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Forms of State: the Contemporary State (II)



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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

4. A democratic State

Definition of democratic State

- The democratic state
- pluralistic structure and shared power
- collective ownership and exercise of power
- popular support
- goals of a liberal democratic society.
- Strictly related to the definition of form of government, that concerns the ways according to which the power is shared between different constitutional bodies

Definition of form of Government

- Form of Government is the set of rules concerning the distribution of power among the branches of government, or the relationship between constitutional bodies (those organs which are above the others and have the same level of sovereignty and independence).

Parliamentary form of Government

- The parliamentary form of government is the form of government in which the Government is bound to the Parliament by a relationship of confidence.
- At the origin of this form of government there is the shift of the Government from the orbit of the king to that of the Parliament.
- The confidence that until then defined the relationship between the king and the ministers, became a constitutive element of the relationship between the government and the parliament.

Parliamentary form of Government

- The British system was the first to adopt this form of government
- Dualist parliamentary government
- Monistic parliamentary government

Parliamentary form of Government

- In some countries, beginning with Austria (1920), a rationalization of the parliamentary form of government is proposed
- Attempt to artificially reproduce the operating conditions of the form of the British government, which has continued to exist without any written rule.

Presidential form of Government

- The presidential form of government was introduced in the United States in the late eighteenth century.
- It is based on a strict separation of powers.
- It is characterized by the presence of a monocratic executive branch, headed by a President elected directly by the people, not related to the Parliament by a relationship of confidence.

Presidential form of Government

- The President of the Republic is not only head of state but also head of government.
- The Executive is monocratic, even if the President can nominate State Secretaries
- The Cabinet is not a body with a specific relief and functions.
- The separation between the executive and legislative, although much more pronounced compared to the parliamentary form of government, is not absolute

Presidential form of Government

- This form of government has subsequently spread to other legal systems, starting from Latin America (see for example the Argentine Constitution of 1853 and the Brazilian Constitution of 1891) and, with the end of colonialism, even in many African and Asian states (see the Philippine Constitution of 1935 and the Tunisian Constitution of 1959), although with very different results in comparison with that achieved in the United States.

Semi-Presidential form of Government

- Semi-presidential form of government
- A President with direct popular legitimacy, charged with executive powers and functions – as is the case in the presidential form of government – coexists with a collegial government
- Two-headed character of the executive branch (the President and the Prime Minister), and prevalence of one over the other

Semi-Presidential form of Government

- Fifth French Republic, born with the Constitution of 1958
- Direct election of the President
- The President enjoys extensive powers

Semi-Presidential form of Government

- The success of the French experience led to a remarkable expansion of the model adopted in many countries which have had access to independence as a result of decolonization and in many states that have experienced the transition to democracy in recent decades (including Portugal and most central and Eastern European countries).

Semi-Parliamentary form of Government

- Semiparliamentary form of Government
- Direct election of the prime minister, that is at the same time constrained by the relationship of confidence with the Parliament.
- The two organs, the executive and legislature, are bound by the principle *aut simul stabunt, aut simul cadent*

Semi-Parliamentary form of Government

- This form of government has been experimented for some time with little success in Israel since 1992. In this experience, the concurrence of several factors (including a proportional electoral system and a very conflicting society), along with the excessive rigidity of the system, has caused the paralysis of the institutions, by convincing the legislature to reform again, in 2001, the form of government in a parliamentary sense.

Directorial form of Government

- Directorial form of government
- Absence of monocratic institutions of constitutional importance (such as the President of the Republic and the Prime Minister) and the division of political power between an elected parliament and a government (Directory)
- In Switzerland, alongside the Parliament elected by universal suffrage there is a Directory (Federal Council) that consists of seven members, who are elected by the Parliament but are not revocable by this.

Directorial form of Government

- The directory plays both the typical functions of the Government and those of the head of state. The uniqueness of the Swiss Confederation (a small federal state composed of a plurality of ethnic and linguistic components that are active in the determination of national policy through a constant and ordinary use of the referendum) makes this experience unique, non-exportable into more complex democracies in which the instruments of direct democracy play a minor role.

5. A decentralized State

Definition of decentralized State

- The decentralized State is that State which is based on the distribution of decision-making power on the territory, in favour of territorial political bodies.
- The concept of decentralized State is strictly related to the definition of type of State, that concerns the ways according to which the power is shared among different constitutional bodies

Definition of type fo State

- The set of rules concerning the distribution of power among the levels of government, or the relationship between the central State and the decentralized authorities (such as Member States, Lander, Regions, Provinces).

Unitary State

- Political power conferred only to the central government
- Diffusion of power on a territorial basis, but in favor of peripheral entities
- Some European countries that have historically had a strong imprint of centralist type

Regional State

- The Regional State is a recent form of territorial and political decentralization. It was born in some European countries after the Second World War and is derived from the division of countries into territorial entities that were previously characterized by a strong centralist tradition.

Regional State

- The Regional State, various theories
 - Regional state as a subspecies of the unitary state
 - Regional state as a kind of intermediate state between the unitary state and the federal state
 - Regional state as a subspecies of decentralized state

Regional State

- Common characters of the regional states:
 - The recognition in the state constitution of autonomous territorial entities (regions, autonomous communities etc.) that have their own statutes which must be approved by State Law
 - The constitutional allocation to regions of legislative and executive, but not jurisdictional, powers
 - The existence of a Senate that is not directly representative of the regions, but that can be elected on a regional basis or with a limited representation of the regions
 - A limited participation of the regions to the exercise of state functions (legislative initiative, referendum request), and in particular to the exercise of the constitutional review function
 - The attribution to the Constitutional Court of the power to resolve conflicts between the state and the regions, usually guaranteeing the primacy of national interest even in regional competence

Regional State

- The Regional State actually contains a wide range of possible solutions for the decentralization of political power. Some possible distinctions are:
 - Necessary (Italy)/Optional (Spain)
 - Symmetrical (Italy)/Asymmetrical (UK)
 - Generalized (Italy)/Limited (Portugal)
 - Political (Italy)/Administrative (France)

Regional State

- Common trends
 - Strengthen the local authorities in a federal direction
 - Development of the so called cooperative regionalism

Federal State

- The federal state is an older form of territorial decentralization of political power
- Different and opposing processes.
 - Association or integration of independent states which first formed a confederation of sovereign states (United States).
 - Disassociation or decentralization of a previous unitary state (Germany, Belgium).

Federal State

- Federal States, several theories
 - Sovereignty in the federal state is divided between Central State and the Member States.
 - Sovereignty belongs only to the Member States
 - Sovereignty belongs exclusively to the Central state

Federal State

- Common characters of the federal states:
 - The existence of a federal state system based on a written and superior constitution that recognizes the autonomy of local political entities placed between the State and the local authorities, which have their own constitutions subordinate to the Federal one
 - The provision in the Federal Constitution of the division of powers between the central State and the Member States, which generally concerns the three basic powers of the State
 - The bicameral structure of the parliament, made up of a House expression of the entire national electorate and a House (Senate or Council) representative of the Member States
 - A composition of the government that is representative of the composite nature of the state
 - The participation of the Member States in the procedure for constitutional amendment which may be indirect (through the second chamber) or direct (with the participation of the parliaments of the Member States).
 - The establishment of a federal court with the task of solving the conflicts between the Federal State and the Member States.

Federal State

- Two models, the Anglo-Saxon and the European model
 - The first is characterized by a strict division of legislative powers between the central state and the member states, a close parallelism between these functions and the executive powers, by the presence of a judicial power shared between the two levels of government
 - The second is characterized by the presence of a more flexible distribution of powers between the central state and the member states through the category of the shared competences, the emergence of the executive federalism and the centralization of the judicial power in federal bodies.

Federal State

- Common trends
 - Strengthening of the central state
 - Establishment of a cooperative federalism

6. An open State

Definition of open State

- The open State is that State which is based on cooperation with other countries and openness to international law.
- This openness is the result of some political, economic and social factors and finds space in the constitutions with provisions that relate to the relations between national law and international law.

Sovereignty

- Sovereignty is one of the elements of the State
- It represents the full right and power of a governing body to govern itself without any interference from external sources or bodies
- Internal sovereignty describes the relationship between a sovereign power and its own subjects
- External sovereignty refers to the relationship between a sovereign power and other states

Factors of an open State

- Peace and cooperation
- Globalization
- International integration