

## Federalism: The Concept, Development and Future

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### Abstract

*Federalism appears as a figure already in ancient times, when alliances had existed by which cities and states were connected with each other for the purpose of defending themselves against the conquest ambitions of Macedonia, Rome and Sparta<sup>1</sup>. In addition to that, in the Middle Ages also confederations were established, thus alliances of independent states or, as they are mostly considered, only reinforced alliances of states by which however no "super-state" ("superior state") was created. By a confederation, merely an international association of states is being established, representing a contractual relationship between independent and sovereign states. Even upon establishment of a confederation, these states keep their own sovereignty. Federalism is an idea, movement and a form of state organizing. Unlike a confederation, a federation or federal state is an institutional union. A union of this kind entails formation of a new state which differs from its Member States. In a federation, a superior state exists, having its legislative, executive and judicial power. In contrast to a confederation, a federation is neither an international union, nor a structure of international law, the constitutive act of which is an international treaty. On the contrary, a federation is a structure of national law being based on the constitution, i.e. constitutional law. In a federation, "primacy" belongs to the federal constitution, particularly as the Member States, when adopting their constitutions, decide on the basic principles of the federal constitution. According to this, sovereignty belongs to the central government, but not to the Member States, while a confederation, by contrast, does not have any state subjectivity, and the federation is a sovereign state, respectively, whereas in a confederation, the sovereign states are comprised in it. Hence, a federation is a federal state, a confederation, however, an association of states, or in other words, a federation is a state, whereas in case of a confederation, a union of states is concerned. If one takes into consideration that a federation, in comparison to confederations, has proven to be the form of government which is by far more vital and more solid, today the largest and most populated countries of the world are organized as federations (for instance, the USA, Canada, the Russian Federation, India, Brazil, Nigeria). Considering this background, a confederation in practice has turned out as a loose formation, and the best known confederations at that time were the Swiss, American and German confederation. However, they all belong to the past.*

**Key words:** Federalism, federal state, confederation, models of federalism, unitarism, European Union, Switzerland, Germany, USA

### 1. Introductory Remarks

From the historical perspective, federalism has originated as one of the forms of internal set-up of the state. In most instances of legal consideration<sup>2</sup>, today federalism is actually treated in this way, however, the political sciences have ascribed a somewhat broader meaning to it. Thus, one also may find a definition according to which federalism in its broadest sense marks a "multi-layer or pluralistic concept of social and political life".

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<sup>1</sup> As an example for such alliances, we can quote the "Archaic League" which had been founded in the 3<sup>rd</sup> and 2<sup>nd</sup> century B.C. against the Macedonian hegemony, or the "Aetolic League" which was founded for the purpose of resistance against the Achaic League in ancient Macedonia.

<sup>2</sup> Pravni leksikon, "Savremena administracija" [Legal guide, „Contemporary administration“], Belgrade, 1964, p. 224.

According to the words of Prof. Jovan Đorđević, for example, „the word federalism stems from the word foedus, foederis and means a union and collaboration for the purpose of achieving common goals by per se autonomous and independent subjects and individualities“<sup>3</sup>. This term denotes a contract, an alliance, while federalism is meant to be a formation of a union and a voluntary association of different territorial unions of people within the scope of a state, or between several states and political unities for different purposes. Following Littré, federalism, that had come into vogue, especially in France, stems from the Verb fidere which translated means "to trust", "to trust in". This is why in those days, meaning by the end of the 19th century, three crucial works dealing with the federal organization of states had been published in French. Till then, the French had paid very little attention to federalism or did not take it into account. The French spirit probably take a contrarian stands towards this form of state organization, in contrast to the Germans who are very much addicted to federalism. The psychology of the French people itself tends to unitarianism, particularly as one may see an expression of national strength and unity in it.

Nevertheless, federalism has very much aroused interest in the French lawyers in the past decades of the 19th century, and in 1886 appeared the doctoral thesis of Eugène Borel under the title "Etude sur la souveraineté et l'Etat fédéral" on sovereignty and the federal state. Afterwards, in 1896 Louis le Fur defended his doctoral thesis at the Law Faculty of Paris with the title "Federal State and Confederation of States" (a fundamental work of 800 pages), and only one year later, in 1897, the work "L'état Fédératif, Législation comparée et sociologie" by Raoul de la Grasserie was published in Paris.

In the opinion of le Fur, a federation is a far more significant form of state community, so he assigns a dual nature to it: according to him, it is both a state and an alliance (confederacy), while its components take part in forming the state's will. Here, the connection between the components is much narrower (closer, firmer) as in a confederation, because here there are no more independent, sovereign states any more. Sovereignty belongs exclusively to the alliance which represents a new state via its components. In a federation, the individual is not bound to the alliance via its components, but the latter are subject to it directly concerning anything that is in the competence of the federation. Here, only one "nationality" exists – the federal one, because the citizens are subject to the federation, but not to its components, i.e. Member States, provinces or districts.

In a federation all attributes of sovereign power are devolved to the government, however, not to its components, particularly as the latter have no responsibility under international public law, since the entire union is responsible for them. For this reason the federation has the right and the obligation to provide assistance to certain states, provided that this is necessary, possibly for the protection of peace and order (this right of inherency in internal affairs of the components, however, does not exist in the case of confederations). Taking into account the fact that the components of a federation are no sovereign states, these cannot determine their own competence, accordingly. Namely, the federation is entitled to do so, which in the German-speaking terminology is called "competence-competence", i.e. the competence of the competence.

As in a federation, the sovereign power belongs to the union, but not to its components, only the union has legal personality on the level of public international law, representing its members in international relations. Only the union has the right of diplomatic representation, the right to proclaim war and the right to conclude peace, as well as the right to conclude treaties under international law, which means, that only the union holds the three attributes of external sovereignty. As a result of the sovereignty of the federation, its members neither have the right of invalidation, nor a right of secession.

Apart from theory, federalism has also its geography and history, which is evident if one bears in mind that it most frequently appears in certain historical eras and on certain continents, more often than somewhere else. From a geographic point of view, federalism belongs rather to the "new world", i.e. to America, than to the "old lady", thus Europe. Namely, on our continent the federative organization of the state is an exception, while in America it is the rule. There, most of the northern, central and southern states have been, or today they are organized federally (United States of America, Canada, Mexico, Brazil, Argentina, Venezuela and other), which means that nearly 3/5 of the whole American continent are organized federally (today, only four, relatively small South American states live in a unitarian regime, namely: Ecuador, Bolivia, Peru and Chile). However, in Europe this is not the case, where federations are virtually an exception (Germany, Austria, Switzerland).

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<sup>3</sup> Đorđević, J.: Federalizam, Politička enciklopedija [Federalism, Political encyclopedia], Belgrade, 1975, p. 273.

In Central America the fights for federalism were very frequent and long for a long time. For instance, in several attempts, particularly in 1889, it was tried to induce a constant federative relationship between five Middle American states: Guatemala, Honduras, Salvador, Nicaragua and Costa Rica. Nevertheless, even when considering what has been said before, one cannot assert, that the American continent is the cradle of the federal organization. On this territory, federalism has merely found a fertile ground for its development, but it has its roots rather in Europe, already in ancient times. Le Fur saw a classical state of federalism in the Ancient Greece, where in the first place there are “the amphiktyonies of Greek cities and small states”. These were considered as a form of confederation founded on a religious basis.

If one compares this ancient with contemporary federalism, it can be ascertained that from an internal, i.e. a constitutional view, a perfect analogy exists: a central government decisions of which are binding on all members; the latter take part in the creation of the federative will; there is a common body, an organ in which this common will is expressed; a central government is responsible for the solution of disputes and looks after the common interests of the members. Of course, it should be emphasized that in Ancient Italy federalism did not play such a significant role as this was the case with the Greeks. There, two confederations are mentioned: one having a religious character, the so-called “Etruscan Confederation”, and a second one, the league of cities of Great Greece which was founded on the “ideal principles of brotherliness and mutual love”. Even though federalism represents a principle being valid for all levels of civilization (de la Grasserie), the Roman state was not suitable for such form of organization. As already mentioned before, there were and there are peoples whose psychology struggles against such a system (above all French and Slavs), but there are also those who have a “suitable mentality” in favor of federalism (Germans and Anglo-Saxons). Just because of that, at times of the Roman Empire, as well as in the course of barbarian onslaughts against the Roman Empire, federalism has fallen into oblivion for many centuries until deeply into Middle Age. Only by the end of the Middle Ages it has begun to awaken from deep sleep, so that in the 16th and 17th century in practice it often was applied (in this age only confederations were known). Only later, at the end of the 18th century, the federation appeared in America, namely with the second constitution of the USA of 1787 (by the first constitution of 1778, the confederation was brought into being).

In addition, when talking about the federal practice and the so-called geography of federalism, it should be stated that Australia nationwide belongs to the federative group, and also New Zealand, which is organized federatively, likewise. Africa has over centuries lagged behind in view of the juridical development, while the largest parts of the African territory had stood under the colonial rule of France, Italy, Spain and England. But today, also on this continent federative alliances are practiced, whereas one may state just in the case of Asia that federalism is nearly unknown to it.

The question arises as to the advantages of federalism and why the same was able to become a modern and largely widespread structure of state organization in certain temporal epochs and on certain continents. In the past and also today, numerous and passionate proponents of federalism have brought forward many advantages of the federal state organization. Thus, for instance Raoul de la Grasserie has gone so far to state that he regarded a unitary state as a “social monstrosity”, and at the same time he demanded his home country France (at the end of the 19th and beginning of the 20th century), “this fortress of unitarism” to be converted “into a federation”. Merely before, for Proudhon federalism had been “the salvation for every state”, for according to him, only this was able to reconcile the principle of freedom and the principle of social authority, and to harmonize them. These are principles which in every society and in every state are at war with each other. Consequently, also le Fur stated at the end of the 19th century very seriously, that federalism would “spread more and more” and that “unitary states” would “disappear gradually from the globe”. This famous French professor of law who, as already mentioned above, had dedicated his doctoral thesis to federative states, foresaw the foundation and the federations of the Balkan peoples.

Of course, it should not be hid that apart from federalist, i.e. proponents of federalism, there are also anti-federalists, hence opponents of such a form of state organization who hold a completely opposite view and bring forward their arguments on this occasion. For instance, according to these opinions, federalism is a source of weakness and decay for a state or a people.

Indeed, the truth probably lies, as usually, somewhere in the middle between these both extreme opinions (in medias res veritas), meaning that neither federalism nor unitarism, when seen isolated, are the biggest evil, but also no remedy for every state misfortune (“salvation for the people” – as Proudhon used to say). It probably all depends on the moment and the circumstances a state is in, and the people that lives in this state. Thus, one can state for instance that for a state which is surrounded by opponents the unitarian system is more useful, focusing all forces of the people on the purpose of the defense at the given time, rather than federalism which at least in some way splits the strength of the people.

At this point it is appropriate to take the opportunity and cite some more arguments in favor of federalism, but also criticism. On the one hand, there are arguments according to which federal states are peaceful, and federalism develops pacifism among the peoples (unfortunately, not too long ago, history has denied this excessive optimism by the proponents of federalism, particularly as the First World War was evoked and triggered just by two federal states, Germany and Austria-Hungary, and the Second World War by Germany). The federal structure of the USA also did not detain this world power from entering into numerous wars, likewise. Furthermore, the primacy over unitarism in favor of federalism is usually offered, namely in the sense that the latter causes less difficulties in activating the state mechanism. By contrast, the opponents of federalism maintain exactly the opposite – that it is just unitarism which has primacy over federalism.

In addition, federalists are inclined to prove that federalism does not curtail patriotism, and that it grants a better protection of individual freedoms and rights, while unitarism would suppress the individual, stating that there would be a few great peoples who are completely homogeneous. Therefore, it is stressed that federalism clears out misunderstandings and possible “frictions” between the integrating elements of the federal state, and that it would give a representation to all elements in this state. Consequently, the proponents of federalism underlined that “a federation draws off a federation”, so that one, in this way, gets from federation to federation, to a universal, global federation which would guarantee durable peace, to all peoples’ general welfare. Unitarism, in contrast to federalism, as is further argued, “entails an isolation of the peoples and an antipathy towards other peoples”, so that there would be no doubt that a supranational federalism, having its roots in the League of Nations, today the United Nations Organizations, would be of unplayable value for the protection of international peace.

Federalism, as further argued, allows a direct rule of the peoples, namely by way of plebiscite and referendum. It would wake up the citizens from political abstinence and indifference and encourage them to fight and vote, it would support the creation of intellectual centers and offer less possibility for capturing and destroying the main center. However, in a unitary state it is sufficient to capture the capital, and the whole state goes down. The well-known constitutionalist James Bryce compared the federal state with a boat which would be split into several separate parts, so that these were water-impermeable. If the water gets into one part, it still cannot intrude into the other parts, so that the boat will not sink, which, however, is not the case with a unitary state. To this, also the point of view of the famous French philosopher Charles de Montesquieu can be added, who argued that “the federative system combines the advantages of big and small peoples, the size of the monarchy and the blessing of the republic, order and freedom”.

The view that supports a federative organization is highly interesting according to which the United States of America are quoted as an example, and according to which federalism is necessary, in particular for those peoples who have grown and spread suddenly. Thus, in the USA for instance the number of inhabitants of 4 millions at the very beginning of the 19th century has increased to 100 millions at the beginning of the 20th century, and finally, at the beginning of the 21st century, this figure increased to 300 millions. Over the intervening years, the number of associated states has risen from 13 to 50 states (of course, one may not forget that the increase of the American population to such an extent was not caused by the federal organization of this state, but rather by immigration, in particular of the European population, which during the 19th century had grown to an enormous extent and keeps on continuing until today, as a result of immigration of people from the whole world).

Against all these and other arguments of the federalists, the proponents of unitarism admittedly, offer counterarguments, particularly as they retort numerous objections to federalism on their part. Hence, they state, for instance, above all that federalism is “a regime of weakness and torridness”, and that state power would be extremely minimized and limited, because it is shared between the community and its parts”.

In addition to that, federations install frontiers within the state, and frontiers, of whatever kind, always create obstacles and brake traffic and mutual relations, and they complicate commercial relations and other connections. Besides, according to their opinion, federalism promotes a harmful particularism and separatism and perpetuates everything what separates a people. As such it entails dissimilarity which results from a subdivision in accordance with historical provinces, which are not all the same.

The opponents of federalism also stress their argument, that it is much more difficult to govern a federation than a unitary state, that for this more tact, more state wisdom and political abilities are necessary, however, one of their strongest argument is that federalism is more expensive than unitarism. Namely, in a federation all organs exist more or less in dual version, the state apparatus is much bigger and more complex, consequently a federation is far more expensive and costs much more than a unitary state. In federalism an affirmation of the individual - the citizen - has taken place, namely on the level of the federal unity as well as on the level of the federation, meaning that the democratic potential of federalism is a twofold one. For in a state, it guarantees the individual's representation rights, but also those of the particular territorial unities. Yet, the citizen is represented here not only in a double way, but he is also obliged in a twofold way – he is subject to the administration of justice of the federal state and the administration of justice of the federation as a federal state<sup>4</sup>.

At this point it should be particularly referred to the fact that there is also a classification into unitary (elementary) and multi-layer states. Nevertheless, this classification can be accepted only in part, particularly as there is no completely elementary state in the original sense of this word. A multi-layer state is just a kind of association of sovereign and independent states, so that one can divide states only according to an actual classification into unitary and federative states.

A unitary state is such a state in which a center of political union exists. This center is composed of appropriate state organs which virtually concentrate all attributes of power in their hands. This means that the whole political power in the state lies with its competence, and that all subjects in the state are subject to it. Yet, this on no account means, that a unitary state is synonymous with a monocratic or totalitarian state, since, as practice has revealed, such a state can be democratic, as well, and besides, today the prevailing majority of states of the world are unitary. If considered from the view of exercising power, thus state governance, a unitary state can be centralized or decentralized, and a centralized state can be organized on the basis of concentrated or deconcentrated governance, accordingly<sup>5</sup>.

Nowhere in the world such a federation existed in history or still exists which would have possessed all properties to be capable of being quoted as a classic example according to which all federations or federalism could be compared to and assessed. One also hits a snag in a similar way when comparing contemporary federalism, because here primarily difficulties as to the question of the relation between the actual and the normative may occur. Here, we face the situation in which very similar, in some cases the same institutional solutions, manifest very different social contents.

From the foundation of the "first" modern state of Yugoslavian peoples up to the creation of the Federal Republic of Yugoslavia, a three-quarter-century has passed. The "first", unitarily organized common state – the Kingdom of Yugoslavia, experienced a historic break. During World War II, all Yugoslav peoples have suffered a cruel "way of tortures", and, yet, in the end, the federal Republic, after 45 years of existence, did experience a dramatic decay in the confusion of the civil war, in the bloodiest war which the 20th century Europe has ever reported. For an examination of federalism in the Federal Republic of Yugoslavia, what is of importance is that also in this, the international relations have their basis in the federative system. In all three phases of the common life of Yugoslav peoples, this syntagma of the "national question", which formerly was used generally, was construed as a problem, namely not only in a figurative sense, but also factually. As a result, different models were offered to reach a solution of this question.

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<sup>4</sup> Neumann, F., writes on this dual responsibility: *Federalism and Freedom: A Critique*, Anthology Federalism, Mature and Emergent, ed. Arthur W. Macmahon, Doubleday and Company, New York, 1955, p. 46.

<sup>5</sup> Stern, Klaus: *Das Staatsrecht der Bundesrepublik Deutschland* [The state law of the FR of Germany], Vol. I, Grundbegriffe und Grundlagen des Staatsrechts, Strukturprinzipien der Verfassung [Basic terms and fundamentals of state law, structural principles of the constitution], 2<sup>nd</sup> ed., Munich 1984, § 19, p. 660.

## **2. Demarcation of the Term „Federalism“**

When talking about federalism as a political idea, it has to be stated that the same is regarded as a principle of state organization. In a federal state, aside from federal elements, also unitary elements can find a footing, while federalism can find its realization not only in a federal state, but also in other multi-layer forms of state organization, in particular in an association of sovereign states.

Apart from liberalism, constitutionalism and democracy, Federalism is to be quoted as one of the strongest political formation forces out of which numerous European states have developed their shape. Yet, not a self-contained system is concerned, but “politically it merges into manifold colors”. Nevertheless, some typical features of all forms of federal state are observable:

Federalism primarily is in a close connection with the subsidiarity principle. As a result, a typical kind of social and state structure appears, from below upwards, in the form of a structure of smaller and larger, up to the biggest unity<sup>6</sup>. "Federalism" means a well-regulated system in which a large number of particular states having equal rights unite to a “free union”, under protection of their state individuality in a common political acting<sup>7</sup>.

Federal statehood, as well as democracy, always means a "disagreeable" form of government, as well, which, apart from an extensive written "agreement on fundamentals", in particular requires the political ability to govern the same<sup>8</sup>. Under Otto von Bismarck, it was exercised exemplarily.

Therefore, the theory of federalism lays stress on the original meaning of the term of federalism (*foedus*) in Greek, which it had had in the Ancient Greece. Namely, the term of "federalism" described the relationship between the alliance and the union of independent subjects, with the purpose of reaching common goals. Just because of that, the cities - states at that time made use of the principle of federalism and united to special alliances, the so-called "leagues" for the purpose of defense, a common life or in order to realize other goals. With this as a backdrop, considering the original sense of federalism<sup>9</sup>, the principle of federalism later has developed to the medieval federal alliances, up to the contemporary federations, like for example the Federal Republic of Germany, the United States of America or Switzerland.

Accordingly, the historical mission of federalism consists in guaranteeing an alliance and cooperation of different subjects, namely in such a way that these subjects achieve planned common aims, however, in doing so, the particular subjects do not lose their identity. This exactly means that, with the help of the principle of federalism, conflict situations can be bridged, and that the plurality of states can be protected (as well as the one of other social and political subjects) which enter into a cooperation on the basis of the mentioned principle.

Considering the abundance of philosophical, sociological, political and juridical ideas, a comprehensive definition of this concept is only hardly possible. As a comprehensive social life principle and principle of arrangement, federalism requires a well-regulated social structure<sup>10</sup>. The two organizational forms – federal state and association of states – differ in their legal form in such a way that a federation originates from the will of the people by means of a contractual relationship that has been laid down legally between the states, whereas a federal state is based upon a public law relationship<sup>11</sup>.

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<sup>6</sup> Püttner, Günter: *Elemente des Föderalismus in der Verfassung des Deutschen Reichs vom 16. April 1871 – Föderalismus, light?*, [Elements of federalism in the constitution of the German Empire of April 16<sup>th</sup> 1871 – Federalism light?], Eberhard – Karls University of Tübingen, summer term 2000, Seminar "Topical problems of federalism", p. 2.

<sup>7</sup> Hesse, Konrad: *Grundzüge des Verfassungsrechts der Bundesrepublik Deutschland* [Basics of the constitutional law of the FR of Germany], 13. ed., Karlsruhe 1982.

<sup>8</sup> Stern, Klaus: *Das Staatsrecht der Bundesrepublik Deutschland* [The state law of the FR of Germany], Vol. I, *Grundbegriffe und Grundlagen des Staatsrechts, Strukturprinzipien der Verfassung* [Basic terms and fundamentals of state law, structural principles of the constitution], 2<sup>nd</sup> ed., Munich 1984, p. 664.

<sup>9</sup> Federalism means a union, junction of different subjects, for the purpose of realizing different objectives.

<sup>10</sup> Cf. Schnalenbach: *Föderalismus und Unitarismus in der Bundesrepublik Deutschland* [Federalism and unitarism in the FR of Germany], p. 3000.

<sup>11</sup> On this term see Laband: *Das Staatsrecht des Deutschen Reiches* [State law of the German Empire], Vol. I, reprint of the 5<sup>th</sup> ed. of 1911, 1964, § 7, p. 55 et seq.

The experience of the European Community indicates a direction of the integration process that is developing while maintaining the national identity, offering an institutional frame for a federalization or institutionalization of the Member States, which had been unitary states before, like for example Belgium and Spain, or to lower extent Italy and France. The federal principle is a compilation of structures and appropriate processes which are based upon adequate principles. These fundamental principles are the following:

- Principle of recognition of people and community,
- Principle of autonomy of the members which constitute the union,
- Complementary principle of the members' participation in the execution of common authorities,
- Federalization as a kind of association of heterogeneous elements,
- Renunciation of hegemony,
- Subsidiarity principle.

The first principle is the basis of democracy and the cornerstone of federalism, while the last quoted principle enables the states to transfer a part their duties to the European federation, as well as to regions, local authorities or the private sector. This actually means that an analysis must be drawn up and it must be determined, on which level the task can be performed best– within the collective, privately or publicly, and in doing so, one has to take into consideration available capacities and resources<sup>12</sup>.

### **3. The Idea of Federalism**

Federalism is a political organization system which pursues the purpose to connect the existence and independence of the majority of political unities with a synthesis of these unities to a higher unity. As a result, federalism is the freedom of narrower territorial and personal communities within the scope of a whole.

Federalism has never been a modern designed ideology of autonomy, decentralization, independence; federalism may not be equalized with decentralization or separatism. If a tendency towards particularism, ambivalence, egoism or even to the idea of secession exists, then one does not think in a federal way. Federalism presumes the will to a unity in diversities. With federalism, the recognition and affirmation of diversities in the unity are typical. The will to self-affirmation, and the will to create a unity are, one may say, basic characteristic features of this form of state organization, connection of which will be maintained by the will to unity (in tolerance).

The federative organization principle can also be found with the classics of Swiss federalism, Constantin Franz (1817-1891) and P.J. Proudhon. Federalism unites centripetal and centrifugal forces to a unity (and makes the same steadier), with an increase in efficiency, however, with a higher guarantee of autonomy, at the same time. Federalism protects small associations in a large common entity. It grants them the freedom to conduct their affairs by themselves in their own responsibility for the same. At this, the constitutional law of federalism often turns out to be astonishingly open. In a unity, essential developments and adaptations are permitted, and in certain cases also a change of the constitution, with a direct or indirect participation of the members.

Federalism is a political organization principle that pursues the purpose to connect the existence and independence of political unities, with a connection of these unities to a higher whole. Federal facilities are to be regarded as political multi-level systems in which the political existence of the whole is based upon the political entities which are members of the federation. As a result, federalism is the freedom of narrower and personal entities within the scope of a whole. Federalism serves the creation of unity in diversity; it operates towards an integration of what is different in the common<sup>13</sup>.

Previous experiences of federal states require the existence of general principles in order to safeguard the preservation and development of the federation, as well as a balance between the members of the federation.

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<sup>12</sup> Just the ascertainment of appropriate levels of decisions consists in a practical application of the principle of subsidiarity. Namely, what the Member States are able to perform on their own, should not be to the detriment of the federation, and the same principle applies to regions and local governments, too.

<sup>13</sup> Nettesheim, Martin: Demokratie durch Föderalismus? [Democracy through federalism?], in *Europäischer Föderalismus im 21. Jahrhundert*, Schriftenreihe des Europäischen Zentrums für Föderalismus – Forschung, Tübingen [European federalism in the 21<sup>st</sup> century, series of the European Center for research on federalism], Vol. 24, 1<sup>st</sup> ed. 2003, Tübingen, , p. 255.



In addition, an equilibrium<sup>14</sup> protects the unity and primacy of a member (state) (or a group of members) between large federal states and small and medium-sized members. For this reason, it is crucial to establish democratic federations, for also the best known types of federation (American, German and Swiss) are based on democratic principles, human rights and common values. Therefore, a concept of a European federalism without a simultaneously existing democracy is unthinkable, likewise.

A unitary state has a pyramid structure, whereas a federation bears a star-shaped structure. In case of a unitary state, it is ruled from above, while the structure of a federation gathers around the federal core which gives certain directions, but it also receives particular reply pulses, so that here a constant action and reaction is given<sup>15</sup>. In such a structure the functions correspond with the core, while observing the subsidiarity principle and pursuing the purpose of an optimum allocation of tasks. However, this federal core is defined by general direction selects which are addressed at all actors, while the autonomy of the Member States is protected. A federal government defines the joint policy and takes decisions which are binding on the entire federation, and in doing so, it admittedly enjoys a wide autonomy in defining and defending common interests.

The examination of federalism is currently experiencing a renaissance. There are three reasons for this: after the dissolution of the Soviet Union, a whole range of states – in Eastern Europe, in the Balkans, in Africa, Asia – where numerous confrontations and problems exist related to minorities, are on the way to democracy. At the same time, due to the growing role of the European Union, there is a fear, that the significance of national states in Europe could be limited. Globalization simultaneously requires considerations in view of the economic policy: while so far the central state has been a support and guarantor for an economic growth, it now becomes clearer and clearer that regions and to some extent also cross-border enterprises between the regions play an important role for the economic development. A thought aimed at centralization is being substituted by considerations on a stronger and faster development of social and territorial subjects. The result: the identity and independence of ethnic minorities and the role of local authorities, regions and Member States within the scope of the federal state are becoming a front-ranking political issue. This means that a comparative examination of federalism has future. The following count among the basic terms under constitutional law: Federalism, federal state, association of (sovereign) states, unitary state, republic, centralism, decentralization, unitarism, regionalism (regionalization), sovereignty and other<sup>16</sup>.

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<sup>14</sup> Equilibrium means the tendency, the striving of every social system to remain consistent or, if certain changes are still to be tolerated, this does not lead to a serious imbalance or to a disturbance of the relation between various parts of the system.

<sup>15</sup> One of the main features distinguishing a federation from a confederacy is the direct application of its provisions and decisions, which are binding, and these refer to the citizens directly.

<sup>16</sup> FEDERALISM (Latin *foedus* = alliance, league, covenant) is an organizational principle for a common entity consisting of parts which comprise equal, more or less independent members; FEDERAL STATE is an alliance of non-sovereign states which are connected with each other by a contract on the alliance. Here, sovereignty under international public law is given only with the superordinated central state. The Federal Republic of Germany, the USA and Switzerland are federal states; ASSOCIATION / UNION OF STATES, i.e. confederation, is an alliance of sovereign states that originated from an international law treaty. The federal (member) states remain sovereign in the sense of international public law. However, they use common bodies for the purpose of solution of common tasks. Examples for associations of states are for instance the Commonwealth of Independent States (CIS), or the German Federation of 1815-1866. UNITARY STATE is the political counterprinciple to federalism. In a unitary state, the state power is limited to some central institutions. There is no regionalization with political independence, consequently there are no Member States or single states. Examples for this are France, Italy or the former German Democratic Republic. REPUBLIC (the term is derived from the Latin term *res publica*), describing a freely conceived entity, founded on the basis of the approval of the peoples of this state. The term originated in the 18<sup>th</sup> and 19<sup>th</sup> century in order to delimit the "free people's state" from a monarchy. In CENTRALISM, the supreme state authorities decide on state functions down to the last detail, while the subordinated governments then execute these, without any leeway. The principle of DECENTRALIZATION states that governmental decisions shall be taken by state authorities only in principle. Further execution of these takes place by subordinated bodies and self-administered communities. UNITARISM is, like the concept of centralism, an organizational standardization within a country. Unitarization describes the endeavor to establish an organizational standardization within the framework of a state. REGIONALISM or REGIONALIZATION are to be considered in the context of the term of region. A region is a district which due to its historical, ethnic, cultural or regional common characteristics of its population is regarded as a unity. SOVEREIGNTY means actually the supreme power, and this can be legally effective both internally and externally. External sovereignty means the state's independence from all other states and international organizations.



#### **4. Functions and Goals of Federalism**

In order to determine the meaning of federalism, one has to delimit certain functions of federalism. Indeed, basic functions exist which are applied in all federal states within the scope of different modalities. This common basis creates specific features of federal communities.

Federalism turns out to be an efficient form of separation of powers. In a common state, the federation and the Member States (states) act side by side and complement each other mutually, however, they control each other mutually, as well. This control function through federalism, hence, of the federation towards the Member States (states) and the Member States towards the federation is just a substitute for the classical separation of powers.

Federalism allows a solution of national conflicts in countries with a multinational structure. Via federalism, the subsidiarity principle is realized most clearly in the area of allocation of competences<sup>17</sup>.

As fundamental aims of federalism, the following shall be quoted:

- Safeguarding of diversity and different identities,
- Protection of specific features of every minority community,
- Protection of the individuality of every nation, the federal state or the region.

Just because of what has been said, the basic features of federalism can be identified, which exist in the development and guidance of complexity, in opposition to uniformity and rigidity. In practice, a federation originates and develops in an atmosphere of pluralism, freedom and democracy, in the variety of parties, regions, ideas and cultures. Still, in spite of the numerous advantages mentioned, one may not disregard that there is no ideal form of federalism, for the formation of any federation is based upon really existing political institutions and cultures. What encourages is the opinion of Denis de Rougemont according to whom “the future lies with federalism and computers”.

#### **5. Models of Federalism**

A common basis and main principles represent the criterion according to which federal communities differ from other types of political communities, particularly from the centralized and unitary system. Four basic models of federalism can be quoted, namely:

- the centralist (French) model,
- the German federal model (parliamentary federalism)<sup>18</sup>,
- the Swiss model (collegial structure of federalism), and
- the American model (presidential federalism).

When talking about the first model, i.e. the centralist (French) one, it has to be said that it is successful, although it cannot serve as an example for the European Union, because a projection of such a model would lead to the creation of a European nation-state. For this reason, states and nations of Europe would, within the scope of such a supranational state, construed in compliance with the adventurous and exceptional visions of French governments, which have launched the revolutionary idea of a European federation, melt into one whole. Indeed, these French visions contain some basic principles of federalism, as for example: divided sovereignty, differentiation, recognition of national identities inside of the union, common governance of the topmost government, growing role of local governments and towns, strengthening of the regionalization process, and similar.

Taking into account the mentioned efficiency and at the same time the inapplicability of the French federalism model on the European level, we will analyze the German federal type, concerning which one may, already at first sight, state that it is better adapted to the conditions of the European Union.

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<sup>17</sup> In the German language and in the German-speaking area, respectively, for the term "association / union", primarily the word "Bund" is used, while for the Member States, the term "Länder" is common.

<sup>18</sup> Only the Federal Republic of Germany has experienced the form of "parliamentary federalism" and the control of the government by the parliament, which represents a general feature approximating it to the form applied in the European Union.

Namely, with this model, the governmental power is distributed between the federation and the federal entities, thus, between the federation and the constituent states. Of these constituent states every state takes part in the particulate, sometimes, however, also in the divided sovereignty, namely in such a way that certain powers are exclusively in the competence of the alliance, i.e. of the federation, while particular competences are reserved for the constituent states. For instance, external affairs, defense, currency, traffic and immigration issues fall in the competence of the federation, whereas the constituent states, the so-called "Länder" have competence in affairs of education and culture, as well as a range of other matters, concerning which the federation does not exercise its legislative competence. This aspect of German federalism is also known as "executive federalism".

However, for the purposes of the present study it is especially important to point out to the fact that with the development of this system step by step it has come to a strengthening of the relations between the federation and the federal entities, as well as between the Member States, among each other. Exactly these mutual relations represent the most significant features of the so-called "cooperative federalism". As we will see by means of the following model, one finds these elements of cooperative federalism also in the case of Switzerland, so by way of analogy with the practice of the German and Swiss federalism, the system of the European Union sometimes has introduced itself as a "cooperative federalism". In spite of that, even though the German federalism is rich experience and applicability, and even though it is highly efficient and workable in practice, this model, just like the French one, still cannot serve as a pattern for the organization of the government in the European Union. Of course one should keep clearly in mind that the Federal Republic of Germany in Article 23 paragraph 1 of its Basic Law [Grundgesetz] stipulates that Germany participates in "establishing a united Europe" [...], being "committed to democratic, social, and federal principles, to the rule of law, and to the principle of subsidiarity [...]"<sup>19</sup>.

Referring to the German model of federalism that has been mentioned before, it has to be said that the experience of the Swiss federalism, when judging it comprehensively, is closer to the process of European integration. In fact, the Swiss federalism not seldom is also called "European microcosm", since Switzerland – just like the European Union – is also a multinational, multilingual and multiconfessional community.

These are only those three resemblances between the European Union and Switzerland which are most likely to be noticed, but still, it shall not be left out of consideration that these two communities bear some other resemblances in various regards, namely in view of the structural variety, in particular, the political subdivisions, the existence of a collegial government, the organization of the government according to the principle of separation of powers, the introduction of referendum and people's initiative, the existence of trust, and a constant striving for consensus. Due to all of the mentioned reasons or recognized resemblances Switzerland, maybe more frequently than any other state, has been suggested as a pattern for the European Union. Nevertheless, the same, just like in the case of France and Germany, also cannot serve as pattern for the organization of the government on the European level, but Switzerland and its practice can, according to the opinion of Dusan Sidjanski<sup>20</sup>, who is both a famous professor and one of the best experts and theorists of European federalism, "with its qualities, as well as with its deficiencies, serve as a test experience and a mini-laboratory for the European Community"<sup>21</sup>. Also, Switzerland decided in favor of neutrality, with the wish to live in durable peace, while the international responsibility of the members of the European Union and its political influence are the principal reasons in the world why it is, therefore, impossible to hold such a view; therefore, these two facts conflict with the European Union's neutrality in the current globalization process in the world.

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<sup>19</sup> The federal constitution of Germany contains, similar to the Swiss constitution, certain fundamental principles, as for example the federal structure, the democratic principle, state under the rule of law and fundamental rights. The major part of these principles has already been incorporated in the Treaties on European Union and was taken into account in the draft of the European Charter of Fundamental rights.

<sup>20</sup> Sidjanski, D. (dir.) en coll. avec M. Aligisakis, M. de Bellet, *L'Union européenne à la lumière du fédéralisme suisse*, Institut européen de l'Université de Genève, Georg, Collection Europa, 1996, p. 9-11, 183-209.

<sup>21</sup> Switzerland consists of 23 cantons, i.e. federal entities – approximately the same number of Member States as in the European Union which has 27 members following the recent enlargement. For details see: Sidjanski, D., *U traganju za novim evropskim federalizmom* [In search for a new European federalism], Gutenbergova galaksija, Belgrade, 2002.

When talking about the European federalism, after all, we should also mention some facts on the experience of the United States of America and its contribution to the development of federalism in the world, in particular, since the American experience and practice have served as an authoritative frame from the beginning, if not even a model. This so-called “presidential federalism” in which the role of the president of the USA is weighty and in which there is a strong personalization of governance and an overemphasized separation of legislature and executive, i.e. of legislative and executive powers, is a highly significant model in the process of today’s globalization in which the United States of America assume a key role. Today, the impression emerges as if in the political life of America the search for a balance between federal government and the government of the constituent states were the most important thing. In this regard the Supreme Court is of particular importance, especially due to the fact that the Supreme Court exerts constitutional control over the activities of legislative powers. From this it follows that this Court has a key role and a decisive influence on the institutions of government, as well as on the safeguarding of a balance between the governments. Yet, it must be emphasized that, compared to the Supreme Court of the USA, the European Court of Justice has the tendency to carry out a similar influence in the system of the European Union, given that this Court of law has created the jurisdiction system of the Community. For instance, the European Court of Justice has developed its competence particularly in the field of the contracts, whereas the solution of social problems chiefly remains with the courts of the nation-states of the Member States.

### ***Conclusion***

Concluding the aforementioned we can state that in the German, Swiss and American model federalism combines the identity in external relations and the unity in diversity in internal affairs, while at the same time affirming regional identities, an expanded role of towns and the protection of regional cultures. In federal states, like for example Switzerland or Germany, a cooperative federalism and different levels exist, as well as in the system of the European Union. The “interstate” relations between the Member States of a federal state have nothing to do with the international processes of an alliance in the course of its establishment, so that within the scope of the European Union, the accentuation is on these “interstate” relations, indicating a unanimous decision of the governments. This actually means a return to the classical intergovernmental organization, however, an equalization of federalism with an “interstate federalism” shatters the whole system. Namely, the fact that a federal union comprises some interstate elements does not mean that it can be equated with an “interstate federalism”, because Wolfgang Wessels applied the concept of “cooperative federalism”, for example of the German or Swiss one, to the European Union.

Therefore, and considering the fact that the European Union is a completely new form of organization which up to now has not been known in the comparative constitutional practice, the same also requires a completely new form of federal alliance, regardless of the fact that the aforementioned resemblances and conformities of certain functions of the European Union and the functions of particular, most developed Member States exist, even in respect of the founders of the big European family. Definitely, there exists a high risk that existing models or some of them, respectively, impose upon the new reality, so that an all-embracing European consultation with experts and interest groups is taking place, as D. Sidjanski ascertains, “in search for a new European federalism”<sup>22</sup>.

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<sup>22</sup> Due to the meaning of the mentioned problems, Prof. Dr. Dusan Sidjanski entitled his work „In search for a new European federalism“, which among many other works serves as sufficient proof that he is one of today’s greatest experts of European federalism.