

§ 2 The federal state

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

- traditional distinction between associations of states under constitutional law and under public international 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 statutory law that can be altered at any time
- 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
- also some populous states: China, Indonesia, Bangladesh, Japan, Philippines...

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 (due to policies insufficiently taking into account regional economic, social and cultural particularities)

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 in the USA and first introduced in 1788 with the conversion of the USA from a confederation to a federal state
- 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 particular in the USA, Germany, Switzerland
- basic idea of federalism: *unity in diversity*
 - note that this slogan, though also characteristic for the unitary Republic of Indonesia, is the *classical slogan of federalism!*
- 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

- in the federal state, the federation is a sovereign state (in the sense of public intern. law) while the federated states are only states in the sense of state law
- in the confederation, the confederation itself is an organisation based on public intern. law while the confederated states are sovereign states
- in the unitary state the regions/provinces do not enjoy the status of a state

3) Characteristic features

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

4) Examples

- USA (since 1788), Switzerland (since 1848), Germany (since 1870)
- traditional Latin American federal states (Argentina, Venezuela, Mexiko, Brasil)
- former British colonies (Canada, Australia, India, Pakistan, Malaysia, Nigeria)
- Russia, Austria, Belgium
- also some small states: Comoros, Micronesia, Saint Christopher and Nevis
- federal states can emerge
 - from the unification of two states to one new federal state (e.g. USA, Germany)
 - from the transformation of a unitary state into a federal state, in order to prevent an imminent dismembration (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 (e.g. in Bavaria and Berlin or in Texas and California) in one state
- *vertical separation of powers* complementing the classical horizontal separation of powers
 - the governments of the federated states as counterweight to the national president or government (with own administrative and police forces)
 - therefore lower risk of dictatorship
- strengthening of democracy
 - more hubs of democracy
 - better political culture, since the same parties will be partly in government, partly in opposition, partly cooperate and partly oppose each other
- more complex structure (much more difficult to learn!)
- 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

- in some federal states, federated states have little competences and political influence
 - example: Austria
- many federal states show a tendency of unitarisation (shift of influence from federated states to federation) in the wake of development, geo-regionalisation and globalisation
 - example: the decline of influence of the German Länder

2) Highly autonomous regions in unitarian states

- some unitary states have adopted the concept of unity and diversity and implemented it by constitutional guarantees of regional and local autonomy
 - the example of art. 18 et seq. Indonesian Constit. 1945
 - an extreme example: the autonomy of the Comunidades Autónomas in Spain
- some autonomous regions in unitary states actually enjoy more independence than some federated states in federal states
 - the example of Scotland within the United Kingdom
 - the example of the Spanish regions Catalonia and Basque Country
 - the example of the Indonesian Province Aceh

V. Asymmetric federalism

- in some federal states, there are different categories of federated states or just some individual federates states that enjoy a higher degree of autonomy and more competences than the others
 - example: different categories of federal subjects in Russia
 - example: special status of Quebec in Canada
- the term is also used (incorrectly) to describe the special status of highly autonomous regions (e.g. Scotland, Catalonia) in some unitary states

VI. Excursus: Federalism outside the federal state

- the basic idea of federalism - unity in diversity, uniting without giving up the own identity - is not limited to the model of the state
- see for non-state forms of organisation based on federalism the confederation (see § 3 II.) and the supranational union/"Staatenverbund" (see § 3 V.)
- the concept of federalism can also be applied within the society (federal sports associations, trade unions associations, church associations etc.)