
4. Title by Possession	
	[NOTE. – In the following clauses it will be observed that besides prescription, which corresponds to the English Statute of Limitations, Austrian law (following Roman law) has also a stronger form of title by possession, which not merely deprives the particular subsisting owner or owners of his or their powers of ejectment, but confers an independent title on the

	occupier. The former of these (Verjährung in German, Præscriptio in Latin) I translate “Prescription : the other (Ersitzung in German, Usucapio in Latin) “Title by Possession.” The Austrian law preserves both these (in a modified form) as to registered land ; the Prussian law (it will be remembered) abolishes them as against a registered owner. See Appendix I., p. 99, Sections 6, 7.]
§. 1451. The prescription is the loss of a right, which has not been exercised during the time fixed by the law.	1451. Prescription is the loss of a right which has not been exercised during a period fixed by law for the purpose. The period is fixed in Sections 1467–1494, which *see* below.
§. 1452. If the prescriptive right devolves at the same time upon another person on the ground of his legal possession; it is called a right gained by usucaption, and the mode of acquisition, usucaption.	1452. If the right which has been lost owing to prescription devolves at the same moment on another person by virtue of lawful occupation, it is called a possessory right, and the mode of acquisition, title by possession. *See* Section 1461 below, as to what constitutes lawful occupation for this purpose.
§. 1454. The prescription and usucaption can take place against all private persons, who are themselves capable of making use of their rights. It is only admissible under the following restrictions (§§. 1494, 1472 and 1475) against persons under guardianship or curators; against churches, communities and other juridical bodies, against administrators of the public property and against those, who are absent without any fault on their part.	1454. (and 1472, 1475, and 1494). [Exceptions in the case of persons absent, or under disability, churches, communes, and other bodies having only a legal existence, and administrators of public property ; in which cases a longer period is required than in others.]
§. 1461. Every possession, which is grounded on such a title, which would have been sufficient for the acquisition of the property, when the latter had belonged to the deliverer, is a legitimate one and sufficient for the usucaption. Such titles are f. i. the legacy, the donation, contracts for loans, for selling and buying, the contract of exchange, the payment and so on.	1461. Occupation is lawful, and a sufficient foundation for a title by possession when it commences in a manner (such as, for instance, gift, by will or *inter vivos*, loan, purchase, exchange) which would confer a valid title if the grantor were the true owner.
§. 1463. The possession must be a bona fide one. Still the mala fides of the former possessor does not prevent a bona fide successor or heir from beginning the usucaption from the day of his possession (§. 1493).	1463. The occupation must be *bonâ fide* ; but *mala fides* in the first occupier does not prevent his *bonâ fide* successor from acquiring title as from the day of his own occupation.

§. 1464. The possession besides dare not be spurious. If some one has seized a thing with force or fraud, or sneaks secretly into the possession, or possesses a thing only by way of entreaty; neither he himself nor his heirs can acquire it by means of usucaption.	1464. The occupation must also be open and as of right ; not by force, by stealth, or by leave ; a fault in this respect affects the successors, as well as the first occupier.
§. 1466. The right of property, the object of which, is a movable thing, is by means of usucaption acquired after a legal possession of three years.	1466. With regard to movable property, three years' occupation confers a title by possession.
§. 1467. The person, in whose name immovable things are registered in the public books, acquires likewise the full right to them by usucaption against all contradiction after the expiration of three years. The limits of the usucaption are to be judged of according to the possession registered.	1467. With regard to immovable property, three years' occupation confers title by possession, provided the occupier is registered as owner in the public registers. In such case the extent of the land deemed to be occupied will be according to the registered description of the estate.
§. 1468. Where regular public books have not yet been introduced, and the acquisition of immovable things is to be proved by judicial acts or other documents, or when the thing is not registered in the name of the person, who exercises the rights of possession in regard to it, the usucaption is only completed after thirty years.	1468. In other cases real property requires 30 years for the completion of a title by possession.
§. 1469. Easements or other special rights, which are made use of on the landed property of another, the same as the right of property are acquired after the expiration of three years by usucaption by the person, in whose name they are registered in the public books. §. 1470. Where regular public books do not yet exist, or when such a right is not registered in them, the bona fide possessor can acquire it by usucaption only after the expiration of thirty years.	1469–70. [Similar rules as to servitudes.]
§. 1471. In regard to rights, which can seldom be exercised f. i. the right to confer a prebend, or to demand from some one a contribution for the repairs of a bridge, the person, who maintains the usucaption, must besides the expiration of thirty years, at the same time prove, that the case for the exercise of the right has occured at least three times during this period, and that he has exercised this right each time.	1471. As to rights only occasionally exercisable as :–to present to a benefice, to demand contributions to the repair of a bridge, &c., the right must have arisen and been actually exercised three times also.
§. 1474. The qualification of a family-entailment, of a fee-farm and copyhold-estate is only lost in consequence of a free possession of fourty years.	1474. [Entails and settlements protected against prescription for 40 years.]

§. 1477. Whoever establishes the usucaption in proving the expiration of thirty or fourty years, is not bound to allege the legal title. But the mala fide possession proved against him excludes the usucaption even after the expiration of this extended period.	1477. In claiming a title by possession founded on 30 or 40 years' occupation, it is not necessary to give particulars of the legal commencement. But *mala fide* commencement may be set up as a defence.
§. 1478. (As far as every usucaption includes a prescription, both are completed with their requirements at one and the same period. But for the prescription properly speaking the mere non-use during thirty years of a right, which otherwise would have been used, is sufficient.	1478. [For prescription, mere non-user during 30 years suffices.]
§. 1479. All rights therefore against a third person, they may be entered in the public books or not, expire as a rule at latest by the non-use during thirty years, or in consequence of silence, which has been observed for so long time.	1479. Thus as regards individual owners, all rights expire as a rule after 30 years non-user, whether registered in the public registers or not.
§. 1480, Claims of arrears of yearly duties, interest, rent or services expire after three years; the right itself becomes prescriptive by a non-use during thirty years.	1480. [Only three years' arrears of rents, interest, &c., recoverable.]
§. 1498. Whoever has gained a right or a thing by means of usucaption, can apply to the tribunal against the former proprietor for the adjudication of the property, and have the right adjudicated entered in the public books, so far as it forms an object of the same.	1498. When a person has acquired a title by possession, he can apply to the Court, by means of an action, for an Order adjudicating the property to him, and, if the right in question is registered, for registration of the order in the public registers.
§. 1499. In the same manner the obligor can after the expiration of the prescription obtain the cancelling of his obligation, which was entered in the public books, or the disanulment of the right, which previously belonged to the obligee and of the documents delivered in regard to it.	1499. In the same manner, after the expiration of the period of prescription, the person bound by a registered obligation can obtain the discharge thereof.
§. 1500. The right gained by means of usucaption or prescription can however not be prejudicial to a person, who trusting in the public books has purchased a thing or a right, before the right gained by means of usucaption or prescription has been entered in the public books.	1500. Provided that a right gained by possession or by prescription cannot be asserted to the prejudice of a person who has, in reliance on the public register, acquired the property before the registration of the prescriptive or possessory right.

8

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