Small States & Territories, Vol. 1, No. 2, 2018, pp. 183-196

Law, small state theory and the case of Liechtenstein

Sebastian Wolf
MSB Medical School Berlin, Germany
sebastian.wolf@medicalschool-berlin.de (corresponding author)

Peter Bussjäger
University of Innsbruck, Austria
peter.bussjaeger@uibk.ac.at

and

Patricia M. Schiess Rütimann
Liechtenstein-Institut, Liechtenstein
patricia.schiess@liechtenstein-institut.li

Abstract: This interdisciplinary paper tries to identify specific small state characteristics with respect to the emergence, function and application of legal norms. Three respective assumptions are derived from theoretical considerations. An exploratory single-case study shows that all assumptions apply to Liechtenstein. The principality can be described as a hybrid legal system that is significantly shaped by foreign legal norms. Liechtenstein's dualistic constitution particularly combines a powerful monarch with extensive direct democratic elements. The microstate's legal system depends on supports from sources beyond its territory and citizenry, such as law schools, legal experts and academic sources. Several brief comparisons and examples regarding Andorra, Monaco and San Marino supplement the socio-legal study. Finally, the authors suggest to apply the assumptions to a wide range of jurisdictions in order to learn more about their explanatory power.

Keywords: Austrian and Swiss law; comparative law; direct democracy; legal studies; legal system; Liechtenstein; microstate; monarchy; small states; Andorra; Monaco; San Marino

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Introduction

Law is a key instrument of public governance in modern states. Small jurisdictions are no exception (Butler & Morris, 2017, p. vi). But are there any specific small state characteristics when it comes to the emergence, function and application of legal norms? This research question calls for an interdisciplinary and theory-driven research design (Wolf, 2016a, pp. 4-7). Therefore, in this exploratory study we try to combine approaches from both legal studies and social science.

In the following section, three assumptions regarding fundamental aspects of law in small states, as derived from theoretical considerations, are proposed. Thereafter, we address several methodological issues concerning our legal small state analysis. The empirical sections of our contribution are mainly based on a qualitative single case study. This means that the assumptions are preliminary examined with regard to the legal system of the Principality of Liechtenstein, a 'most likely' case. Several brief comparisons and examples regarding Andorra, Monaco and San Marino supplement our socio-legal study. Finally, we discuss, inter alia, to what extent our findings can be generalised and may contribute to "mainstreaming the study of small states" (Baldacchino, 2018).

Law and legal studies meet small state theory

Contemporary small jurisdictions are quite heterogeneous (the first two paragraphs of this section are mainly based on Wolf, 2016b, p. 85). Small island states in the Caribbean or the Pacific, for example, differ a lot from European microstates with regard to legal, political and social aspects (Veenendaal, 2013; Wettenhall, 2018). But even the European microstates show considerable legal differences (Blevin, 2016, pp. 511-512). Against this background, Geser (1992, p. 632) has argued that small state theory has to operate on a rather high level of abstraction. Moreover, researchers have to take into account that the original impulses of a small state size can be modified – e.g. intensified, weakened, neutralised, reversed or diverted – by other country-specific factors (Fanger & Illy, 1981, p. 236). This means that certain cultural, economic, political and social characteristics more or less tend to distort or transform genuine effects of smallness on a legal system. Such additional intervening factors, as well as their direction and intensity, may not be well known to the legal scholar or social scientist conducting a respective small state study. Thus, given the empirical heterogeneity of small jurisdictions as well as the vagueness and the interdependency of the small state concept, the usefulness of the small state approach in scientific research has been called into question. For example, Baehr (1975, p. 466) was convinced of the "insufficiency of the concept as an analytical tool. Whatever criterion is adopted, small states form too broad a category for purposes of analysis".

This opinion does not appear to have become the majority view in the scientific community. The small state has "proven to be a useful tool for analysis" (Baldacchino, 2018, p. 7). Despite the above-mentioned conceptual or methodological pitfalls of theory-oriented small state studies (and other potential problems), carefully designed and conducted small state research should be able to make at least modest "descriptive or explanatory *inferences* … that go beyond the particular observations collected" (King, Keohane & Verba, 1994, pp. 7-8). The goal is to "identify a common small state behaviour in relation to certain … issue-areas" (Christmas-Møller, 1983, p. 46) such as key features of small legal systems. When it comes to the detailed and theory-driven analysis of small jurisdictions, however, "scholarship, particularly legal scholarship, is relatively scarce" (Butler & Morris, 2017, p. vi). Against this backdrop, the aim of our exploratory study is twofold: first, we aspire to deduce a couple of key assumptions regarding law in small states; second, we intend to preliminary examine these assumptions with regard to a selected microstate. We do not claim to deduce and study all possible presumptions concerning small legal systems.

Many studies suggest that small jurisdictions are likely to incorporate foreign law to a large extent (e.g. Frommelt, 2016; Gantner & Eibl, 1999; Geser, 1992; Wolf, 2016a). Being a "policy-taker" (Veenendaal & Wolf, 2016, p. 280) constraints a small state's autonomy and democracy (Donlan, Marrani, Twomey & Zammit, 2017, p. 192) since the small jurisdiction is dependent on external legal and political decisions, at least to a certain degree. However, such a political strategy implies several advantages for a country with limited resources: The adoption of foreign legal provisions is time-saving and cost-reducing (Gantner & Eibl, 1999, p. 83; Kramer, 2017, p. 5). It facilitates employing lawyers and legal experts from other jurisdictions, if necessary. Moreover, when faced with a small internal market (Kocher, 2002, p. 18), it eases export-oriented economic transactions (Geser, 1992, p. 638). Therefore, our first assumption reads as follows: *A small jurisdiction extensively adopts foreign legal norms*.

Several scholars note that many small countries tend to develop and preserve rather unusual political and legal institutions. Compared to medium-size and large jurisdictions, their constitutional arrangements can often be described as deviant (Veenendaal & Wolf, 2016, p. 279). It appears that small political systems do benefit from such constitutional systems: their citizens are permanently confronted with foreign cultural and social communications, products and norms. Against this background, it can be an important national objective to preserve traditional identity-establishing and community-building institutions (Blevin, 2016, p. 290; Gantner & Eibl, 1999, p. 33; Geser, 1992, p. 635; Veenendaal, 2015, p. 347). These considerations do not contradict the above-mentioned first assumption which concerns imported legal provisions and policies below constitutional law. Thus, our second assumption states: *A small jurisdiction features remarkable or unusual constitutional characteristics.*

For a small state, it may be demanding to establish and maintain all the necessary facilities and institutions of a modern legal system, in financial, organisational and human resource terms: these include legal education and training as well as a sufficient number of legal experts in the private sector and the civil service, especially in public administration and the courts. As Butler and Morris (2017, p. v) put it, small countries "face challenges in providing a complete legal and judicial infrastructure". They may be forced to draw on foreign or international sources in order to run their legal systems. This leads us to our third assumption: *A small jurisdiction is dependent on external resources to maintain its judicial and legal institutions.*

An augmented single case study and its rationale

In the last section, we tried to comply with the scientific guidelines set by King et al. (1994, pp. 100-114) in order to construct falsifiable and internally consistent theoretical assumptions which draw a balance between concreteness and generalisation. For the purposes of our empirical study, the smallness of a jurisdiction is the independent or explanatory factor whereas the legal phenomena specified in the respective assumptions are the dependent characteristics (cf. Amstrup, 1976, p. 165). Apparently, it would be desirable to examine our assumptions with regard to a vast number of both large and small countries. This could enable us to "design a study that selects on the basis of the explanatory variables suggested by our theory and let the dependent variable[s] vary" (King et al., 1994, p. 149). However, our current research resources are too limited to run a rigorous large-n study. We guess that a rather anecdotal or even superficial "journey through small state governance" (Wettenhall, 2018) is no reasonable or reliable alternative. On the other hand, we possess rare expert knowledge about the legal system of the Principality of Liechtenstein. Against this backdrop, we opt for an exploratory study based on an in-depth analysis of a single case (cf. Veenendaal, 2015, p. 347; Wolf, 2016b, p. 93), keeping in mind its specific pros and cons.

Liechtenstein is a microstate (Geser, 1992, p. 631) with obvious small state characteristics: a resident population of just under 38,000 inhabitants; and a geographical land mass of 160 km^2. At least for the purposes of our preliminary study, selecting a very small state like Liechtenstein relieves us from another lengthy and inconclusive discussion of small state definitions. This does not mean that we "ignore or avoid the issue" (Baldacchino, 2018, p. 7), however. As a clear micro-jurisdiction, Liechtenstein can be described as a "most likely" case in the framework of our research design. With regard to our guiding research question and our theoretical assumptions, selecting the Alpine principality for a case study is of particular interest because it enables us to conduct an in-depth analysis. Liechtenstein undoubtedly is a 'most likely' case as to the key dimensions of resident population and geographical land mass,

but it has some peculiarities which may impact on our research results. In contrast to several other small states, the microstate has no colonial past, is not an island, is rather wealthy and situated in a peaceful and democratic regional environment. It is rather difficult to estimate how these factors may impact on our findings. Nevertheless, it seems reasonable to assume in accordance with small state theory – as outlined above – that the exceptional smallness of the selected jurisdiction is a strong and dominant explanatory factor.

In order to raise the generalisability of our exploratory single case study at least a little, we add brief comparisons and examples regarding in particular Andorra, Monaco and San Marino. These very small states have several characteristics in common with Liechtenstein (Marxer & Pállinger, 2009, p. 901). Such an approach helps us to exclude the possibility that Liechtenstein is an outlier or deviant case that is not at all suited for generalisation. Nevertheless, our study is exploratory, i.e. if our theoretical assumptions are confirmed, we admittedly do not learn that much about their explanatory power: they would have simply passed a "plausibility probe" (cf. Welzel, 2016, p. 412). However, if our presumptions are falsified, we may conclude that their general explanatory power is likely to be poor (cf. King et al., 1994, p. 209). As to data and methodological approaches, we mainly conduct a legal study supplemented by some socio-legal examples and references to social science literature where appropriate. The following three sections are arranged according to our three assumptions.

Liechtenstein as a policy-taker and hybrid legal system

The Principality of Liechtenstein is situated between Austria and Switzerland and close to Germany. In accordance with a traditional but sometimes criticized point of view (Glenn, 2006, p. 434), the Alpine microstate forms part of the Germanic legal family. This means that Liechtenstein is mainly shaped by the civil law tradition. As Mousourakis (2015, p. 302) notes, in civil law systems there is "a tendency to use abstract terms" and "to employ a conceptual approach to legal problems … Legal reasoning in civil law countries is basically deductive". Liechtenstein has a written constitution dating from 1921. The wording of its acts and ordinances is based on the abstraction principle.

Unlike many other small states, Liechtenstein has no colonial past. This is also true for Andorra, Monaco and San Marino whose origins date back to the middle ages (Marxer & Pállinger, 2009, p. 901). However, the Princely House of Liechtenstein stems from Austria. Therefore, the microstate adopted important codes of law from the Austro-Hungarian Monarchy in the 19th century. As the two countries formed a customs and currency union from 1852 to 1919, a large number of Austrian norms were also automatically in force in Liechtenstein. After World War I, the principality politically turned to Switzerland. In the 1920s, property law and labour law were copied from Switzerland, to name the most important examples. In 1923, Liechtenstein decided to form a customs union with Switzerland. Thereafter, the two states concluded several other agreements (Frommelt, 2016, p. 131). Since then, more and more parts of Liechtenstein's substantive law have been influenced or overlaid by Swiss legal provisions. Many Swiss norms automatically apply to Liechtenstein due to the customs union. Remarkably, large parts of civil law (Berger, 2011), criminal law and procedural law (concerning civil, criminal and administrative cases) are still very similar – though not identical – to Austrian law. This difference in the origins of procedural and substantive law may also be observed in mixed jurisdictions, i.e. legal systems in which civil law and common law meet (Palmer, 2012a, p. 611). However, whereas in Liechtenstein the older Austrian law still dominates the procedural law, in many polyjural jurisdictions common

law as the younger law "shapes the fields of procedural, constitutional, and commercial law" (Andó, 2015, p. 8).

In 1995, Liechtenstein became the smallest member state of the European Economic Area (EEA). Particularly because of the customs union with Switzerland and its EEA membership, the principality has to adopt a lot of foreign norms and standards (Frommelt, 2016). The number of new laws passed every year is no smaller than in many larger states. To reduce the costs of law-making, it is not uncommon to copy entire laws or large parts of laws from Austria or Switzerland. Liechtenstein's part-time parliament mostly rubber-stamps the respective bills. According to Frommelt (2011, p. 27), just a third of all acts adopted in the period 2001-2009 had a political origin within the microstate. There are several recent examples of extensive "copy and paste legislation". For example, in 2016 the tenant law was completely revised. Liechtenstein switched from an act influenced by Austrian law to a new act that literally copied the articles of Swiss tenant law article by article – except for a few norms protecting the tenant which the Liechtenstein government and parliament did not accept.

Foreign law of neighbouring countries and European law also play an important role for other very small jurisdictions. For example, Monaco's policies are strongly influenced by French law because of numerous bilateral treaties (Marxer & Pállinger, 2009, p. 935). San Marino agreed, inter alia, to adapt its tax law to the Italian legislation to some extent (Marxer & Pállinger, 2009, p. 945). Certain EU legal provisions indirectly apply to Andorra, Monaco and San Marino due to customs, currency and economic agreements with their respective neighbouring states.

To sum up, the extensive adoption of foreign legal provisions has a long tradition in Liechtenstein. Its current law is significantly shaped by Austrian, Swiss and EU norms. The principality's legal system is quite often labelled as a "*Mischrechtsordnung*" (translated literally: mixed legal order). However, mixed jurisdictions are often defined as English-speaking legal orders with "parents" in both civil law and common law (Palmer, 2012b, p. 8; Siems, 2014, pp. 85-86; for a critique see e.g. Muñiz Argüelles, 2015, p. 34). Therefore, we do not call Liechtenstein a mixed jurisdiction. Liechtenstein's legal system is not a mixture of common law and civil law, although the legal entity of trust – foreign to civil law – was deliberately incorporated into company law in 1926 (Schurr, 2014, p. 4). Moreover, most legal norms that coexist in the principality do not originate from real foreign cultures (see the definition of polyjurality by Andó, 2015, p. 4): Apart from EU norms and the legal concept of trust, most legal provisions have their origins in the German-speaking neighbourhood. Against this background, we prefer to call Liechtenstein a hybrid legal system. In any case, assumption 1 clearly applies to Liechtenstein. Examples from other European microstates also support the presumption that small jurisdictions extensively adopt foreign legal norms.

The Prince and the People: Liechtenstein's exceptional constitutional characteristics

The current constitution of Liechtenstein, enacted in 1921, is mainly based on some more or less modified parts of the principality's previous constitution, several articles inspired by the Austrian constitutional debate at that time and a couple of norms copied from constitutions of Swiss cantons. The legal foundations of other very small countries also draw on constitutional law from neighbouring states. For example, the constitution of the Principality of Andorra particularly adopted the Spanish constitution's long catalogue of social and cultural rights. Remarkably, the constitutions of the European microstates are quite short compared to the constitutions of most of their respective neighbouring countries apart from France.

Article 2 of the constitution of Liechtenstein (commonly referred to as *Landesverfassung*, hereinafter LV) provides that the "Principality is a constitutional, hereditary monarchy on a democratic and parliamentary basis … the power of the State is embodied in the Reigning Prince and the People". The constitutional order of Liechtenstein is often described as a dualistic system with two pillars of state power: the Prince and the people (Veenendaal, 2015, p. 337; Wille, 2015, p. 728). Thus, Liechtenstein constitutionalism particularly combines a powerful monarch (European Commission for Democracy through Law, 2002, p. 12) with extensive direct democratic elements.

The Reigning Prince functions as the head of state (Article 7 para 1 LV). He "shall not be subject to jurisdiction and shall not be legally responsible" (Article 7 para 2 LV). He is one of the richest monarchs in Europe but does not have to pay taxes. The Prince may represent Liechtenstein in international relations (Article 8 LV). Article 9 LV stipulates that "every law shall require the sanction of the Reigning Prince to attain legal force". This means that every law passed by the *Landtag*, Liechtenstein's single-chamber parliament, needs the consent and signature of the Prince. The same applies if the people vote on a popular initiative or a referendum: the Prince has to assent to every bill adopted by the people. Moreover, the monarch has the right to enact emergency decrees (Article 10 para 2 LV). The Prince appoints the members of the government (Article 79 para 2 LV). He is also entitled to dismiss the government on his own, i.e. without the consent of parliament (Article 80 LV), and to dissolve the *Landtag* (Article 48 para 1 LV). The monarch appoints the judges and dominates the respective selection procedure (Articles 11 and 96 LV). He has the right "of pardon, of mitigating or commuting legally adjudicated sentences, and of quashing initiated investigations" (Article 12 para 1 LV). Finally, the Law on the Princely House of Liechtenstein which regulates, *inter alia*, hereditary succession to the throne, is laid down by the members of the Princely House themselves, without the consent of parliament or people (Article 3 LV).

These remarkable constitutional provisions are by no means dead letter or just symbolic law. The Prince or the Hereditary Prince occasionally makes use of his extensive rights (Schiess Rütimann, 2013; Veenendaal, 2015; Wolf, 2015). Two bodies of the Council of Europe – the European Commission for Democracy through Law (2002) and the Group of States against Corruption (2011) – have criticized several legal powers of the monarch. The European Court of Human Rights (1999) ruled that Prince Hans-Adam II's decision not to reappoint an experienced lawyer to public office because of certain views the latter had expressed in a public lecture violated the applicant's right to freedom of expression.

On the other hand, Liechtenstein has far-reaching and rare instruments of direct democracy (Marxer, 2014). In principle, all laws and important financial resolutions passed by the *Landtag* are "subject to a popular vote if Parliament so decides or if at least 1,000 Liechtenstein citizens eligible to vote or at least three municipalities submit a request to that effect" (Article 66 para 1 LV). 1,500 citizens or four municipalities can request a referendum on international treaties concluded by Liechtenstein (Article 66bis LV). Moreover, at least 1,000 Liechtenstein citizens or three municipalities may submit a popular initiative (Article 66 para 2 LV). A popular initiative concerning the constitution requires supporting signatures of at least 1,500 Liechtensteiners or respective decisions of four municipalities (Article 66 para 4 LV). If the parliament rejects an initiative by the people, the bill automatically is put to a popular vote (Article 66 para 6 LV). There are further – more or less hypothetical – participatory elements regarding the convention and dissolution of parliament (Article 48 LV), the selection of judges (Article 96 para 2 LV), a motion of no-confidence against the Prince (Article 13ter LV) and the abolition of the monarchy (Article 113 LV). The fact that the Prince

has to assent to every bill adopted by the people – apart from the unlikely abolition of the monarchy – means that the monarch's veto power outweighs the strong direct democratic instruments.

Other European microstates also have exceptional constitutional characteristics. For example, the Prince of Monaco is at least as powerful as Liechtenstein's head of state. The European Commission for Democracy through Law (2013) described Monaco as a "*sui generis* system of limited monarchy" (p. 19) and complained about the "extensive powers of the Prince" (p. 19). It concluded that the Mediterranean principality "is not a parliamentary monarchy; it is not a representative system, in which the executive is accountable to the elected legislature or the electorate" (p. 19). Another example is Andorra. A *condominium* in former times, modern Andorra still is a unique co-principality, with the bishop of Urgell (in Catalonia) and the President of the French Republic as its co-princes, i.e. head of state (Marxer & Pállinger, 2009, p. 905).

To sum up, the constitution of Liechtenstein provides for both one of the most powerful monarchs worldwide and one of the most extensive direct democratic governmental systems on earth (cf. Marxer, 2014, p. 14). This exceptional dualistic constitutionalism is important for the microstate's national identity (Veenendaal, 2015, p. 347). Although day-to-day-politics is usually dominated by the government (Wolf, 2015, p. 358), assumption 2 obviously applies to Liechtenstein. Examples from other European microstates support the presumption that small jurisdictions feature remarkable or unusual constitutional characteristics.

Liechtenstein's partially deficient legal system

Due largely to its smallness, the Alpine principality's legal system has some remarkable characteristics. Other very small jurisdictions show similar socio-legal features. In this section regarding assumption 3, we focus on legal education, the court system as well as legal research and scholarship.

Legal education

Liechtenstein has a small public university and a tiny private university, but both do not offer basic study programmes in law. This is also true for e.g. the International University of Monaco. High school graduates from Liechtenstein have to choose a university abroad to study for their Bachelor and Master of Law degrees (Marxer, 2016a). They mostly chose Austrian or Swiss universities. There is no noticeable difference between graduates from Austria and Switzerland – but usually none of them have been taught Liechtenstein law (Schiess Rütimann, 2015, pp. 20-21). Lawyers working in the microstate have to learn the special features of Liechtenstein law on the job. There are some in-house courses for new public officials. The University of Liechtenstein offers several postgraduate professional education programmes in law, tailored to the needs of the Liechtenstein financial centre – similar to what Donlan et al. (2017, p. 199) describe with regard to Malta. These LL.M., diploma or certificate programmes deal with banking and finance law, securities law, trust law and services, intellectual property law and/or international taxation. Liechtenstein's private university offers a six-semester doctoral programme in law. However, these doctoral students only occasionally write their theses on aspects of Liechtenstein law.

In a small jurisdiction, it makes no sense to specialise in a single area. Every lawyer should have a basic knowledge of every field of law (Donlan et al., 2017, p. 209). This can also be seen in the curricula vitae of candidates proposed by microstates as judges for the European Court of Human Rights (for an example regarding San Marino see Parliamentary Assembly of the Council of Europe, 2018). Similar to the situation in Liechtenstein, the University of San Marino offers a course in trust law and a basic course which introduces lawyers and economists to the law of San Marino. The University of Andorra and the Open University of Catalonia jointly offer online studies to obtain the bachelor of law degree. Within this collaboration, however, the Andorran University is only in charge of teaching the specific subjects of Andorran constitutional and civil law.

Court system

For a long time, Liechtenstein's judicial system was partially outsourced. From 1809 onwards, only the court of first instance was located in the principality. The Princely Court Chancellery in Vienna (Austria) served as second instance. From 1818 on, the Higher Regional Court in Innsbruck (Austria) was the third instance. When the 1921 constitution came into force, all courts had to be established in Liechtenstein. Apart from that, Article 1 para 2 LV stipulates that parliament and government must have their seat in the capital Vaduz. This provision makes clear that Liechtenstein from 1921 on has to be ruled by citizens of Liechtenstein residing in the principality. In larger states, such an issue is usually not laid down in the constitution, of course. Other very small jurisdictions also outsourced their judicial systems more or less in former times. In Andorra, for example, legal disputes were settled by the judiciaries of the two coprinces in the past (Marxer & Pállinger, 2009, pp. 903-904).

According to Article 97 LV, there are several ordinary courts in Liechtenstein: the Princely Court of Justice (first instance), the Princely Court of Appeal (second instance) and the Princely Supreme Court (third instance). There is also an Administrative Court (Article 102 LV) and the Constitutional Court (Article 104 LV). All courts are situated in Vaduz, Liechtenstein's capital. Judges are usually selected by a special committee – chaired by the Prince – and elected by parliament (Article 96 LV). The constitution of Liechtenstein provides that the majority of the judges of the Administrative Court and the Constitutional Court have to be Liechtensteiners (Articles 102 and 105 LV). Traditionally, one judge and one alternate judge of the five judges of the Constitutional Court are Austrians whereas one judge and one alternate judge are Swiss citizens (Bussjäger, 2016, pp. 18-19). Remarkably, many foreign judges of higher instances who are not employed full-time continue to work as attorneys, judges, legal consultants or professors in their home country. Apart from the courts, there are unusual substitute rules for members of government and parliament in Liechtenstein in order to cope with limited human resources (Schiess Rütimann, 2016).

Very small jurisdictions seem to be prone to conflicts of interest ("everyone knows everyone"). For example, two judgements of the European Court of Human Rights (2009, 2015) concerning Liechtenstein and Malta show that small court systems sometimes have difficulties assuring the impartiality of the judges involved in a case. Against this background, there is a long tradition in Monaco to elect only foreigners residing abroad as judges of the Constitutional Court. Likewise, San Marino has a long tradition of recruiting foreign lawyers, i.e. Italians, as judges (Marxer & Pállinger, 2009, p. 944). In the past, a constitutional provision did not even allow nationals of San Marino to become judges in their country. Apart from that, small countries often need foreign judges because of limited human resources and lack of legal expertise. For example, currently two out of the four judges of the Constitutional Court of

Andorra are Spanish nationals and one is a French national. In San Marino, the current president of the Constitutional Court is a national of San Marino while the other two judges and three alternate judges are Italian citizens. Currently 42% of all the judges in Liechtenstein have an Austrian or Swiss nationality. Similarly, about half of the judges of the Principality of Monaco are French nationals (Blevin, 2016, p. 286; European Commission for Democracy through Law, 2013, p. 17).

Legal research and scholarship

Less than ten scholars are engaged in conducting research on Liechtenstein law. They are often foreigners and either work at the University of Liechtenstein or the *Liechtenstein-Institut*, an interdisciplinary, private and non-profit research institute. Most professors of the principality's private university are foreigners and just come to the microstate for their teaching sessions. There is a general lack of public funding for independent research in Liechtenstein – and not only in the field of law (Marxer, 2016b). In many civil law countries and particularly in the Germanic legal family, there is a tradition of lawyers writing detailed commentaries on every single article of important acts. Liechtenstein is an exception in this regard due to the lack of legal scholars. There is only an online commentary on the constitution (Liechtenstein-Institut, 2016; Bussjäger, 2018, p. 696). Against this background, court decisions are of great importance. However, in many areas there are no judgements. Moreover, many judgements cannot be upheld or overruled because there are no similar cases.

Apart from a single law review ("*Liechtensteinische Juristen-Zeitung*") and a couple of academic books and edited volumes on selected aspects of Liechtenstein law, there is hardly any specialised literature such as legal textbooks (Bussjäger, 2018, p. 691). When it comes to other small countries, legal practitioners and researchers are confronted with similar problems. For example, specialised literature on Monegasque law is very scarce except for a law review published in the microstate ("*Revue de droit monégasque*"). In prestigious journals such as the *Global Review of Constitutional Law*, there is a general lack of information about countries like Andorra, Monaco and San Marino.

According to Mousourakis (2015, p. 304), in civil law countries "an ever-vigilant academic community observes, reviews and critiques the courts to ensure that any shaping or re-shaping of the law remains a controlled activity". In Liechtenstein, comments on certain judgements are sometimes published, but many of them are written by judges. There are not enough legal scholars to comment on important judgements on a regular basis. This is also true for other very small jurisdictions, for example Monaco (Linotte, 2016, p. 95). Lawyers in Liechtenstein usually try to apply legal provisions copied from Austria or Switzerland exactly as they are interpreted in the country of origin in order to save time and effort. For these purposes, they extensively draw on foreign judgements and academic literature. Copied norms revised in their native country may lead to problems (Schiess Rütimann, 2015). Other practical difficulties may arise when material law based on Swiss acts must be dealt with before the courts by means of procedural law similar to Austrian norms (cf. Palmer, 2012a, pp. 611-612).

To sum up, Liechtenstein's legal system significantly depends on the law schools of foreign universities although for example research on Liechtenstein's constitutional law has significantly developed since the 1980s (Bussjäger, 2018, p. 693). Moreover, the principality's courts permanently need to employ foreign lawyers, particularly from Austria and Switzerland. Legal provisions based on acts from other jurisdictions are interpreted with the help of foreign court decisions and academic literature. Therefore, we can conclude that assumption 3 also

applies to Liechtenstein. Several examples from other European microstates support the presumption that small jurisdictions are dependent on external resources to maintain their judicial and legal institutions.

Conclusion

This interdisciplinary contribution started from the research question "Are there any specific small state characteristics when it comes to the emergence, function and application of legal norms?" We deduced the following assumptions from theoretical considerations about a small jurisdiction: (1) it is liable to adopt foreign legal norms extensively; (2) it tends to feature remarkable or unusual constitutional characteristics; and (3) it is dependent on external resources to maintain its judicial and legal institutions. Obviously, we have not deduced all possible assumptions concerning small legal systems. Therefore, we encourage other small state researchers to formulate further relevant presumptions.

An exploratory single-case study showed that all of our three assumptions apply to Liechtenstein. The principality can be described as a hybrid legal system that is significantly shaped by Austrian, Swiss and EU norms. Liechtenstein's dualistic constitution particularly combines a powerful monarch with extensive direct democratic elements. Finally, the microstate's legal system depends on external resources such as law schools, foreign legal experts and academic sources. Several brief comparisons and examples regarding in particular Andorra, Monaco and San Marino tentatively support our assumptions. As a (very) small state, Liechtenstein does not seem to be a clear outlier or deviant case that is not at all suited for generalisation. Thus, we hope that our theoretical assumptions on the legal systems of small jurisdictions, supported by our case study, may contribute to "mainstreaming the study of small states" (Baldacchino, 2018).

Despite its peculiarities described in the empirical parts of this paper, Liechtenstein can be seen as a "most likely" case when it comes to examine assumptions derived from small state theory. The principality "is such a diminutive country that small state characteristics can be supposed to have particularly strong effects" (Wolf, 2016b, p. 93). Nevertheless, as we conducted an exploratory study, our assumptions just passed a "plausibility probe", not a rigorous analysis (cf. King et al., 1994, p. 209; Welzel, 2016, p. 412). Therefore, we suggest an application of the assumptions of this exploratory paper to a wider range of jurisdictions – including islands, poor and rather undemocratic countries – in order to learn more about their explanatory power.

It is quite possible that larger small states show different or mixed results. As Geser (1991, pp. 96-97) rightly pointed out, smallness can be a causal, functional or conditional factor. Certain country-specific or regional characteristics may weaken or neutralise the small state effects assumed by our presumptions. In any case, law and legal systems seem to be a promising field for further interdisciplinary small state research, particularly large-n studies. On the other hand, qualitative in-depth analyses like this paper are able to thoroughly study socio-legal phenomena in clearly under-researched small jurisdictions.

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