

§ 2 The federal state

I. The federal state as an association of states under constitutional law

- traditional distinction between assoc. of states under constitutional and public intern. law
- the federal state as closest possible association of states (it is a state itself)

II. The alternative model of the unitary state: one level of statehood with ultimate control and responsibility

1) Characteristic features

- vertical concentration of powers and responsibilities at the national level
- competences, structure and functioning, finances, supervision and even existence of regional collectivities regulated by ordinary statutory law
- some constitutions prescribe existence or autonomy of regional collectivities (see for Indonesia art. 18 et seq, Const. 1945) but this can be changed by constitutional amendment

2) Examples

- the classical model of the state (→ all states before 1787)
- almost all small states but also some populous states (China, Indonesia, Bangladesh, Japan...)

3) Advantages and disadvantages

- more simple and transparent structure (much easier to learn!)
- legal unity (equal legal conditions throughout the country)
- easier to achieve economic unity and equivalent living conditions throughout the country
- possibly more efficiency (easier to implement new policies throughout the country)
- higher risk of dictatorship (no vertical separation of powers)
- difficulties to find policies suitable for the whole country
- higher risk of regional tensions and separatism

III. The model of the federal state: two independent levels of statehood within one sovereign state

1) Historical, theoretical and legal foundations

- a new model of state, invented and first introduced in North America 1787/88
- a model suitable in particular for unification states (founded by several previously sovereign states), but also for states which would otherwise fall apart (e.g. Belgium)
- theory of federalism established by JAMES MADISON, ALEXANDER HAMILTON, JOHN JAY in "The Federalist Papers" 1787/88; further developed in USA, Germany, Switzerland
- basic idea of federalism: **unity in diversity** (but also a slogan of the unitary Republic of Indonesia!)
- two concepts of statehood in the General Theory of State: *state in the sense of public international law* (sovereign state) *and of state law* (non-sovereign state within a state)

2) Delimitation from confederation and unitary state

- federal state: federation is sovereign state (in the sense of public intern. law), federated states are only states in the sense of state law
- confederation: confederation is organisation based on public intern. law, confederated states are sovereign states
- unitary state: regions/provinces not a state at all

3) Characteristic features

- sovereignty of the federation
- special status of the *federated states as states in the sense of state law*
 - ordinary public power (directly derived from the national constitution)
 - existence, autonomy, competences, basic finances regulated in the national constitution
 - constitutional autonomy and autonomous self-organisation (own constitution and state law, own government, parliament and courts)
- federal structure cannot be abolished by constitutional amendment
- different models of (usually complicated) distribution of competences
- cooperation between the two levels regulated in the national constitution

4) Examples

- USA (since 1788), Switzerland (since 1848), Germany (since 1870), Austria
- traditional Latin American federal states (Argentina, Venezuela, Mexico, Brazil)
- former British colonies (Canada, Australia, India, Pakistan, Malaysia, Nigeria)
- federal states can emerge from unification of states (e.g. USA) or transformation of a unitary into a federal state (e.g. Belgium)

5) Advantages and disadvantages

- unity in diversity (the main reason for federalism)
 - in particular lower risk of regional tensions and separatism
 - often the only way to keep populations with different values and mentalities in one state
- *vertical separation of powers* complementing the classical horizontal separation of powers
 - the state governments as counterweight to the national government (with own administrative and police forces)
- strengthening of democracy (more hubs, pluralism of political coalitions, better political culture)
- more complex structure, complicated vertical relations and intransparent responsibilities
- more complicated legal system with restricted legal unity
- high risk of losing economic unity and equivalent living conditions in the country

IV. Crossover phenomena

1) Unitarian federal states

- where the federated states have little competences and political influence (e.g. Austria)
- a tendency of unitarisation in the wake of development, geo-regionalisation and globalisation (e.g. Germany)

2) Highly autonomous regions in unitarian states

- unitary states following the concept of unity and diversity and guaranteeing regional and local autonomy (e.g. Indonesia; extreme example: Spain)
- some autonomous regions in unitary states even enjoy more independence than the federated states in some federal states (e.g. Scotland, Catalonia, Aceh)

V. Asymmetric federalism

- different categories of federated states in some federal states (e.g. Russia, Canada)

VI. Excursus: Federalism outside the federal state

- basic idea of "unity in diversity" applied in organisations under public intern. law (confederation, supran. union) or in society (e.g. sports or trade unions associations)