

Dividing a state

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The separation of the canton required the division of its assets and liabilities, a task that raised legal and financial questions of considerable complexity. The canton owned buildings, land, forests, rents, tithes, capital funds, the arsenal, the archives and the property of the church and the university. It also had debts. The diet appointed arbitrators to divide this estate between the two new half-cantons in proportion to their populations, a division carried out in the years after 1833.¹

The most contested question concerned the property of the university and the church. The city argued that these endowments belonged to institutions located in the city and could not be divided. The countryside claimed its share, since the endowments had been financed in part by rents and tithes from rural territory. When the arbitrators decided that the university's property was to be divided as well, the city had to pay Basel-Landschaft a considerable sum to keep the university intact. The Minster treasure, which Part B mentioned, was divided between the two half-cantons. Basel-Landschaft auctioned its share in 1836, so that the medieval treasure of the Minster was dispersed among collectors and museums across Europe.

The division of 1833 is an early example of a problem that modern law knows well: the partition of a state, or of an entity with public functions, and the allocation of its assets and debts among successor entities. International law has developed rules on the succession of states in respect of state property, archives and debts, codified in the Vienna Convention of 1978, which has not entered into force but reflects principles used in practice.² The dissolutions of the Soviet Union, Yugoslavia and Czechoslovakia raised the same questions on a vast scale. In corporate law, demergers and spin-offs follow comparable logic, whenever a company divides its assets, liabilities and contracts between several successor companies. The Swiss Merger Act of 2003, which regulates such

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transactions, has been used repeatedly by the pharmaceutical companies of Basel, as Part G shows.³

1 Notes

1. On the division of the state assets of the canton of Basel after 1833 by federal arbitration (Teilung des Staatsvermögens), including the treatment of the university and church property, see HLS, article "Basler Wirren"; the literature on the separation of the canton. To be verified. ↩
2. Vienna Convention on Succession of States in respect of State Property, Archives and Debts of 8 April 1978 (not in force). See the standard literature on state succession. To be verified. ↩
3. Federal Act of 3 October 2003 on Mergers, Demergers, Transformations and Transfers of Assets and Liabilities (Merger Act, MA, SR 221.301), in particular Art. 29 ff. on demergers. To be verified. ↩

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