

Forms of State: the Contemporary State (I)



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JEAN MONNET MODULE "EUCOLAW" THE EUROPEANIZATION OF CONSTITUTIONAL LAW. THE IMPACT OF EU LAW ON NATIONAL SOURCES OF LAW, FORM OF GOVERNMENT, RIGHTS AND FREEDOMS.

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Summary

- 1. A constitutional State
- 2. A pluralistic State
- 2. A social State
- 4. A democratic State
- 5. A decentralized State
- 6. An open State

1. A constitutional State

Definition of Constitution

- The Constitution is the set of basic rules concerning the organization of the State.
- It is the fundamental law of the state, the normative act at the top of the sources of law of the State legal system.
- The formal constitution is the written text of the Constitution
- The material constitution is the set of fundamental purposes that give substance and life to the written constitution

Definition of Constitution

- The Constitution can take different forms and content
- Some common elements:
 - the guarantee of the rights
 - the organization of powers.
- Art. 16 of the Declaration of Man and Citizen of 1789: «A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all».

Classifications of Constitutions

- As for the origin
 - Popular Constitutions
 - Agreed Constitutions
 - Granted Constitutions
 - Plebiscitary Constitutions
 - Imposed Constitutions
 - Conditioned Constitutions

Classifications of Constitutions

- As for the form
 - Written constitutions
 - Customary Constitutions
 - Monotextual Constitutions
 - Pluritextual Constitutions

Classifications of Constitutions

- As for the content
 - Short Constitutions
 - Long Constitutions
- As for the force
 - Flexible Constitutions
 - Rigid constitutions

Definition of constitutional State

- The constitutional State is a State characterized by the presence of a rigid constitution.
- The rigid Constitution is a "guaranteed" Constitution
 - Constitutional justice, that is, the presence of instruments that eliminate laws contrary to the Constitution;
 - An aggravated and special procedure for constitutional revision, different from the legislative procedure

Constitutional revision

- Rigid Constitution does not mean that a constitution can not be changed
- In particular, the constitutions provide procedural and substantial limitations to the constitutional revision

Constitutional revision

- The substantial limits are those limits that do not concern the procedure to be followed, but rather the fact that the constitution can not be changed in any part or any time
 - Temporal limits
 - Content limits

Constitutional revision

- The procedural limitations are those limitations which concern the aggravated and special rules to follow in order to change a constitution; the solutions adopted are also in this case multiple
 - Different institutions
 - Special procedures
 - Popular vote in a referendum

Constitutional justice

- The diffused jurisdictional control
- It is the American model of constitutional justice
 - Diffused
 - Concrete
 - Incidental
 - inter partes and ex tunc

Constitutional justice

- The centralized jurisdictional control
- It is the Austrian model of constitutional justice
 - Centralized
 - Abstract
 - Principal
 - erga omnes and ex nunc

Constitutional justice

- The political control
- It is the French model of constitutional justice
 - Political, as for the organ
 - Political, as for the time of control

Constitutional justice

- The models of constitutional justice are circulated and are still reference systems worldwide.
- It should be noted how often the circulation of models causes a hybridization of the same models

2. A pluralistic State

Definition of pluralistic State

- With the expression “pluralistic State”, we intend a State that recognizes the existence and the political relevance of subjects or groups of subjects deeply different from each other; in this State, their different subjectivity is recognized by the law.
- Difference with the liberal state, a monoclasse State
- Extension of the franchise
- all the individuals are politically active and
- the politic is influenced by different interests

Universal suffrage

- Universal suffrage is affirmed in 1893 in New Zealand, in 1902 in Australia, in 1920 in the United States, in 1928 in the United Kingdom, in 1944 in Germany and immediately after the Second World War in Belgium, Germany, Italy.

The dimensions of pluralism

- Different economic and social interests
- Other elements of differentiation
 - sex
 - age
 - religion
 - ethnicity
 - language
 - culture

The tools of pluralism

- Right of peaceful coexistence among subjects with different and sometimes conflicting interests.
- Pluralistic democracy does not require only to extend the own rules of the liberal state to new social groups, but affects the mode of application of these rules
- Principle of majority
- Rights of minorities

3. A social State

Definition of social State

- To keep the unity of the pluralistic society the contemporary State also uses other instruments, and primarily the promotion of public policies aimed at removing the most important economic and social inequalities
- Social State : form of state which has as its goal the substantial equality.
- Difference with the liberal state, based on the "formal equality."

Formal equality

- Formal equality means that all persons are equal before the law and should be treated in the same way, considering that
- Art. 1 of the Declaration of Man and Citizen of 1789, all are born equal
- Vision of equality acceptable in a liberal state
- In a deeply unequal society, it perpetuates inequalities.

Substantial equality

- Substantial equality, at the contrary, means equality of result and consists of the removal of the differences that hinder the achievement of formal equality.
- The formal equality starts from the point of view that all are equal and therefore all should be treated in the same way.
- The substantial equality starts from the opposite point of view, everyone is different and should be treated fairly differently

Social rights

- In the contemporary social state, in addition to the traditional civil rights, typical of the liberal state, even the so-called social rights are provided and protected.
- Negative rights
- Positive rights