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## Federalism



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# Federalism

## Contents

- 1 Term and concept
- 2 Forms of federalism
- 3 Intergovernmental relationships
- 4 Federalism and democracy
- 5 Resolving conflicts between the federation and member states

References

Additional literature

**Federalism combines national unity with territorial diversity. The forms of federalism, the division of competences and the cooperative relationships between the federation and member states reflect the balance between these two ideas. A distinction should be made between dual federalism, cooperative federalism and political integration. Federalism is an expression of democratic rule.**

# 1 Term and concept

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The term *federalism* has its roots in the Latin word *foedus*, which means alliance or contract. Federalism can be regarded as a voluntary agreement on the form of territorial rule. Individual territories commit themselves to permanent cooperation, whereby, unlike a federation of states, the political autonomy of the territories is restricted in favour of uniform decision-making at the federal level. Federal law trumps state law. The federation is required to behave in a considerate way towards the decision-making process of its members. The minimum requirements of federalism are: the organisation of a political system into territorial units; a separate constitution for each of these units, which is based on the idea of sovereignty of the people; participation of the member states in decision-making by the federation; and a financial constitution which permits the member states to fulfil those tasks which fall within their remit. The division of tasks in federalism follows the principles of ▷ *Subsidiarity* and solidarity. The smaller territorial unit is responsible for state functions and tasks in the first instance. If it finds itself unable to fulfil certain tasks alone (e.g. defence or monetary policy), within federalist system it can expect that the next higher territorial level will step in (local authority – state – federation – ▷ *European Union*).

# 2 Forms of federalism

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Federalism is always a compromise between spatial uniformity and spatial diversity. The need for diversity has various roots. In many cases (for example, the USA, Canada, Germany), these are historical. A common national territory has been formed from previously autonomous territories. The member states wish to maintain their identity and important competences within this ‘unifying federalism’. Federalism can also be the result of the collapse of a state. Particularly in multi-ethnic societies with territorially concentrated ethnic, religious or other minorities and/or with stateless nations, unitary states are rarely stable (cf. Heinemann-Grüder 2011). The alternative to the breakup of these states is federalism, which can be used to attempt to hold a state together (e.g. Belgium, Iraq, Bosnia-Herzegovina). In existing federal states, too, federalism allows a flexible differentiation of regional representation, since the number of member states necessary for federalism is not fixed. The reorganisation of federal states (Germany) or the creation of new member states (Switzerland: Jura canton; India, e.g. Telangana in 2010 as the 29th federal state) can meet the desire for autonomous spatial representation and thus stabilise a state structure.

Whether such an attempt is successful depends less on the specific arrangement of federal systems than on whether there is sufficient commonality between the diverging parts of the country. Examples of failed federal states are the Czechoslovak Federation (1989-1992), Yugoslavia and Sudan (independence of South Sudan in 2011). In Europe, the idea of secession still has supporters, for example in Scotland, Catalonia, the Basque country, Corsica and South Tyrol (cf. Sturm 2016). The pursuit of territorial autonomy in existing state systems has produced various precursor forms of federalism in the shape of political regionalisation. Federalism as a further development of political regionalisation is an issue in Spain, Italy and the United Kingdom of Great Britain and Northern Ireland. Large non-city states, with a few exceptions (e.g. the People’s Republic of China), opt for federalism for practical reasons alone (Russia, Canada, the

USA, Australia). The territorial units in federal states do not all have to be equal in size; in fact, they do not even have to have the same competences. In multi-ethnic federal states, political stability often cannot be achieved if all member states are equal. Multi-ethnic federal states therefore concede special cultural, economic or political rights to the individual member states of a federation; federalism thus becomes asymmetrical (Canada, Russia, Belgium) (cf. Tarlton 1965; Agranoff 1999). It is only in states with relatively homogeneous societies that we find, at least de jure, a symmetrical federalism (Austria, Germany, the USA).

## 2.1 Forms of the division of competences

The forms in which competences are divided up are constitutive for different types of federalism (see Table 1). Competences in the federal system can be distributed according to the clearest possible separation system, which means that the federation and member states govern their respective areas and only cooperate in a few, clearly defined fields. This corresponds to a full range of political institutions at both the federal and the member state level. Both levels therefore have their own constitutions, governments, parliaments, constitutional courts and administrations (dual federalism). Dual federalism is the preferred model in the economic theory of federalism (cf. Oates 1972; Sauerland 1997). It enables territorial competition at all levels (competitive federalism). The member states can attempt to find the best possible solution for their economic problems, to provide a cultural programme that attracts tourists and investors, and to work with innovative policy approaches. In this model, the successful member state retains the fruits of its success. Living conditions are not homogeneous; rather, it is precisely their inequality which is regarded as a motivation for political and social innovation. Federalism becomes a ‘laboratory of democracy’ (cf. Tarr 2001; Oates 1999: 1131 uses the term ‘laboratory federalism’ in this context).

Political experiments in one member state can be imitated by other member states and by the federation if they are successful. Failed experiments are unavoidable, but they only harm one member state and not the entire nation. In elections within dual federalism, the voters can clearly attribute responsibility and draw the corresponding conclusions (cf. Tiebout 1956). They do not have to puzzle over whether a decision was made by the EU, the federation or the state. The federal state parliaments have significance as places of legislation for the states’ own affairs. The markets respond to successful or unsuccessful federal state policy with corresponding risk premiums for individual member states requesting loans. As well as providing accountability towards citizens on the occasion of elections and referendums, this exerts an additional pressure on policymakers to engage in serious financial policy.

The second model of federalism is cooperative federalism. The focus here is on the joint performance of tasks by the federation and member states. In the Basic Law of the Federal Republic of Germany (*Grundgesetz, GG*), this cooperation (▷ *Cooperation between federal and state governments*) is already embedded in the structure, since decisions about most legislative matters are in the hands of the federation, but the federation can only execute laws in a few cases (e.g. federal defence administration). There is no federal administration. ▷ *Administration, public* is generally the job of the federal states. Cooperative federalism encompasses more than cooperation when implementing laws. It is also based on the financial dependence of the member states on the federation and on the joint performance of numerous tasks, particularly in the area of the welfare state. The benchmark is often the standardisation of living conditions (▷ *Equivalence of*

## Federalism

*living conditions*). Here, the welfare state norm of equality collides with the essence of federalism, which guarantees diversity (cf. Sturm 2013).

In cooperative federalism, the barriers to innovation in the member states are high, because decisions are integrated into complex federal and state government negotiation systems. The federal state parliaments are weakened in comparison with the federal state governments. Only the latter act as cooperative partners of the federation (executive federalism). Because of the financial association between the federation and member states, the markets cannot differentiate with regard to the creditworthiness of individual member states. They count on a bail-out by the federation if a member state should get into difficulties, and assign an identical rating to federal and member state budgets.

A special form of cooperative federalism is political integration, which has a strongly unitarising effect (cf. Scharpf/Reissert/Schnabel 1976; Kropp 2010). It goes beyond selective and problem-related cooperation in the handling of political tasks, because it institutionalises this cooperation and prescribes it in the federation's constitution. Cooperation becomes the structural principle for performing public tasks. Joint decision-making committees are formed, in which the federation and member states seek to reach compromises. Given the large number of stakeholders and interested parties in such committees, the smallest common denominator is often the basis for decisions rather than a change of direction. Added to this is a tendency on the part of all participants, in order to encourage consent, to organise gains for everyone at the cost of the taxpayer, which is why the decision-making mechanisms of political integration contribute to an increase in government spending. Area specialists from policy and administration in the federation and the federal states are the spokespersons ('professional brotherhoods') and present their proposed solutions to the elected parliaments as the only choice. Competition between member states is excluded except for the few political fields in which the member states act on their own authority. Decisions remain opaque for voters, because they are not made in the federal state parliaments but rather in federal and state government committees of very different types, which are filled by the governments. The results of these committees are not called into question in the federal state parliaments.

**Table 1: Types of federalism**

Type	Dual federalism	Cooperative federalism	Unitary federalism
Characteristics	Competitive federalism	Cooperation between federal and state governments	Political integration

**Source: The author**

The division of competences in federalism results in different types of legislation: exclusive legislation by the federation (regulated in the federal constitution); exclusive legislation by the federal states, which can be regulated both in the federal constitution (India) and in the member state constitutions (Germany); and a third type of legislation: competitive legislation (regulated in the federal constitution), which, in cooperative federalism, is intended to give the federation access to a limited range of tasks performed by the states for overarching reasons, if there is a

parliamentary majority for this at the federal level.

## 2.2 Financial federalism

The revenue systems in federal states are designed analogously to the models of cooperative and dual federalism (see Table 2; cf. Döring 2000, who compares US and German financial federalism). Dual federalism usually has a separate system with both the federal and member state level having sovereignty over the organisation of tax collection. The principle of fiscal equivalence applies (cf. Olson 1969), which means that each political level is responsible for creating a balance between revenue decisions and spending decisions. In cooperative federalism, a system of tax revenue sharing and distribution can be expected, or the exclusive right to levy taxes by the federation. This does not exclude the possibility that, after the tax has been levied, the revenue from a particular type of tax is allocated in advance to the member states (revenue sovereignty). However, the decisive factor for the cooperative federalism model is that the member states are financially dependent on the federation or on federal legislation.

Table 2: Forms of financial federalism

Form of federalism	Dual federalism	Cooperative/unitary federalism
Financial constitution	Separate system/fiscal equivalence	System of tax revenue sharing and distribution/allocation system

Source: The author

This dependence is expressed not only in tax law but also in the financing of numerous state responsibilities in which the federation acts as co-financer. The combined financing of responsibilities can be structured in different ways. It can be tied to a particular responsibility and its fulfilment. However, the federation can also provide a fixed total sum and entrust it to the member states to use as they wish. The latter model has the advantage for the federation that it does not have to contribute any further funds if the scope of the responsibility should grow over time, e.g. because of demographic change. Any type of combined financing carries the danger of the so-called ‘golden reins’, i.e. the problem that the federation may end up steering the policies of member states through financial incentives, such that member states lose their political autonomy.

One way out of this dilemma would be to strengthen the federal states’ own income. In every federal state, there are rich and poor member states. This means that there is also always a mechanism of fiscal equalisation (▷ *Fiscal equalisation between the states*). A distinction is made between vertical and horizontal fiscal equalisation (cf. Döring 2005). Horizontal fiscal equalisation is based on the principle of federal solidarity, i.e. that the federal states will be there for one another. The economically/fiscally more successful federal states co-finance the less successful ones. Horizontal fiscal equalisation is only practised in a few federal states (Germany, Switzerland). Many of its aspects are controversial. For example, it is not clear when equalisation can be considered sufficient – when the federal states are fully equal after balancing payments or

## Federalism

when they have achieved a certain percentage of the financial power of the federal states. Another question is how to measure the different financial performance of the federal states – by their results (as in Germany) or by their starting conditions (as in Switzerland). Which measurements and indices should be used as reference values for the balancing is also disputed. The alternatives are to determine the (financial) need of the federal states, to take their population as a starting point, or to calculate an indicator for the financial strength of the member states.

In federal systems with horizontal fiscal equalisation, vertical fiscal equalisation is used in addition in order to be able to perform further corrections to funding in favour of the poorer federal states. This is achieved by means of payments from the federal budget in order to cushion exceptional emergencies. In countries which lack horizontal fiscal equalisation, vertical fiscal equalisation, i.e. balancing payments by the federation to the member states, alone takes on the function of correcting the spatial distribution of income at the member state level. This means that the federation alone decides which spatial effects it wants to achieve. Indirectly, the federation also always has the option of pursuing a policy of strengthening certain federal states through the regional dimension of its political decisions (▷ *Locational policy*) (e.g. locations of the army or of ministries, or the awarding of contracts to companies).

The multi-layer structure of federalism offers incentives to pass on financial burdens to lower political levels, e.g. burdens which result from the enforcement of federal laws. This can only be counteracted if the ▷ *Connexity principle* applies for legislation with cost consequences, which obliges the entity causing the costs to bear them, even if these costs only have to be settled at the member state level or at the municipal level.

### 3 Intergovernmental relationships

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The cooperation between federation and federal states can be organised in different ways. The spectrum ranges from informal relationships to cooperation in federal legislation in the second chamber of the federal parliament. In the USA, for example, the governors of federal states only have the role of lobbyists in Congress if they want to influence federal legislation in their favour. In other countries, such as Austria or Canada, where – as in the USA – the second chamber is omitted as a place to bring federal state interests into the legislative process because the formation of party political camps prevails there, alternatives have been sought. Here, the heads of the regional governments meet regularly, sometimes also with representatives of the federal government, in order to make the concerns of the member states heard (Provincial Governors' Conference [Austria], First Ministers' Conference [Canada]).

The German Federal Council (*Deutscher Bundesrat*) is, in many respects, a peculiarity in this context (cf. Reuter 2007; Sturm 2009). The Federal Council is not a second chamber of the German parliament. Nonetheless, the German federal states participate in federal legislation and in affairs of the European Union through it. The members of the Federal Council are the Minister-Presidents and other delegated members of the federal state governments. Membership in the Federal Council changes after each state parliament election. The Federal Council as such, however, remains intact ('perennial institution'). It is not organised purely along party political lines, and its members do not have the free mandate which is otherwise usual in democratic parliaments.

The representation of the federal states in second chambers either follows the principle of scaling the number of representatives according to the different population numbers of the individual federal states (Federal Council principle [*Bundesratsprinzip*]) or the principle of equal treatment of all federal states (senate principle). The Federal Council is organised according to the moderated Federal Council principle, which mitigates the spread of seat numbers per federal state in the Federal Council in favour of the small federal states. Territoriality plays a large role in Federal Council decisions, even though this is usually reflected in the negotiations of Federal Council committees, out of the public view. Regional governments can also cooperate with each other outside the federal institutions (third level of federalism). In Minister-Presidents' and state ministers' conferences, votes are taken on political tasks which are particularly significant if the member states carry sole responsibility in this area (e.g. Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany).

## 4 Federalism and democracy

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Positive federalism theory disputes the connection between federalism and democracy (cf. Benz 2009). In this view, every state that calls itself federal is federal, including an autocracy like Russia. Normative federalism theory, on the other hand, argues that democracy and federalism are inextricably linked (cf. Sturm 2015). In spatial terms, it understands federalism to be a vertical separation of power alongside the horizontal one between the legislature, executive and judiciary. Democratic governance in the member states restricts the power of the federation and checks the exercise of power. Parliaments at the member state level make policy more manageable and shorten the distance between voters and elected representatives. In homogeneous federal states, elections to member state parliaments have also developed into a kind of interim election for federal policy; in multi-ethnic federal states, they offer a forum for the articulation of ethnic interests. The vertical separation of power is the only justification for the existence of German federalism. Without this element to safeguard democracy, German federalism – like any other federalism – would be the equivalent of a decentralised administration.

Every nation in the world has decentralised administrative structures. Decentralisation and regionalisation are distinguished from federalism in that only the latter ensures democratic governance, namely by its democratic legitimation from below. The member states are the building blocks of the state in federalism. This is made apparent by the fact that the responsibility for social tasks not covered by the constitution is normally (with exceptions, e.g. India) held by the lowest political level (general competence). The election of regional parliaments, such as in Spain, France or the United Kingdom, demonstrates an advanced state of political deconcentration or devolution. But it is only when these regionalisation processes are linked to the constitutional acknowledgement of member state sovereignty that the step from the regionalisation to the federalisation of the political system has been taken. The research emphasises that the democratic potential of federalism does have certain prerequisites. Federalism requires a culture of federalism (cf. Duchacek 1987; Sturm 2004), which can be empirically measured, among other things, by whether citizens expect solutions for social problems, or for the performance of state tasks, to come rather from the federation or from the member states.

Only a lively culture of federalism exploits all the possibilities for diversity in federalism. From the point of view of the federation, diversity conflicts with efficiency in the performance of public tasks. From the point of view of the member states, diversity is an expression of the democratically articulated preferences of the citizens of the member states. Federalism in African (South Africa, Nigeria, Ethiopia) and Asian countries (India, Malaysia, Myanmar) faces another problem in relation to democracy. In these cases, the desire for regional autonomy conflicts with the planning by the central government for the state's economic development. What's more, successful liberation movements against colonial rulers or indigenous dictators show little inclination to share their power with the representatives of member states after taking over power at the federal level.

## 5 Resolving conflicts between the federation and member states

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Conflicts between the federation and member states over resources and interpretations of how a federation perceives its role and function can be resolved either formally or informally. A formal procedure is to go to the supreme federal or constitutional court, which can derive its competences for such a procedure from the constitution. Before it comes to this, there is always the possibility of compromises within the legislative procedure; these compromises are facilitated by the fact that federalism allows for trade-offs over time. The circle of stakeholders is limited, and certain concessions could be made now in exchange for other concessions later. Secession as a means of resolving conflict is only an option when there are fundamental doubts about the democratic legitimation of the federal state. If a member state desires secession, a supreme court decision can be requested to clarify the legality, conditions and procedures of secession.

Informally, conflicts in federalism are defused by coalitions formed by specialist politicians at different political levels. Political parties play an even larger role as long as they do not only act one-sidedly as regional parties in one member state representing particular interests. National parties integrate the diverging interests of individual member states within the competition between parties (cf. Lehbruch 2000). They do this in two ways: firstly, they reach a national compromise between the different political positions of the member states on a topic, and secondly, they flexibly take into account diverging positions in individual member states and act as lobbyists for these positions in their local party organisations. As long as national parties succeed in moderating conflicts between the interests of member states and those of the federation within the party, the competition between parties in the federal state has a unifying effect.

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## Federalism

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