

Hobe, Stephan. *Der offene Verfassungsstaat zwischen Souveränität und Interdependenz. Eine Studie zur Wandlung des Staatsbegriffs der deutschsprachigen Staatslehre im Kontext internationaler institutionalisierter Kooperation*. Berlin: Duncker & Humblot, 1998. Pp. 515. DM 118; öS 861; sFr 105.

In recent years an abundance of scholarly writing — political, sociological, philosophical and legal in character — has identified and described a range of developments which call into question traditional concepts of international relations as well as the classical structure and organization of international society as a whole.

The ambitious study under review presupposes these developments — generally being summed up under the term 'globalization' in its very broadest meaning — without reiterating them at length. Its very purpose is rather to analyse in detail the implications of the various aspects of globalization for domestic, in particular constitutional, law and for the theoretical foundations of the state as such. Although there are some glimpses of the constitutional situation in a number of other countries, the study clearly focuses on the legal situation under the German *Grundgesetz* of 1949. Interestingly enough, there seems to be no other Constitution in the world which has been made the object of so many and profound intellectual efforts in order to ensure its complete harmonization with the exigencies of a changing international environment. One common denominator of earlier works by — among others — Vogel, Tomuschat and Häberle consists in the conviction that the *Grundgesetz* as it stands today is indeed flexible enough to cope with the multitude of new challenges. This overall optimistic attitude is primarily due to the identification of a set of constitutional norms which are supposed to embody a comprehensive concept of an 'open (Vogel) or co-operative (Häberle) statehood'. By taking up this qualification — Hobe uses the term '*kooperationsoffen*' —

the author finds himself on firm dogmatic ground.

Against the background of an exhaustive — but nevertheless highly interesting — panorama of the conceptions of statehood in German state theory from the early 19th century to the present (Part 1), Hobe proceeds to a description of the attitude of the *Grundgesetz vis-à-vis* the outer world (Part 2). The following comparative analysis — sometimes slightly perfunctory — comes to the conclusion that the *Grundgesetz* must indeed, on a worldwide scale, be regarded as exemplary with respect to its willingness to cooperate and its affirmative attitude towards international integration in general. Today's constitutional reality in Germany is thus miles away from traditional concepts like Fichte's idea of a 'closed statehood' and similar introverted conceptions which dominated theoretical thinking from the 19th century to the very recent past.

However, what remains to be examined is whether or not the very essence of sovereign statehood — traditionally paraphrased by the famous 'three elements' (e.g., a territory, population and, in particular, a government which exercises supreme and sole authority over the territory and people) — can still be upheld without any curtailments. For this purpose, Part 3 of the study — which might well be regarded as its very core, draws an impressive picture of the state of international cooperation in various fields (particularly within the framework of international organizations) as well as of diverse forms of the appearance of new actors in the international arena. In fact, this scrutiny unveils an ever increasing transfer of attributes of sovereignty to international organizations, supranational bodies and even transnationally operating non-governmental entities.

This empirical analysis paves the ground for — as the author calls it — an accurate description of the modern notion of statehood at the end of the 20th century (Part 4). Hobe's chain of reasoning parts from the fact that many of today's problems are inherently international in nature and thus require solutions which go far beyond the powers and

competences of a single state. Thus, today's reality requires different levels of problem-solving, a development which is most prominently reflected in the growing extent of competences and responsibilities conferred upon trans-/inter- or supranational authorities. This evolution, however, so the author argues, demands a rewriting of the classical elements of statehood: sovereignty can thus no longer be attributed exclusively to the state; the '*suprema potestas*' must rather be regarded as being distributed on different levels and exercised by different, even non-governmental actors. However, the state still holds a key position in this multi-level interplay of a variety of actors. Hobe's final outlook on the future of the state (at 446ff) is therefore after all an optimistic one: in his opinion, the 'waning of the State' (Schreuer) is not yet on the agenda.

The book covers an enormous range of different questions without ever losing the thread. It is hardly astonishing that some topics can only be touched on. This is particularly true for the complex questions linked to the process of European integration. Patterns which might be valid elsewhere do not always seem to fit perfectly with this very special phenomenon, at least when presented in such a cursory manner. However, enriched by some innovative ideas, Hobe's book is certainly one of the most comprehensive studies on the state's position under the conditions of the new world order. In addition, it constitutes a most valuable contribution to the state theory as such. The 62-page (!) bibliography of this German '*Habilitation*' and the extensive footnoting underscore the book's value as a reference work.

An English-language summary of some of the essential conclusions can be found in an article published in the *Austrian Review of International and European Law* 2 (1997), 127. A special aspect — the increasingly important role of non-governmental organizations — is dealt with in an article which appeared in the 1997 issue of the *Bloomington Journal of Global Legal Studies*.

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Duursma, J.C. *Fragmentation and the International Relations of Micro-States: Self-Determination and Statehood*.

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The book's focus is simple: '[H]ow do Micro-States function in the international community and what can international law learn from their existence?' (Introduction, at 3). It is dealt with in three sections. First, three aspects of (general) international law that impact on micro-states are considered. This survey is followed by five case studies of European micro-states: Liechtenstein, San Marino, Monaco, Andorra and the Vatican City. The section is then rounded off with some general conclusions.

Self-determination constitutes the bulk of the international law section. Reference is made to documents, debates and judicial decisions before focusing on the key question of conflict with the 'right' to territorial integrity of existing states. The coverage is wide-ranging, if at times slightly lacking in focus. It is followed by a much briefer treatment of the criteria for statehood and the general question of micro-states within international organizations, both of which are more interesting than enlightening. Whilst being accessible, the whole section is heavily based on previous works, such that it only serves as a general summary of the material.

Each of the five case studies consists of a survey of various aspects of individual micro-states, such as the history, demographic and economic conditions, constitutional arrangements, and relations with other states and international organizations. The consistency of information provided makes for easy comparisons and offers for a useful survey of the material. This is then related back to the prior discussions of the criteria for statehood and self-determination, before conclusions as to statehood are drawn for each entity. These brief summaries are both intelligent and accessible. However, recalling the caveat already made regarding the lack of rigour in the first section of the book, the reasoning