CZASOPISMO PRAWNO-HISTORYCZNE
Tom XXXII — Zeszyt 1 — 1980

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Morphology and Dynamics of Federalism

I. In view of the fact that in principle the primary aim of federation, namely to assure maximum unity of action while preserving historically justified rights of the component parts to autonomy, is always the same, reflection should be given to an ideal type of federation, most closely corresponding to the need of assuring unity on the one hand, and political pluralism on the other. It seems that such a theoretical model could best be built on grounds of a specific political system, which would take in account both social forces favouring integration and those conducive to disintegration. Such an ideal model must be distinguished from an empiric model corresponding more or less accurately to synthetically formulated historical characteristics of federal states [1]. In the early period of emergence of modern federal states, the ideal type of federation of necessity coincided almost exactly with the empirically existing federal state. The federal system of the United States was viewed for a time as the ideal model of a federal state, until it was found that transplantation of the American model to Europe for example, in most cases was impracticable or simply pointless.

Even now, many writers accept the federal system of the United States as a reference point when discussing question of federalism, without taking account of the social, political or economic differences of other federal systems [2]. Such an attitude leads to negation of the federal status of states which did not copy their constitutional institutions from the American experiment. This applies primarily to socialist federalism.

It would be equally difficult to accept B. Burdeau's proposal to be guided by an abstract model of a federal state which does not exist [3]. In view of the great variety of solutions applied in systems which existed in history and exist in contemporary federal states, the question might

[1] N. Rockefeller, *L'avenir du fédéralisme*, Paris 1964, p. 48.

[2] Ibidem p. 80; C. Durand, *L'Etat fédéral en droit positif*, in: G. Berger and others, *Le fédéralisme*, Paris 1956, p. 212.

[3] G. Burdeau, *Traité de Science Politique*, Paris 1949, v. 2 p. 405.

be asked whether it would be at all possible to establish a uniform federal state theory which would take sufficiently broad account of the scope of political sociology and juridical institutions. The question is not as obvious as might appear at first glance, consequently it seems desirable to study this fundamental matter in greater detail. Account must be taken of the fact that 1) the basic aim of the federal system, common to all states, consists of safeguarding the interests of the state's integrity, while preserving the historically justified (hence changing) rights of heterogeneous territorial groups to autonomous development; 2) factors favouring political integration, as well as those conducive to disintegration, may be distinguished in every federal state; 3) a series of juridical institutions exist in the federal system, the function of which is to some extent similar, irrespectively of concrete conditions existing in a given federal state; 4) classification of ways and means of safeguarding attainment of the primary aim of the federal state would simultaneously permit to outline the typical dependences between economic, political and juridical factors and occurrences.

Accepting existence of common structural or functional characteristics as a fact without which all comparative research would be pointless, account must also be taken of characteristics specific to different federal states, for instance characteristics conditioned by specific historical factors such as the influence of traditional constitutional institutions, the political situation in which new state organisms were formed, the balance of social forces, and above all the aim envisaged by social groups, which at a given moment dispose of sufficiently effective means to shape political and economic relations.

II. It would be difficult to specify all the meanings given to concepts of "federation", "federal state" and "federalism". The last is probably the most ambiguous, it denotes not just the doctrine of federation or process in which federation occurs, but is also used to define all forms of union between states, as well as regional units which have no characteristics of state organisation. L. Kulczycki [4], G. Burdeau [5], and M. Duverger [6] are writers who accept the broad interpretation of the term "federalism".

[4] Federalism is union of a number of states which preserve their distinctness, formed to attain common aims with the help of federal authority. Depending on the nature of federal authority, federalism takes the form of a union of states or a union (federal) state; L. Kulczycki, *Autonomia i federalizm w ustroju państw konstytucyjnych* (Autonomy and Federalism in a System of Constitutional States), Lwów 1906, p. 174.

[5] G. Burdeau, *Traité* ..., v. 1 p. 391, where he uses the concepts: fédéralisme interétatique (confédération, union, commonwealth), fédéralisme intraétatique (Etat fédéral).

[6] M. Duverger, *Droit constitutionnel et institutions politiques*, Paris 1955, p. 74.

Scholars who wished to make federalism the basis of international law ascribed it an even broader conceptual scope, E. Kant for example tied concepts of a universal order, which was to be based on federalism (confederation of free states) [7], with the categorical imperative: "there must be no wars" [8]. The concept of federalism as a principle of reconstruction of international relations, became specially dilatable due to the movement aimed at political integration of West European states [9].

Efforts at positive definition of the nature of federalism proceeded parallel with efforts at negative definition. According to H. Hintze, anything which does not aim at union but tends to break up unity is not federalism. Hintze affirmed that the philosophical concept at the beginning of the 18th century, administrative decentralisation prior to 1789, and decentralisation of legislation at a subsequent period, were all forms of federalism [10].

As a form of compromise between the interests of the state as such and its component parts, federalism envisages an endless variety of solutions and various intermediary forms. Not without case, E. Freeman saw this as a source of difficulties in determining whether a given concrete state comes under the definition of "federal state" [11]. Nonetheless, in Freeman's opinion, these various forms have something in common, something which could be called an ideal of federation, implemented to a greater or lesser extent in practice. This view comes close to the concept of "perfect" and "imperfect union" formulated earlier by A. de Tocqueville, A. Hamilton, and J. Stuart Mill [12]. Many scholars accepted the division into perfect and imperfect federation in order to distinguish between federation and confederation (Wheaton for example), or the division into federation or quasi-federation (K. C. Wheare, J. W. Wagner), primarily for the purpose of distinguishing "classical federation" from federation which comprises elements of "unitarism" [13]. A. MacMa-

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[7] F. Baerenbach, *Das Problem des Völkerrechts gemäss der Ethik und der Rechtsphilosophie Kant's*, „Zeitschrift für die gesammte Staatswissenschaft" 1881, Bd. 37, p. 714, Tübingen 1881.

[8] C. J. Friedrich, *Inevitable Peace*, Boston 1948, p. 171.

[9] W. Suchecki, *Prawo krajowe a prawo międzynarodowe (w świetle teorii państwa i prawa)*, (National and International Law in the Light of Theory of State and Law), in: *Studia z teorii prawa* (Essays on Theory of Law), Warsaw 1965, p. 164 and fol.

[10] H. Hintze, *Staatseinheit und Föderalismus im alten Frenkreich und in der Revolution*, Stuttgart 1928, XXX. 622.

[11] E. Freeman, *History of Federal Government from the Foundation of the Achaian League to the Disruption of the United States*, London 1863, p. 2.

[12] W. Suchecki, *On the Methodology of Studies of Soviet Federalism*, paper submitted at IPSA Round Table Conference, Oxford 1963, p. 13.

[13] W. J. Wagner, *The Federal States and Their Judiciary*, s'Gravenhage 1959, p. 26.

hon introduced the distinction into mature and emergent federalism [14]. J. Kunz distinguishes between an authentic federal state (*der echte Bundesstaat*) and unauthentic one (*der unechte Bundesstaat*) [15]. Just the same, G. Burdeau is right in considering arbitrary all efforts to draw a demarcation line between authentic federalism and any other form of federalism [16]. Comparison of existing federal states with an ideal model of the federal system must in fact be based on subjective assessment, and consequently, increase conceptual ambiguity.

Adoption of the ideal model as the starting-point, only in appearance adds precision to the concept of federal state as such. The static, immutable model of federal state, tantamount to negation of variety of objective factors which shape relations between a federation and its component parts, also of processes which occur in the nature of federal authority, inevitably reduces the fecundity of problems of federalism. Rejection of the ideal model, which in point of fact is intended to represent a sum of characteristic features of historically existing federations, is not equivalent with abandonment of efforts to determine features characteristic of the federal state. Nevertheless, the teleological element should be the decisive factor, namely the objective tasks which a federal state must fulfil.

Two fundamental questions deserve special attention, namely the aim which founders of a federal state set themselves, and the ways and means applied to attain this aim. Federalism is both a doctrine and practice aimed at a compromise conciliation of divergence of interests between the whole and its component parts, or to assure autonomous existence to heterogeneous societies in accordance with generally accepted political principles, such as the right of nations to self-determination for example. The federal system does not settle these questions according to any pre-established pattern, on the contrary, in one case, accent may be laid on the necessity to give priority to interests of the whole, at another time, the question of guaranteeing the rights of subjects of federation comes to the fore, or the trend may be to assure coordination between the federation and member states.

A cursory review of characteristic features advanced in definitions of "federal state" indicates that despite basic convergence of views and opinions advanced in western science on the nature of the state, fairly significant differences exist when it comes to defining the basic characteristics of federation. For example, federation is defined as: 1) a com-

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[14] *Federalism Mature and Emergent*, ed. A. W. MacMahon, Garden City, New York 1955, p. 557.

[15] J. Kunz, *Die Staatenverbindungen*, p. 130; M. Mouskhelichvili, *La théorie de l'Etat fédéral*, Paris 1931.

[16] G. Burdeau, *Traité...*, v. 2, p. 420 („Le fédéralisme n'est pas un absolu mais comporte au contraire toute une série de degrés").

posite state composed of states (e.g. A. de Tocqueville, G. Waitz, R. Mohl); 2) organic unity of several states (O. Gierke, M. Huber); 3) composite sovereign state composed of non-sovereign states (P. Laband, G. Jellinek, S. Brie); 4) „State common to several states" (H. Naviasky, C. Schmitt); 5) state with unlimited sovereignty (C. Gareis, K. Stengel); 6) decentralised state which comprises fractional juridical orders endowed with broad autonomy (J. Kunz, A. Verdross); 7) state composed of cooperating autonomous communities (E. Borel, L. Le Fur, M. Mouskhelichvili, Z. Giacometti).

In juridical literature, the concept of federal state is usually identified with „union state" (*Bundesstaat*). Actually, some German 19th century writers defined the union state as a state based on principles of federalism, which is common or garden tautology if we admit that the concept of federation is equivalent to „Bundesstaat" (in Romanic languages there is no equivalent to „union state", hence the problem does not exist). The variety of language traditions causes that certain distinctions of terminology have no equivalent when translating them into another language. Thus C. J. Friedrich, translating K. Hesse, distinguishes the concept of „federal principle" and the concept of „federalistic principle". According to Hesse, the former of these principles remains actual, whereas the latter is anachronistic. The Polish language does not render the nuances of this distinction [17].

In USSR practice, the concept of federation is used to define all forms of Soviet federalism, whereas the federation of sovereign Soviet republics is called „union state". It does not follow from this however that „union state" is a concept different from federation, which is what A. Lepioshkin contends. According to A. Lepioshkin, federation exists in the Soviet Union not only in the shape of the union state but also in the form of federation based on the principle of autonomy, the Russian Socialist Federal Soviet Republic for example, which cannot be called a „union state" in the strict sense of the term [18]. To decide the question correctly, it will first be necessary to demonstrate that these concepts correspond to different types of system. A federation (union state) may be founded either on the principle of autonomy or the principle of sovereignty of its subjects. A. Lepioshkin himself admits that in assessing the concrete nature of constitutional institutions, one should not take

[17] K. Hesse, *Der Unitarische Bundesstaat*, 1962, p. 32 and fol., quoted after C. J. Friedrich, *Federalism, National and International in Theory and Practice*, Oxford 1963, p. 44, paper submitted at IPSA Round Table Conference, Oxford September 1963.

[18] A. I. Lepioshkin, A. I. Kim, N. G. Mishin, P. I. Romanov, *Kurs sovietskogo gosudarstviennogo prava*, v. 2. Moscow 1962; N. J. Kupric, *Gosudarstviennoye ustroystvo SSSR*, Moscow 1952, p. 75 — Kupric holds that the RSFSR is not a union state.

account even of the constitution in force. He shares the view advanced by I. A. Ananov [19] and I. Levin [20], who affirm that alongside of the Russian Soviet Federative Socialist Republic and the Union of Socialist Soviet Republics, union republics in which autonomous republics form part of them are also federations (e. g. the Uzbek Republic, Georgia, Azerbaijan, Tadzhik Republic) [21].

The USSR Constitution of 1977, compared with the previously binding Constitution of 1936, adds the following new elements to the characteristic of the USSR (Art. 70): a) The USSR is a uniform union state. This concept does not abolish the right of a union republic to "secede freely from the USSR" (Art. 72). This formula is intended to reflect the process of inner consolidation and does not alter the existing juridical nature of the USSR, b) the USSR is a multi-national state, the emphasis laid on this fact is due to the necessity of opposing the simplified vision of rapprochement between nations and artificial acceleration of this process. The USSR constitution distinguishes three concepts: the Soviet nation (*narod*), the statehood of which is personified in the USSR, nations (*nacyonalnosti*), and nationalities (*narodnosti*), but does not link them with any specific type of autonomy or sovereignty, c) the USSR was formed as a result of free self-determination of nations, d) the USSR is founded on the principle of socialist federalism.

According to the definition given by S. Ehrlich, "federation, or union state, is a relationship in which respective states relinquish part of their sovereignty (independence) in favour of the union state, the government of which takes over part of the competences of governments of states belonging to the union" [22]. G. Galperin is right in identifying the concepts of "union state" and "federation". But it would be difficult to agree with his definition of federal state, in which he affirms that "alongside of sovereignty of the state as a whole ... sovereignty of the subjects of

[19] I. A. Ananov, *Sistiema organov gosudarstviennogo upravleniya v sovietskoy socyalitcheskoy federacyi*, Moscow 1951, p. 126.

[20] I. D. Levin, *Sovietskaya federacya — gosudarstviennopravovaya forma razriesheniya nacyonalnogo voprosa*, „Voprosy sovietskogo gosudarstva i prawa", Moscow 1957, p. 240.

[21] D. Gayduk ov, *Dyskusja w Instytucie Prawa Akademii Nauk ZSRR nad pracą S. Ehrlicha, Ustrój Związku Radzieckiego* (Discussion in the USSR Academy of Science Institute of Law on S. Ehrlich's Work: The System of the Soviet Union), „Państwo i Prawo" 1955 No. 7 - 8, p. 167 and fol. Earlier, K. A. Arkhippov held that Georgia should be called a federal state; K. A. Arkhippov, *Otcherk Konstitucyi i Sovietskoy Riespubliki Gruzyi*, „Vlast' Sovietov" 1923, No. 6 - 7, p. 33; S. Kishkin, *Centralnye Organy RSFSR*, „Sovietskoye Pravo" 1923, No. 3, p. 78.

[22] S. Ehrlich, *Teoria typów i form państwa* (Theory of Types and Forms of State), „Państwo i Prawo" 1950, No. 4, p. 21.

federation also exists". This would eliminate existence of the federal state based on principles of autonomy [23].

The variety of definitions of a federal state might indicate that no clear opinion exists in science on what is the actual nature of a federal state. Such a conclusion would be premature. There can be no doubt that these definitions have a series of elements in common. This is indicated by the duality of the concept of federal state as such, which comprises certain elements specific to some concrete federations only, alongside of universally manifest characteristics.

Thought the concept of federalism is used in juridical-political literature to define the sumtotal of a federation's constitutional institutions, it seems indicated to distinguish the concept of "federalism" from that of "federation". Federalism should be understood as the political process aimed at political, economic and cultural integration within the federal system, the political and juridical doctrine which motivates the necessity of finding compromise between local interests and the interest of the whole, in a situation when failure to grant specific rights to component parts would threaten disintegration of the given state. Hence, federalism comprises both doctrine and concrete conclusions "de lege ferenda", as well as the practical system aimed at establishing a federal state, or improving the functioning of an already existing one. Federalism is the dynamics of development of the federal state.

Federation (federal state) is the sumtotal of constitutional institutions which permit to distinguish a given state from a unitary state on the one hand, and from a confederacy or other forms of ties between states on the other hand.

When trying to define federation, three basic criteria should be adopted: genetic, structural, and functionally-teleologic.

1. From the point of view the origins of a federal state, existence of a constitution determining the scope of competences of the federation and its members is essential. During the period of formation of a federal state, parallel solutions on the plane of both international and internal law are possible (e.g. the USSR, up to conclusion of the Agreement and Declaration of 30 December 1922, on establishment of the USSR).

2. From the structural point of view, as a rule a federal state has the following characteristics: 1) the federal constitution establishes division of competences between federal authorities and authorities of states which form part of the federation; 2) a special course of procedure is envisaged for settling competence disputes; 3) some federal acts take direct effect throughout the whole country; the principle is accepted that

[23] *Obshtchaya teoriya gosudarstva i prava*, ed. D. A. Kierimov, Leningrad, p. 8; S. Ehrlich takes a similar view: *Ustrój Związku Radzieckiego* (System of the Soviet Union), Warszawa 1954, p. 135.

in the event of collision between federal law and law of a component state, the legal force of the law of the member state is suspended or abrogated; 4) Federal Court decisions are binding throughout the federation; this applies also to decisions passed by the Constitutional Tribunal or other federal organ appointed to decide competence disputes between the federation and its component parts; 5) the federal constitution recognizes the distinctness of authorities of the federal state and of its component parts; 6) federal authoritie's function throughout the whole federation according to competences specified in the constitution; 7) as a rule, representative authorities are composed of two "chambers", which enables them to represent the interests of different component parts; 8) in general, the principle of equality of all members of the federation is recognized, as well as the right of participation of all member states in the affairs of the whole federation; 9) a uniform federal citizenship exists; 10) component parts of a federation are not viewed as units of administrative division, but have state status, their constitutions are not granted by federal authority but voted by representative organs of respective states forming part of the federation.

3. From the functional-teleological point of view, the goal at which a given federal state aims carries essential significance. A federal state may set itself the goal: to preserve political unity of a heterogeneous society at the cost of the autonomy or certain sovereign rights of member states; to grant political, economic and cultural equality to different regions distinguished by national, religious or other characteristics; finally, a federal state may be viewed as on organisation of transient nature, leading to establishment of a unitary state.

Thus the definition of "federal state" is based primarily on structural elements, namely it must accept as a basis typical constitutional institutions adopted in states generally recognized as federations. In this sense, it may be called an analytical definition. The definition of a federal state which accepts analysis of that state's aim as a basis, will be of a different nature. Of necessity, a definition built on such grounds must include elements of assessment, if the purpose of the definition is to determine whether development trends conform with the avowed aim of the federal state. But that is precisely one of the reasons why the question of federalism cannot be completely elucidated solely in categories of juridical science.

III. In order to permit better understanding of the nature of a federal state, it will be essential to compare it with a confederacy on the one hand, and on the other hand with a decentralised uniform (unitary) state.

The concept of "confederacy" also has many meanings. It first appeared in Ancient Greece in the form of "sympoletei" (confederacy of

Beocia, Lacedemonia), and several other unions the legal nature of which is more or less disputable. As regards confederacies closer to us in history, mention must be made of the Union of Utrecht in 1579, which constituted the United Netherlands and remained in force until 1795; the Confederation of the Rhine between 1214 and 1350, and again from 1806 till 1813; the Hanseatic League which existed from 1367 till 1669, the Helvetic Confederation of 1291 - 1798, 1803 - 1814, and 1815 - 1848; the Confederation of Germany of 1815 - 1866; the United States between 1781 and 1787; and the Confederation of South American States of 1861 - - 1865.

Federation and confederation differ from each other in many respects. These differences relate to both quality and quantity [24], may appear in specific spheres and vary in intensity. Determination of concrete differences and elimination of apparent ones is not an easy matter. Concrete differences were sought i.a. when such questions were reviewed as the manner in which a federation and confederation is formed, the nature of its durability, the decision-making procedure and voting acts of law, method of functioning of organs of authority, status in respect of international law, participation in forming of a common federal will, etc.

1. As regards the origins of federation and confederation, many scholars accept that a confederation is formed by agreement concluded on the strength of international law; the resulting legal relationship between states (*vinculum iuris*) is based on international law; federation on the other hand, is formed on the strength of an internal act of law [25].

Some representatives of what is known as the corporate theory, S. Brie [26], A. Haenel [27], and K. Stengel [28] for example, stress that states may unite on the strength of a constitutive treaty which establishes specific rights and duties, as well as a new legal order [29].

[24] J. B. Westerkamp affirms that as regards imperious rights, the difference between federation and confederation is one of quantity not quality (nature); J. B. Westerkamp, *Staatenbund und Bundesstaat; Untersuchungen über die Praxis und das Recht der modernen Bünde*, Leipzig 1892, p. 453.

[25] „Der Staatenbund durch juristisch bedeutsamen Akt, insbesondere durch Vertrag entstehen muss"; J. Hatschek, *Allgemeines Staatsrecht auf rechtsvergleichender Grundlage*, III. Theil, Leipzig 1969, p. 45; according to G. Jellinek, confederation is formed by an act of international law but it is not a subject of law; G. Jellinek, *Die Lehre von den Staatenverbindungen*, Wien 1882 p. 178, whereas a union state cannot be formed by way of agreement (ibidem, p. 189).

[26] S. Brie, *Zur Lehre von den Staatenverbindungen*, „Zeitschrift für das Privat und Öffentliches Recht der Gegenwart", Elfter Band, I Heft, Wien 1833, p. 31 and fol.

[27] A. Haenel, *Studien*, I, p. 31 and fol.

[28] K. Stengel, *Staatenbund und Bundesstaat*, in: *Schmollers Jahrbuch*, 1898, Bd. 22, p. 1126 and fol.

[29] H. Triepel, *Völkerrecht und Landesrecht*, Leipzig 1899, p. 49 and fol., 59 and fol.

2. Many scholars point to differences in durability between federation and confederation. Federation is generally recognized as a union of lasting nature, whereas confederacy is seen as a union formed for the purpose of fulfilling specific purposes of transient nature. The conviction prevails that both confederation and federation constitute merely a transitory stage to complete union (particularly when their component parts do not differ in respect of nationality).

Marxist science goes further still. The view is generally accepted in Marxist literature that both forms, confederation and federation, are of transient nature, even when societies heterogeneous as regards nationality are concerned, their task consisting of gradual preparation of conditions for establishment of a unitary state. In the socialist system, the basic condition of such a process is establishment of equal rights for all nationalities, both in the eyes of law and in actual practice, accompanied by progressive consolidation of the nation, which identifies itself with the community of the federal state.

It seems this categoric assumption cannot be divorced from the experience accumulated in the multinational Soviet State. The process of developing national conscience, the growing cultural and economic aspirations of various nations and ethnic groups in Soviet Union points to the complexity of the problem. The idea of transitory character of Soviet federalism based on some underestimating of national aspirations has to be modified.

The example of Western countries particularly: Belgium and Spain, Great Britan will certainly have some impact on the ways of solution of national question in a federal state.

Some scholars see no difference between federation and confederation as regards durability. According to K. Stengel, both are constituted as lasting, permanent unions [30]. K.C. Wheare contends that federation is a lasting union, that experiences of existing federations do not indicate that they tend at gradual transformation into unitary states [31].

The right to secession is connected with the question of durability of both federation and confederation. In western science, the right to secede is almost universally viewed as contrary with the nature of the federal state [32].

3. Emphasis is also laid on differences in methods of functioning of authorities in a federation and confederation. It is contended in general that in a confederation union authority is exercised solely through the

[30] K. Stengel, o. c., p. 707 and fol.

[31] K. C. Wheare, *Federal Government*, London 1963, p. 238.

[32] On the strength of this C. Durand holds that in the light of literal interpretation of the USSR Constitution, the Soviet Union should be recognized a confederation; C. Durand, o.c., p. 179.

intermediary of the authorities of member states [33]. In practice however, this is not so, the confederation also exercises direct authority in respect of subjects, or citizens, of member states [34]. This is no exception, as testified by the example of Germany and Switzerland [35].

4. As regards participation of member states in forming a common federal will, or, putting it in a different way, in decision-making and voting acts of law by federal organs, no uniform concept exists in western science. Particularly serious differences exist as to the form this participation should take [36]. Many scholars believe that participation of member states in the exercise of federal authority is not essential, among them O. Gierke, M. Huber, H. Naviasky, G. Meyer, F. Fleiner, J. Hatschek, G. Jellinek, J. B. Westerkamp, H. Kelsen, J. Kunz and A. Verdross [37]. G. Jellinek [38], J. Hatschek [39], L. Le Fur [40] and others stressed that this participation can take place in a confederation also, not only in a federal state.

5. Some scholars see the difference between federation and confederation in the nature of their structure [41].

6. Finally, some scholars speak of differences of purpose. S. Brie stresses that the aim of confederation is limited to some aspects of state activity only, consequently, a confederation has only a specified scope of competences. The aim of federation on the other hand is identical with the aim of the state in general [42]. K. Stengel contends that federation and confederation follow aims independent of the aims followed by respective member states [43].

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[33] E. A. Freeman, *History of Federal Government* ..., I, London 1863; P. Philimore, *Commentaries upon international Law*, I. London 1871, § 101, 118.

[34] S. Brie, *Der Bundesstaat*, I, Leipzig 1874, p. 90; J. Ebers, *Die Lehre vom Staatenbunde*, Wroclaw 1910, p. 295.

[35] In Switzerland, the *Tagsatzung* contains a series of rules which apply directly to citizens. In the German Confederation — Imperal authority extended over the population of different territories.

[36] P. Laband, *Deutsches Staatsrecht*, I, p. 57; G. Jellinek, *Recht des modernen Staates*, 2 Aufl., Berlin 1900, p. 754; O. Gierke, „Schmollers Jahrbuch" 1883, Bd. 7, p. 1170.

[37] M. Usteri, *Theorie des Bundesstaates; Ein Beitrag zur Allgemeinen Staatslehre ausgearbeitet am Beispiel der Schweizerischen Eidgenossenschaft*, Zürich 1954, p. 351 - 354.

[38] G. Jellinek, *Recht des modernen* ..., p. 754.

[39] J. Hatschek, *Allgemeine Staatslehre* ..., III, p. 43.

[40] L. Le Fur, *L'Etat fédéral et confédération d'Etats*, Paris 1896, p. 532.

[41] J. B. Westerkamp holds that neither the organisational structure of federal authority nor functions of the federal government bear any greater significance, whereas a significant role is plaid by guarantees regarding changes of the federal constitution and independence of the federation from member states, which distinguishes federation from confederation; J. B. Westerkamp, o. c., p. 458 and fol.

[42] S. Brie, *Der Bundesstaat* ..., p. 99.

[43] K. Stengel, o.c., p. 707 and fol.

Speaking of the relation of federation to confederation, attention must be drawn to the following clearly divergent views: 1) an evident difference exists between federation and confederation (G. Jellinek); 2) the difference is merely formal (J. Madison)[44]; 3) the difference cannot be clearly demonstrated, since elements proper to a confederation may appear in a federation and vice versa[45]. Madison gave the following characteristics of the American Constitution: "the proposed constitution ... is in strictness neither a national nor a federal constitution but a composition of both"[46]. Madison also stressed that as regards the method of its voting and ratification, the constitution, as well as the structure of the Senate, in principle was confederal, whereas the United States, as regards the source of government powers, army organisation and law enforcement, is a federal state[47]. In this formulation, "national" is synonymous with federal state, and "federal" is synonymous with confederation. The German Reich was also a complex state. The political system of the German Empire contained elements of both federation (the *Reichstag*, the judicature) and confederation (*Bundesrat*). States which formed part of the Empire preserved certain limited rights as regards legislation and military administration, whereas exercise of Imperial powers was transfered to a large extent over to regional governments. Some states preserved certain privileges, of which they could not be deprived without their consent. According to J. W. Garner, these characteristics gave the German Empire a confederal nature, to a greater extent than was the case in other federations[48].

It is understandable that in the process of formation of a political community of states, of transition from a form of loose international cooperation over to confederation and subsequently to a federal state, superposition of various elements is inevitable. This is particularly evident in the initial stage of the transition process, as might have been observed during the period of evolution of relations between Soviet republics, prior to constitution of the USSR in 1922. The dispute waged in Soviet literature on the legal nature of these relations indicates that it would be impossible to define clearly, whether prior to establishment of the USSR they represented a federation or confederation. Before assuming a specific legal form, these relations comprised elements of both confederation and federation, even those of a unitary state[49].

[44] *The Federalist Papers* No. 40.

[45] J. Dubs, *Das Öffentliche Recht der Schweizerischen Eidgenossenschaft*, II Teil, 1878, p. 5.

[46] Hamilton, Madison, Jay, *The Federalist Papers*, New York 1961, p. 246.

[47] *The Federalist Papers* No. 39.

[48] J. W. Garner, *Introduction to Political Science*, New York 1910, p. 152.

[49] W. Suchecki, *Geneza federalizmu radzieckiego* (Origins of Soviet Federalism), Warszawa 1961; W. Suchecki, *Controversial Problems in Research on Soviet Federalism*, Geneva 1964, p. 3.

In the light of comparison between historically existing federations and confederations and the doctrine of federalism, it may be affirmed that:

1) Differences between federation and confederation are both of quality and quantity. From the point of view of state morphology, it is necessary to distinguish between the nature of confederation, based on international law both as regards origin (formed on the strength of agreement) and legal character (union of states which in specific conditions may be a subject of international law but cannot be a state), and the nature of federation which has all the characteristics of a state and in principle is based on constitution;

2) Viewing political integration as a complex process does not exclude the possibility that transformation of confederation into federation may proceed at an unequal varied rate in different sectors. Gradual changes of quality cause the nature of a relationship based on an agreement concluded on the strength of international law to change gradually, due to the fact that this relationship becomes regulated in an increasing extent by internal legislation. Simultaneously, the position of organs of the confederation consolidates (a process noted during the evolution of Soviet federal state between 1917 and 1923, as well as earlier, during evolution of western federations);

3) The problem of the relationship between confederation and federation connects up with the question of relationship of international to national law. The process of gradual transformation of a confederation into federation indicates that the distinction between confederation (a relationship based on international law) and federation (an act of national law) is not always perceptible in practice;

1. It has long been a widespread opinion in science that by nature a federal state comprises an element of "unitarism". It is stressed in support of this thesis, that externally a federation acts as a uniform subject, has uniform citizenship, exercises direct authority in respect of individuals within a uniform territory. Though individuals belong to various local societies, they constitute a "single national body" (*un corps national unique*). A federal government governs individuals, it is not a government over governments. Respective member states participate in forming federal organisms which represent the uniform will of the federation [50]. The federal nature is manifest in participation of member states in federal decision-making, and in their activity conducted within the scope of competences reserved to them. According to G. Burdeau, this dualism results from the nature of federal authority as such [51]. The complex

[50] G. Burdeau, Traité..., v. 2. p. 445.

[51] Ibidem, „Si les Etats n'étaient pas présents dans la substance du pouvoir fédéral, leurs compétences propres seraient impuissantes à fonder le caractère fédératif de l'Etat".

nature of the federal state is due not merely to the fact that federal and regional authorities coexist alongside of each other, but above all because federal authority itself is of a complex nature [52].

F. Fleiner contends that federalism and unitarism are elements tied together organically within the federal state [53]. These concepts surpass the sphere of national law, acquire a political significance, express specific political trends. Viewed from this angle, unitarism should be understood as political trends aimed at consolidating the federal state and its evolution in the direction of a unitary state — at the cost of member states, federalism on the other hand, acts in defence of autonomy of member states, opposes trends of federal authorities to enlarge the scope of their competences [54].

Such contrasting of unitarism and federalism does not take account of the fact that the essence of federalism consists primarily of the trend at compromise between interests of the whole and regional interests reflected in territorial distinctness. Federalism aims to assure autonomy to territorial units, as well as efficient functioning of federal authorities, which in certain circumstances necessitates reinforcement of federal authority — for example, to maintain the principle of unity of action by member states. Such cases are noted primarily in the stage of consolidation of the federal state. Consequently, the tendency to extend the competences of federal authorities will not always be synonymous with unitarism. In order to determine when such extension of competences leads to consolidation of federalism and when it signifies transformation into a unitary state, more detailed analysis will be necessary of the constitution and constitutional practice of federal states, as well as research in political sociology.

2. Though existence of elements of unitarism in a federal state is generally recognized fact [55], it is by no means a simple matter to determine the degree in which the two elements, namely the federal and unitarian element, are actually present. The view prevails that federation has dominance over member states. The specific role of the federal state is manifest in that it may determine its own competences as well as the competences of member states. Federal organs are competent to transform the federation into an unitary state, particularly when the constitution does not provide the right of secession, or does not require changes and modifications of the constitution to be ratified by a qualified majority of regional legislatures. In some states, the federal system was

[52] Ibidem, v. 2, p. 446; idem, *Droit constitutionnel et institutions politiques*, Paris 1963, p. 51 and fol.

[53] F. Fleiner, *Unitarismus und Föderalismus in der Schweiz und in den Vereinigten Staaten von Amerika*, Jena 1931, p. 4.

[54] Ibidem, p. 5.

[55] Though various understanding is given to the relationship between federalism and unitarism which occurs in a federal state.

abolished by act of central authority. Occasionally, such transformations are carried out in accordance with rules of the federal constitution, in other circumstances they may be the consequence of political crisis (*coup d'état*, civil war). Introduction of the concept „unitary federal state" to the theory of federalism, reflected this tendency [56].

3. Many writers connect federalism with the question of decentralisation. L. Jolly saw federalism as the sole form of decentralisation which is provided lasting foundations by transfer of local administration over to political associations independent of central authority [57]. According to M. Mouskhelichvili, the difference between a federal and unitary state can be reduced to the degree and form of decentralisation [58]. The connection between federalism and decentralisation was also stressed by L. Duguit [59], who opposed mixing up these two concepts [60]. G. Gurvitch defined federalism as the highest stage of decentralisation [61], though he clearly opposed the concept of identifying federalism with decentralisation [62]. According to Mouskhelichvili, in a federal state, decentralisation exists in a higher and more complex degree than in a unitary state. Three types of decentralisation exist: 1) administrative decentralisation (communal local-government); 2) decentralisation of provinces (autonomous province, territory, *land*); 3) federal decentralisation (member state). No substantial differences exist between these three types of decentralisation, since they are all subject to the legal order existing in the state, the only differences are of quantity. From the juridical point of view, their existence follows from this order [63].

4. Special difficulties appear when it is necessary to define the legal nature of a concrete state. According to Burdeau, lack of a clear criterion makes it difficult to determine whether a given state is a federal or a strongly decentralised unitary state [64]. This difficulty was also stressed by C. J. Friedrich [65] and A. Hanson [66]. Contrary to M. Duverger [67],

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[56] K. Hesse, o.c., p. 32.

[57] L. Jolly, *Fédération — seule forme de la décentralisation dans les démocraties*, 1866, quoted after A. Yashtchenko, *Tieoriya federalizma*, Yuriev 1912, p. 463.

[58] M. Mouskhelichvili, o.c., p. 270.

[59] L. Duguit, *L'Etat*, II, Paris 1903, p. 754 and fol.

[60] L. Duguit, *Traité de droit constitutionnel*, v. 3, Paris 1923, p. 66 and fol.

[61] G. Gurwitch, *K voprosu o federalizmie*, „Revolucya Prava" 1928, No. 3, p. 26.

[62] Ibidem, p. 19.

[63] M. Mouskhelichvili, o.c., p. 216.

[64] G. Burdeau, *Traité...*, v. 2, p. 451.

[65] C. J. Friedrich, *Constitutional Government and Democracy. Theory and Practice in Europe and America*, New York, London 1950, p. 190.

[66] A. Hanson, *Decentralisation*, p. 2 paper submitted at IPSA Round Table Conference in Oxford, September 1963.

[67] M. Duverger, o.c., p. 74.

Burdeau contends that a difference of quality (*différence de nature*) exists between federalism and decentralisation. This point of view was advanced earlier by M. Hauriou [68], and H. Berthelémy [69]. According to Hauriou, administrative decentralisation must not be confused with political decentralisation or federalism [70]. In the event however, of a state allowing excessive decentralisation, such a process may cause emergence of federalism [71].

5. Viewing federalism as the opposite of a centralised state, as a rule leads to identification of federalism with decentralisation. This tendency may be noted in works of writers who though they actually oppose federalism to unitarism, in point of fact identify federalism with decentralisation [72], with every form of political pluralism. According to this point of view, political relations in a feudal state would also be of federal nature [73].

Given such broad understanding of the term "federalism", the question inevitably arises whether the federal system means that the principle of federalism penetrates down to the lowest rungs of political life, comprising various forms of local government, or merely extends to the sphere of political relations in which authorities of subject states of federation participate (cantons in Switzerland for example, or states in the USA). It would seem that the factor decisive of development trends in federalism, is exclusively the method in which division of competences between federal and regional organs is carried out, whereas the process of centralisation or decentralisation of local government has no direct influence on the federal system, or on the rights and duties of subjects of federation. A similar problem arises when subjects of federation are themselves federations.

IV. Viewed from the political angle, division of competences in a federal state reflects either predominance of supporters of centralisation or that of supporters of parochial interests. Occasionally, it may also reflect temporary equilibrium between these opposite tendencies. In certain circumstances, division of competences may be carried out without the participation of member states. In such case, central organs assign a specific degree of autonomy to component parts as a means of countering excentric trends, particularly strong when a homogeneous national, cul-

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[68] M. Hauriou, *Etude sur la décentralisation*, Paris 1892, p. 4.

[69] H. Berthélemy, *Traité élémentaire de droit administratif*, Paris 1920, p. 103.

[70] M. Hauriou, *Precis de droit administratif et de droit public*, Paris 1921, p. 109 - 110.

[71] M. Hauriou, *Etude* ..., p. 4.

[72] F. W. Jerusalem, *Die Staatsidee des Föderalismus*, Tübingen 1949, p. 5.

[73] Ibidem, p. 10.

tural or religious group with possibilities of exercising strong influence exists in a neighbouring state. The central authority however does not always have sufficient power to enforce a division of competences advantageous to itself. In such case, two foctors participate in the division: the federation and member states. At a given stage, both these factors may be mutually subordinate to each other. Such a system of relations, similar to juridical relations in a confederacy, lacks characteristics of durability.

The fact that no general model of dividing competences in a federal state exists, is due to various political and historical factors, juridical concepts, as well as requirements of legislative technique. Division of competences is subject to continuous change and modification. In some federal states no obstacles exist to prevent the government extending its competences at will, even transforming the federal state into a unitary one by legal methods [74].

It is possible however, to establish certain general principles of dividing competences which as a rule exist in every federal state. In practice, division of competences envisaged by the constitution does not always coincide with reality, due either to intentional camouflage on the part of drafters of the constitution of the given federal state, or to legislation lagging behind changing social conditions. As regards legislative technique, the following possibilities may be distinquished:

1) The constitution specifies the competences of federal organs in detail (e.g. the Constitution of the Socialist Federal Republic of Yugoslavia of 1963 and 1974). Detailed listing of rights and duties of respective organs is intended to prevent disputes on competences, and conflicts on such questions between federal and regional authorities. Excessively detailed regulations however might result in the federal constitution or other federal legislative acts lagging behind changing reality, or alternatively, necessitate introduction of frequent changes and modifications in the federal constitution;

2) The constitution gives only a general specification of the competences of federal and regional organs, leaving a series of question for future settlement through amendments, or by way of interpretation by organs appointed to deal with such questions. Thanks to this method, changes introduced gradually in the constitution do not undermine the foundations of the federal constitution. In fact, a prima facie process of substantiation of constitutional laws occurs, rather than a process of reconstruction of its inner structure. A typical example is provided by the Federal Constitution of the United States voted on 17 September 1787, which, together with the Amendments, remains in force to this day. Repeated amendments and modifications to some extent break up the

[74] G. Jellinek, *Allgemeine Staatslehre*, 2nd ed. Wien 1905, p. 763; H. Nawiasky. *Der Bundesstaat als Rechtsbeariff*. Tübingen 1920. p. 233.

uniform structure of a constitution. There is increasing talk in the United States of the need of a new constitution better adapted to the present conditions in the country.

Repeated efforts were made in literature on the subject to classify "models of competence division". J. Kunz specified the following models: competences are exercised directly by the federal state, or through the intermediary of member states; legislative competences belong to the federal state only, whereas executive competences belong both to the federal state and member states; legislative and executive competences belong exclusively to member states, executive competences belong to the federal state and legislative competences to member states; this situation may arise if the federal state does not take advantage of its competences, when, in case of necessity, this competence is exercised by a member state (e.g., Art 9 of the German Constitution of 1919), or when determination of principles lies in the competence of the federal state [75].

W. H. Riker suggested the following types of relations between federal and state authorities: 1) functions are performed exclusively or almost exclusively by federal organs; 2) functions are performed predominantly by federal organs, although state organs play a significant secondary role; 3) functions are performed in a more or less equal scope by federal and state organs; 4) functions are exercised mainly by state organs, although federal play a significal secondary role; 5) functions are exercised exclusively or almost exclusively by state organs [76]. The above classification is based on quantitative criteria, so characteristic of the expanding sphere of competences which rival each other in the contemporary federal state. In this manner, Riker modifies the model established by J. Bryce as regards the United States, Bryce distinguished the following types of rights: 1) rights which belong exclusively to federal authorities; 2) rights which belong exclusively to the authorities of specific states; 3) rights which belong to both federal and state authorities; 4) rights which federal authorities may not exercise; 5) rights which specific states may not exercise [77].

As regards competences which as a rule belong to federal authorities, mention must be made of the following: 1) the right to represent the federation in international relations, to ratify and denounce treaties concluded with other states, to determine general principles of procedure in international relations when member states have the right to maintain diplomatic, consular and other relations with foreign countries; 2) matters of war and peace; 3) organisation of military forces and assuring the

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[75] J. Kunz, *Une nouvelle théorie de l'Etat fédéral*, in: „Revue de Droit International et Comparé", 1931, p. 142.

[76] W. H. Riker, *Federalism. Origin, Operation, Significance*, Boston, Toronto 1964, p. 82 - 83.

[77] J. Bryce, *The American Commonwealth*, New York 1909, v. 1, p. 314.

country's security; 4) acceptance of new members into the federation, expulsion of members, consenting to member states exercising the right to secession; 5) voting the state budget, receiving reports on budget fulfilment, determining the general economic plan (in federations whose economy is based on planning), levying taxes and determining the height of incomes; 6) regulating foreign trade (in systems which have monopoly over foreign trade, establishing import-export quotas); 7) administration of the currency and credits system, determining the system of weights and measures, management of federal banks; 8) legislation on federal citizenship and on rights and duties of foreign nationals; 9) federal transport and communications, federal road-building, etc.; 10) preservation of the environment.

The matters specified above are in the competence of federal authorities, irrespectively of economic system and political regime. They assure efficient functioning of a uniform state organism, while allowing a specific degree of freedom to regional authorities in the exercise of state authority.

The list of rights held by federal authorities grows steadily longer as state interference in the country's economic life, social affairs, etc., increases. A series of rights, proper to socialist federal states only, follow from the nature of socialist economy. Nationalisation of industry banks, means of transportation, land, natural resources, etc., imposes a series of complex tasks and duties on federal authorities in socialist states as regards planning, coordination and management. Naturally, this finds reflection in the competences held by federal authorities. Federal states which adopt only some elements of planned economy, form a separate group.

Division of competences between the federation and its respective parts may be carried out according to the following principles:

1) The constitution specifies competences which belong to federal organs of authority exclusively.

Specification of competences held by federal authorities allows to presume that matters unspecified in the constitution are in the competence of member states. To eliminate all doubts of interpretation, Amendment 10 of the American Constitution of 15 December 1791 declares that all rights which the Constitution does not delegate to the federation, or does not forbid to states, are reserved for states or the nation.

Art. 3 of the USSR Constitution of 31 January 1924, and Art. 15 of the USSR Constitution of 5 December 1936, declare that: "Sovereignty of Union Republics is limited solely by the scope of competences of federal organs specified in the constitution". This rule is omitted from the USSR Constitution of 1977.

2) The Constitution specifies matters in the exclusive competence of regional organs of authority, and those in the exclusive competence of

federal authorities. Unspecified matters are considered in the competence of federal authorities [78].

3) The constitution specifies and generally defines the exclusive competences of federal organs of authority and those of members of the federation. Specification of federal competences is not exhaustive, other unspecified questions may be in the federal competence. Art. 49 of the constitution of the Russian Socialist Federal Soviet Republic of 10 July 1918, lists the competences of federal organs, and art. 50 supplements this list with the statement that apart from matters specified in the constitution as belonging to the All-Russian Congress of Soviets and All-Russian Central Executive Committee of Soviets, all matters recognized within their competence by federal organs, are in their competence.

4) The constitution specifies federal competences, at the same time limiting them in respect of certain component parts of the federation (e.g. the Conctitution of the Federal Republic of Cameroun of 1 September 1961).

5) The constitution specifies matters in the exclusive competence of federal legislation, also matters in the competence of rival (parallel) legislation, and lastly, matters in the exclusive legislative competence of member states of the federation (Constitution of India of 1949, matters unspecified in this constitution are exclusively in the federal competence). On the other hand, the Constitution of Brazil of 18 April 1946 rules that states preserve all rights not granted to the federation and those of which they were not specifically deprived (art. 18 and 19).

The question of division of competences is closely connected with methods in which they are exercised. Federal constitutions provide various solutions as regards the state apparatus called upon to implement competences of the federation and its subjects.

a) The federal state has no administrative apparatus of its own and entrusts execution of its decisions to regional states (e.g. the German Reich under the Constitution of 1871, in principle, also under the Constitution of 1919). Regional administration may remain under the supervision of central administrative organs.

b) Within the scope of its competences, the federal state gives direct guidance to regional administrations through federal officials (e.g. the United States). The federal administration is completely distinct from state administrations.

c) The mixed system is based on the principle that in certain domains, the federal state acts through its own officials, and in others, relies on officials of member states (Austria, Switzerland, the USSR). As regards indirect administration, the federal state preserves the right of control

[78] Art. 91, 92 of the 1867 Statute of the Dominion of Canada; Constitution of the Union of South Africa (Art. 85); the Constitution of Venezuela of 11 April 1953 also recognizes presumed competences of federal organs (Art. 29).

and supervision, issues specific rules regarding the activity of authorities of member states which exercise functions entrusted to them by federal authority. In the USSR, the Council of Ministers coordinates and directs the activity of Union and Union-Republic ministries, Council of Ministers state committees, and other institutions subordinate to the Council of Ministers. Within the scope of administration and economy in the federal competence, the Council of Ministers of the USSR has the right to suspend resolutions and ordinances issued by governments of Union Republics and by republic councils of national economy (from 1957 till their abolishment), also to revoke instructions issued by USSR ministers. Federal ministries guide state administration within the scope of their competences either directly or through organs appointed by themselves, whereas Union-Republic ministries, as a rule, guide the administration subordinate to them through appropriate ministries of union republics. They administer directly establishments, according to a list confirmed by the Presidium of the Supreme Council of the USSR. As regards jurisdiction, as a rule no uniform principles exist in federal states. Between the system of jurisdiction exercised exclusively by federal courts (e.g. Austria), and jurisdiction in the USSR which is increasingly becoming the exclusive domain of union republics, there are several intermediate methods in existence. In some federal states, jurisdiction is exercised according to the principle that federal court judges apply federal principles, whereas state court judges apply principles of the given member state. Regional courts may apply federal regulations, and vice versa, federal courts may apply regulations of member states.

V. The right to secession is a question tied directly with the legal nature of the federation and its subjects. Arguments advanced by supporters of this right (supporters of the "confederal theory" in particular), and its opponents (primarily supporters of the "unitarist theory"), are of equal interest. The right to secede is also connected with the question of sovereignty. Consequently, attention should be drawn to the following questions: the right to secession as a constitutional principle; the right to secession as a subjective right derived from the fact that agreement on establishment of a federation is a voluntary act concluded between sovereign states, the right to secede being a guarantee of the voluntary nature of the federation; actual reasons for exercising the right to secession.

1) As a rule, western science is unanimous in crossing the right to secession of the list of rights of members of a federal state. According to G. Jellinek, there can be no question of the existence of a federal state where the right to secede can be deduced [79]. R. von Mohl [80] and

[79] G. Jellinek, *Die Lehre* ... p. 261.

[80] E. von Mohl, o.c., p. 11.

L. von Rönne [81] recognized the right of lands forming part of the German Reich to secede in the event of violation of the constitution, though they did not deny the Reich's statehood. Agreeing with the view generally accepted in western science that the right to secession cannot be reconciled with the nature of a federal state, J. Kunz, on the strength of art. 17 of the USSR constitution of 1936, which speaks of the union republics freedom to secede from the Union, drew the erroneous conclusion that the USSR is a confederation [82].

2) Many people find that the right to secession is a logical consequence of the thesis that the federal constitution is a specific agreement between states which preserve their attribute of sovereignty. Given this assumption, only a unitary state could exist, or a confederation, the subjects of which, by reason of their legal status, would dispose of the right to secession.

The right to secession, particularly in the version advanced by J. C. Calhoun, reflected extreme reactionary trends, since it was primarily intended to serve the interests of plantation owners in the South, whose aim was to keep the Negro population in slavery. It was not recognized by the Federal Constitution or Federal Court rulings. Not only did A. Hamilton, J. Jay, J. Madison and many other writers reject the concept according to which the right to secesion is derived from natural right, but declared it to be high treason. The right to secession was championed by the Southern States, up to their defeat in the Civil War of 1861 - 1865.

3) Recognized by the Soviet federation, the right to secession plays an entirely different role in that state, for a number of reasons. Contrary to the American Federation, in revolutionary Russia, the right to secession was specified in the Declaration on the formation of the USSR, which proclaimed that "every republic is guaranteed the right to free secession from the Union". This same principle was reaffirmed in art. 26 of the Agreement on establishment of the USSR, and subsequently in art. 4 of the USSR Constitution of 1924 (complemented in art. 6 of the Constitution by the right of veto on abrogation or change of the constitutional rule on the right to secession granted to union republics). It was included in the text of the 1936 Constitution, in constitutions of union republics, and subsequently in the 1977 Constitution (art. 72).

In a socialist federation, the right to secession derives, from the right of nations to self-determination. This right means that every nation is entitled to determine its own future: consequently, every nation has the right to decide the nature of its juridical relations with other nations.

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[81] L. von Rönne, *Staatsrecht des deutschen Reiches*, 2 Aufl. I, p. 47, quoted after Jellinek, o.c., p. 261

[82] C. Durand, o.c., p. 179.

S. Krylov [83] defined the right to secession as the supreme manifestation of a state's sovereignty. But this right cannot be in my opinion exercised on the strength of a unilateral decision which takes account exclusively of the interest of the given member state of the Soviet federation, as distinct from the process of inner consolidation of socialist society.

VI. The confederalist theory, unitarist theory, theory of dual federalism, the synthetic theory, theory of cooperative federalism, and various types of American federalism formed on grounds of neoliberalism, are among the best known theories of federalism. Their connections with practice are not identical: the synthetic theory is an extreme example of theoretical speculation, whereas concepts of federalism noted in the United States after World War II. are extreme manifestations of purely pragmatic approach.

1. Similarly to other theories of federalism, the theory which affirms that only a unitary state or a confederation of states exist, did not spring from theoretical reflections, but reflects specific political interests. This theory developed primarily in the United States of North America and in Germany. Its starting point (as regards theoretical principles), was acceptance of the axiom that sovereignty is indivisible. Known as the "confederalist" theory, occasionally as "separatist theory", it links negation of the federal state with juridical nature of union between states. The two leading representatives of this doctrine, J. C. Calhoun in the United States, and M. Seydel in Germany, contended that in fact a federal state is a confederacy. This was supposed to be indicated by the fact that union is established on the strength of an agreement which does not cease to be binding at a later period. A federal constitution does not have the nature of a fundamental law, but that of an agreement concluded on the strength of international law. Federal authority only holds rights granted it by member states [84]. Consequently, sovereignty is solely the attribute of members of the federation, which have the right to levy taxes and impose tribute, the right to abrogate federal laws which exceed the competences granted federal authorities by member states, or encroach upon the competences of those states, and the right to secession. These concepts were given broad justification by Calhoun [85], also by D. Madison in a speech in the Legislative Assembly of Virginia State. Both Northern and Southern states demanded the right of nullification [86]. The confederalist theory reflected specific parochial

[83] S. B. Krylov, *Istoritcheskyi process razvitiya sovietskogo federalizma*, „Sovietskoye Pravo" 1924, No. 5, p. 58.

[84] J. C. Calhoun, *A Discourse on the Constitution and Government of the United States*, Works, v. 1, p. 276, New York 1853, p. 111 - 406.

[85] Ibidem, v. 6, p. 168; F. Bancroft, *Calhoun and the South Carolina Nullification Movement*, Baltimore 1928, p. 144.

[86] J. C. Calhoun, o.c., p. 302.

trends and opposed reinforcement of federal authority. Concrete political and economic reasons exercised some influence on choice of argumentation, also on the scope of influence exercised by this doctrine in the United States and Germany. The theory found support in other countries also.

In North America, it reflected the mounting conflict between agricultural states which had interest in retaining cheap slave labour, and industrial states interested in abolishment of slavery, which, by permitting migration of the Negro population, would provide abundant labour needed by rapidly expanding industries.

During the dispute on customs tariffs between South Carolina and the Union, J. C. Calhoun firmly insisted on the right of nullification. Such uncompromising stand was not shared by all Southern states. The State of Mississipi for example, proclaimed the nullification theory a heresy threatening the very existence of the Union. North Carolina warned that Calhoun's theory might lead to dissolution of the Union. Alabama declared the theory dangerous in practice [87].

South Carolina made use of the right to secession on 20 December 1860. The example was followed by other states which formed the Southern Confederacy. In that case, the right to secession was used for the most retrogressive ends [88].

The outcome of the War of Secession decided the future of the American federation. The defeat of the South left no doubt as to the concrete nature of the right to secession. The Federal Court confirmed the principle of inviolability of the Union, ruling that it is "an undestructible union composed of undestructible states" [89]. The authors of the Federal Constitution made no mention of the right to secession. The circumstances in which it was voted permit the surmise however, that following setbacks of previous efforts at confederacy which paralysed the activity of Union authorities, the tendency to form a maximum centralised lasting federal government must have been sufficiently strong to prevent any thought of the possibility of breaking the Union up through secession. History demonstrated that in conditions of the American federation, use of the right to secession would entail practical disintegration of the Union [90]. In fact, the cost of preserving unity proved very high [91].

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[87] F. Bancroft, o.c., p. 144.

[88] D. W. Brogan, *American Aspects*, New York and Evanston 1949, p. 34.

[89] Texas v. White 7, Wallance 700 (1869).

[90] D. W. Brogan, o.c., p. 33.

[91] Civil War casualties amounted to, on the North side: three hundred and sixty thousand killed, two hundred and seventy five thousand wounded; on the Southern side: two hundred and fifty thousand killed, the number of wounded was not specified: C. A. and M. R. Beard, *Rozwój cywilizacji amerykańskiej* (The Rise of American Civilisation), Warsaw 1961, v. 2, p. 82.

In Germany, M. Seydel was the leading supporter of the confederalist theory [92]. Seydel endeavoured to prove that the Reich, the United States from 1787, and Switzerland from 1848, were merely confederations [93]. Criticising the theory of divided sovereignty, he endeavoured to demonstrate that the concept of federal state is based on erroneous principles. This view did not find support, the reason being that it reflected the actual state of affairs in a small degree only [94], though on the other hand, it was an expression of protest by countries forming part of the Reich, Bavaria in particular, against Russia's aim at hegemony.

2. The unitarist (centralistic) concept was reflected in the opinion of jurists of many countries.

In Germany, the road to this concept was paved i.a. by P. Laband [95], G. Jellinek [96], P. Zorn [97], G. Meyer [98], and H. Rosin [99]. Laband contended that in a federation, central authority stands above the authorities of member states, consequently, it is the sovereign authority. Member states on the other hand, being subordinate to the sovereign authority, are not themselves sovereign, though they are autonomous because of certain legislative competences [100]. According to Jellinek, only the federation is sovereign, member states are not [101].

The leading supporters of the unitarist theory in the United States included W. Willoughby [102], J. Mattern [103] and E. S. Corwin [104].

[92] M. Seydel, *Kommentar zur Verfassungsurkunde für das deutsche Reich*, Freiburg u. Leipzig 1873; idem, *Die neusten Gestaltungen des Bundesstaatsbegriffs*, „Hirth's Annalen des Deutschen Reiches" 1876, p. 641 and fol.; idem, *Der Bundesstaatsbegriff*, „Zeitschrift für die gesammte Staatswissenschaft", Yearbook 28, Tübingen 1872, p. 185 and fol.; *Staatswissenschaftliche und politische Abhandlungen*, 1893.

[93] M. Seydel, *Der Bundesstaatsbegriff*, p. 231.

[94] H. Nawiasky, o.c., p. 7.

[95] P. Laband, *Das Staatsrecht des Deutschen Reiches*, 4 Aufl. I - IV, Freiburg 1901.

[96] G. Jellinek, *Die Lehre* ...; idem, *Das Recht des modernen* ...; idem, *Allgemeine Staatslehre*, 1896.

[97] P. Zorn, *Staatsrecht des Deutschen Reiches I*, I Aufl. 1880; II Aufl. 1894, „Zeitschrift für Staatswissenschaften" 1831, p. 292 and fol.; *Neue Beiträge zur Lehre vom Bundesstaat*, „Hirth's Annalen" 1884, p. 453 and fol.

[98] G. Meyer, *Grundzüge des Norddeutschen Bundesrechts*, 1868; *Staatsrechtliche Eröterungen*, 1872; *Lehrbuch des Deutschen Staatsrechts*, 1878, „Hirth's Annalen" 1876, p. 656.

[99] A. Rosin, *Souveränität, Staat, Gemeinde, Selbstverwaltung*, „Hirth's Annalen" 1883, p. 291.

[100] P. Laband, o.c. 4th ed. p. 100.

[101] G. Jellinek, *Allgemeine Staatslehre*, p. 751.

[102] W. Willoughby, *The Fundamental Concepts of Public Law*, New York 1924.

[103] J. Mattern, *Concepts of State, Sovereignty and International Law*, Baltimore 1928.

[104] E. S. Corwin, *National Supremacy. Treaty Powers vs State Power*, Gloucester Mass, 1965, p. 321.

The following arguments were advanced in support of the thesis that member states of a federation are not sovereign.

The supremacy clause in Art. VI of the United States Constitution is the corner stone of federal authority. This clause specifies that acts of law voted by member states, cede place to federal acts of law and treaties concluded by federal authorities. States were never endowed with the attribute of sovereignty [105]. Prior to the Declaration of Independence, the states were British Crown Colonies, following the Declaration, sovereignty passed to the Union. The colonies united prior to the Declaration, which they voted and proclaimed in common. Even during the Confederacy, existing restrictions of authority were irreconcilable with real sovereignty [106]. Three years before introduction of the Federal Constitution, J. Jay, Secretary of State at the time, formulated the principle that the right to declare war, conclude peace and conclude treaties, belongs to the federal government, or to persons to whom the federal authority delegates specific rights. A treaty ratified and announced by Congress, comes into force immediately, does not require agreement or "fiat" from state legislatures [107]. The Declaration of Independence was an act voted jointly, not individually (Hamilton).

The doctrine of sovereignty of federal authority and supremacy of constitutional acts by the general government also signifies that state courts of law are obligated to apply federal law as a part of state law [108]. In the case of Chisholm v. Georgia, the Federal Court ruling rejected the claim of state sovereignty. The "unitarist" theory found broad reflection in pre-revolutionary Russian literature [109], particularly in works by M. Gorenberg, F. Kokoshkin, S. Korf, N. Korkunov, S. Kotlarevsky, B. Nolde, N. Palienko and M. Pergament.

The "unitarist" direction was also represented by M. Borel [110] and L. Le Fur [111]. Reluctant to erase the difference between a federal and unitary state, they stressed a characteristic of the federal state, essential in their opinion: namely participation of component parts in shaping the sovereign will of the federal state [112]. According to Le Fur, what distinguishes component parts of a unitary state from the collective which forms part of a federal state, is the fact that in addition to exercising

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[105] J. Madison, o.c., E. S. Corwin, *National* ..., p. 31.

[106] B. Schwartz, o.c., p. 33.

[107] E. S. Corwin, *National* ..., p. 25.

[108] Ibidem, p. 26.

[109] H. Gorenberg, *Teoriya soyuznogo gosudarstva v trudakh publicystov Giermanii*, St. Petersburg 1891, p. 212 and fol.

[110] E. Borel, *Etude sur la souveraineté et l'Etat fédératif*, 1886, p. 167 and fol.

[111] L. Le Fur, o.c., p. 493. The influence exercised by P. Zorn's concept on „unitarist" concepts advanced by Le Fur, E. Borel and other French writers is unquestionable; M. Mouskhelichvili, o.c., p. 161.

[112] E. Borel, o.c., p. 177.

sovereignty jointly with central authority, as members of a federal state they also participate in the "very substance of sovereignty" (*à la substance même de la souveraineté*) [113]. This participation is rendered possible thanks to special organisation of public authority which makes it possible to distinguish a faderal state from a unitary one [114]. Existence of a representation of member states in addition to the representation of the whole nation, is essential to existence of a federal state [115].

3. The theory of divisibility of sovereignty in a federal state reflects to some extent, the transient equilibrium between forces of local parochialism and forces supporting maximum reinforcement of federal authority. In a situation when supporters of "unitarism" aim to weaken the autonomy of member states, and supporters of separatism seek ways and means of weakening central authority, such a theory can suit either side, since it conceals the true nature of both those trends. However, the social function of this theory is transient, the fact that it is unadapted to the existing system of political relations, is soon made apparent.

This theory was first developed in the United States, undoubtedly under the influence of the author of "The Spirit of the Laws", a fact indicated by authors of "The Federalist Papers" [116], and reflects one of the trends prevalent during the evolution of American federalism. When the United States was first formed, this theory became the official doctrine, changing accent as forces of local parochialism grew weaker and federal authority consolidated.

In the United States, the theory was developed primarily in publications by J. Madison, A. Hamilton and J. Jay [117].

At one time, Federal Court rulings helped to consolidate the theory of divisible sovereignty in practice. The concept dominant in the Federal Court since 1837, was based on the following principles [118]: a) the federal constitution is based on the same foundations as state constitutions, b) sovereignty is divided between federal and state authorities; both function on the strength of a common territory and citizenship implementing specific aims, have their own apparatus enabling them to exercise functions imposed on them, preserving autonomy and excluding

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[113] L. Le Fur, o.c., p. 596. This distinction is opposed by L. Duguit, *Traité* v. 1, p. 475 - 476; M. Mouskhelichvili, o.c., p. 163.

[114] Le Fur, o.c., p. 607.

[115] Ibidem, p. 611.

[116] J. Madison, No 39; A. Yashtchenko, o.c., p. 268; A. A. Zhilin, *Tieoriya soyuznogo gosudarstva, razbor glavnieyshykh napravlenyi v utchenyi o soyuznom gosudarstwie i opytie postroyenia yevo yuriditcheskoy konstrukcyi*, Kiev 1912; G. W. Aleksandrenko, *Burzhuaznyi federalizm (krititchesky analiz burzhuaznykh federacyi i burzhuaznykh tieoryi federalizma)*, Kiev 1962, p. 292.

[117] A. Hamilton, J. Madison, J. Jay, o.c., p. 201.

[118] Its leading supporter was Judge R. Taney, President of the Federal Court between 1836 and 1864.

mutual subordination, c) the constitution recognizes coexistence of two centres of authority, namely federal and state authority, viewing them as "twin depositaries of sovereignty", d) when dividing competences, it is accepted that the federal government is sovereign as regards internal relations (opinion advanced by Judge Irdell as votum separatum in the case of Chisholm vs Georgia).

In Germany, the concept of divisibility of sovereignty in a federal state won support both among the liberal bourgeoisie [119] and reactionary landowners [120] interested in preserving parochial distinctness [121]. The principles of this theory were formulated primarily by G. Waitz under the influence of A. de Tocqueville's doctrine. Waitz advanced his views at a time when Germany was still a confederacy [122]. His remarks refered to juridical policy rather than existing laws [123].

Many writers stressed the divergence between the concept advanced by Waitz and the "needs of national life", and explained gradual vanishment of its significance by this divergence.

In pre-revolutionary Russian literature, de Tocqueville's and Waitz's theory met with criticism mainly from supporters of the "unitarist" concept, i.a. A. Zhilin [124] and N. Palienko [125]. It was also criticised by A. Yashtchenko, who supported the synthetic theory of federalism [126]. Efforts were made to apply certain principles of the theory of divided sovereignty to a federal state in the first years of Soviet power, but without notable success. Such principles were reflected in views advanced by D. Magierovsky [127], also in some official statements [128].

The concept of divided sovereignty did not find recognition in Soviet theory of federalism. Some Soviet writers refuted its theoretical principles and stressed its negative practical consequences.

It should be stressed however, that divisibility of sovereignty does not mean opposing federal sovereignty to sovereignty of union republics (or sovereignty of a specific republic) either in an ontological or funct-

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[119] Its leading supporter was R. von Mohl.

[120] H. Treitschke, *Historische und politische Aufsätze*, 6 Aufl. Leipzig.

[121] G. W. Aleksandrenko, o.c.

[122] See his article on the nature of the union state in: „Kieler Allgemeine Monatsschrift für Wissenschaft und Literatur", 1853, p. 494 - 530; G. Waitz, *Grundzüge der Politik nebst einzelnen Ausführungen*, 1862, p. 153 - 218.

[123] G. Waitz, o.c., p. 164.

[124] A. A. Zhilin, o.c.

[125] N. J. Palienko, *Suverenitiet*, Yaroslave 1903, p. 481 - 512.
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[126] A. Yashtchenko, o.c., p. 267 - 279.

[127] D. A. Magierovsky, *Soyuz Sovietskikh Socyalistitcheskikh Respublik*, Moscow 1923; idem, *Konstitucya proletarskoy diktatury*, „Sovietskoye Pravo", 1927, No 6, p. 7 and fol.

[128] E.g. in J. Stalin's report at the X Congress of the Soviets published in „Izviestia" on 27 December 1922.

ional sense. In point of fact, sovereignty belongs both to the Union and union republics, and since "nemo plus iuris ad alium transferre potest quam ipse habet", the political sovereign divided the exercise of sovereignty in a manner which would assure republics a specific degree of autonomy, and at the same time, assure unity of action to the USSR in internal and international relations.

4. One of the concepts of federalism which deserves specification, is the theory which views relations between the central state and member states not as a relationship between the whole and component parts, but between equally important elements which form a specific whole. According to this theory, neither the federation nor its members are states in the full sense of the term, only the whole taken together (namely the federation and its subjects) constitutes a state [129].

5. The theory of cooperative federalism is concerned primarily with division of competences and concrete methods of cooperation between federal and regional organs, not so much with questions of sovereignty. According to this theory, an increasingly important role is played by spheres in which, instead of strict division of competences, an increasingly harmonious cooperation exists between federal and regional authorities, also between different organs of regional authority.

Cooperative federalism is said to be a modified version of the principles of dual federalism, in which clear division into spheres of competence between federal and regional organs of authority is the characteristic feature. Cooperative federalism, or neofederalism as some prefer to call it, aims to break with this dichotomy, but preserves the dominant role of federal organs of authority. Regional authorities which exist alongside of federal authorities are not in opposition, on the contrary, they are meant to cooperate with federal authorities.

The concept of a federal system based on cooperation was not unknown to some authors of the American Constitution [130]. Some interpreted the concept of dual federalism in this spirit. According to E. S. Corwin, the characteristics of the dual form of authority in the United States are as follows: 1) union of several autonomous political units, or "states", for common purposes; 2) division of legislative authority between the general government and „states"; 3) as a rule, direct influence exercised both by federal and state authorities within their established objective scope, as regards persons and property within the bounds of territorial jurisdiction; 4) a federal executive and judicature, as well as state executives and judicatures, assuring implementation of law; 5) as regards questioned "state" rights, supremacy of the

[129] W. Suchecki, *Teoria federalizmu* (Theory of Federalism), Warsaw 1968, p. 183 and fol.

[130] E. S. Corwin, *Court over Constitution. A Study of Judicial Review as an Instrument of Popular Government*, Gloucester 1957, 1st ed. 1938, p. 130 - 131.

federal government within the competences granted to it; 6) dual citizenship [131].

The theory of cooperative federalism developed primarily in the United States, Canada and Australia [132]. This theory reflects the aim to base cooperation between federal and regional organs of authority on the principle of division of functions. It accepts existence of unity of interests between the federation and its component parts as the basic principle. The role of leadership belongs to the federation which represents the general national interest, but member states participate in tasks of general national importance. This type of federalism is opposed to the old type which was characterised by polarised federal and state interests [133].

Gradual transformation of traditional into cooperative federalism is a process noted particularly after World War II. It found reflection in practical procedure and in federal constitutions which break with strict division of authority between the federation and its subjects [134].

Supporters of cooperative federalism refer to instances of cooperation between federal and regional organs of authority. Mention is made of conferences of the Dominion Health Council in Canada, the National Health and Medical Research Council in Australia [135], of aid the Union of Australia grants to its provinces, of conferences between Province Premiers convened ad casum [136].

Efforts at cooperation between different states on tasks of general national significance noted in the United States, represent another aspect of cooperative federalism. In 1921, Congress ratified an agreement between the states of New York and New Jersey on the "New York Region Port" project, to serve both states. The Port of New York Authority, a state organ formed specially for this purpose, also helped to carry out a series of other important communications projects, such

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[131] Ibidem, p. 131.

[132] G. W. Aleksandrenko, o.c., p. 320; W. Sadurski, *Federalizm kooperatywny w doktrynie i praktyce amerykańskiej* (Cooperative Federalism in American Doctrine and Practice), „Państwo i Prawo" 5/1974; A. Pułło, *Podział władzy między federacją i stanami w Stanach Zjednoczonych Ameryki* (Division of Power between Federal and State Authorities in the United States of North America), Warsaw 1977, p. 118 and fol., 147 and fol.

[133] G. W. Aleksandrenko, ibidem, p. 321.

[134] A. H. Birch, *Federalism, Finance and Social Legislation in Canada, Australia and the United States*, Oxford 1955, p. 304 - 305.

[135] K. C. Wheare, o.c., p. 171.

[136] The first such conference was convened in 1906; twelve were held up to 1950, nine of them between 1926 and 1950. Up to 1950 they were officially known as Provincial-Federal Conferences.

as the Hudson River tunnels, for example, bridges, ports, bus stations, lorry parks, etc.[137]

In 1933, seven Western States concluded an agreement on a land melioration project in the Colorado River Basin. In 1934, seven North Eastern States signed an agreement on a minimum wage for women and juveniles. In 1935, the States of Texas, Oklahoma, Kansas, New Mexico and Colorado, concluded an agreement on preservation of oil and gas deposits, known as the Interstate Oil Compact. Confirmed by Congress at the end of 1935, this agreement was renewed biennially till 1943, and since then on four-year basis. In 1964, this agreement included thirteen active members and three associate members [138]. The fact that California, leading oil producing State in the United States, did not ratify this agreement, did not diminish its importance. In 1935, on the initiative of the State of New Jersey, thirty six states formed the Council of States Government; this Council, endowed with broad competences, deals with questions of interstate cooperation.

The work of state representatives on this Council is guided by respective Committees for Interstate Cooperation, composed of members of the given state's legislature and representatives of its executive.

Interstate committees are entrusted with many tasks, for example the question of standardisation of legislation [139], education [140], etc. This group of agreements also includes the Western Regional Education Compact concluded in 1951, which concerns organisation of medical studies, joined by thirteen states. A series of other agreements have been concluded, aimed on the one hand at elimination of discrimination between states, and on the other hand, undertake joint tasks of interest to two or more states [141].

Agreements between states were intended to eliminate harmful interstate competition [142]. This horizontal nature of relations is modified by the increasingly inevitable interference on the part of federal authorities

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[137] E. S. Corwin, *The Constitution and What it Means Today, Princeton* — New Jersey 1947, p. 80.

[138] J. F. Ferguson, D. E. McHenry, *The American Federal Government*, New York 1965, p. 110.

[139] E.g., Crime Compact of 1934, to which all states acceded in 1951.

[140] E.g., The Southern Regional Education Compact of 1949.

[141] E. S. Corwin, *The Passing of Dual Federalism*, „Essays in Constitutional Law", ed. by R. G. McClockey, New York 1947; L. P. Clark, *The Rise of a New Federalism*, New York 1938; J. H. Ferguson, D. E. McHenry, o.c. p. 108 and fol.; E. S. Corwin, *The Constitution* ..., p. 80-81; R. K. Carr, M. H. Bernstein, D. M. Morrison, R. C. Snyder, J. E. McLeen, *American Democracy in Theory and Practice*, New York 1955; J. M. G. Burns and J. W. Peltason, *Government by the People*, New York 1959.

[142] G. Benson, *The New Centralisation. A Study of International Relationshiph in the United States*, New York 1941, p. 168.

which assume the role of coordinator either on their own, or on state initiative. Action taken jointly by the States of Massachusetts, Connecticut, Rhode-Island and New York, to remedy the financial situation of the New Haven Railway Company, may serve as an example.

Cooperation between the federation and states brings positive results particularly in questions relative to two or more states, which carry significance for the federation as a whole. The Delaware River Basin Commission, which includes the Governors of four States, New York, Delaware, Pennsylvania and New Jersey, presided over by a member of the Federal Government appointed by the President of the United States, formed for development of the Delaware River Basin, may serve as an example of such cooperation. Another form of cooperation is represented by the Tri-State Transportation Committee formed in August 1961 by the States of New Jersey, Connecticut and New York, to deal with questions of transportation; the Committee cooperates with such Federal offices as the United States Bureau of Public Roads and the Housing and Home Finance Agency [143].

Advocates of preservation of greatest possible state autonomy see it as an effective barrier against federal bureaucracy, but stress that states could not do without financial aid from central authority [144].

N. Rockefeller endeavoured to demonstrate that equilibrium between federal and state sovereignty is an essential element of American federalism. Preservation of this equilibrium depends on the states themselves. The system of federal grants-in-aid, know in American practice since 1879, was one of the elements of this equilibrium. The system of federal grants-in-aid was based on quasi-agreements between the federation and states. Both parties assumed certain specific obligations: the federation would provide funds on condition that the state would also allocate an appropriate sum to the given aim. The Social Insurance Act of 14 July 1935 is quoted as an example of such cooperation in the juridical sphere.

Methods of cooperation between federal organs and local authorities are a separate problem. Some experts consider that increased control exercised by organs of federal authority over trade restrictions, payment of unemployment benefits, labour exchange organisations, etc., need not necessarily constitute a threat to the system of decentralisation in the United States. It seems that in specific instances, this form of federal government activity may increase the autonomy of local authorities in respect of state authorities. In the long run, it brings about substantial modifications in the structure of federalism, bringing the federal system closer to that of a decentralised unitary state. Federal grants-in-aid make increased federal interference in internal state affairs inevitable.

[143] N. Rockefeller; o.c., p. 64 - 66.

[144] Ibidem, p. 50.

This measure however, which undoubtedly strengthens the role of federal organs, must not be viewed separately from the general nature of federal financial policy. It is undeniable that federal authorities are often faced by the necessity to break down resistance on the part of conservative groups in respective states which endeavour to obstruct progressive changes in social legislation, federal measures aimed at elimination of racial discrimination, etc.

6. In the opinion of many of its critics, cooperative federalism caused excessively frequent tensions, because federal programmes did not take sufficient account of local needs. Consequently, various concepts were advanced, such as Johnson's Creative Federalism, or the concept of New Federalism [145], given concrete shape by Richard Nixon in "General Revenue Sharing despite all the political philosophy they contain, aimed at elimination of negative effects due to excessive expansion of federal agencies, erasement of limits between the competences of different administrative organs. The concept to restore greater responsibility to state governments and local government, launched by Nixon, was intended to free the federal government from responsibility connected with programmes of grants-in-aid and categorical grants, which limited substantially the freedom of state and municipal authorities. "Revenue sharing" meant that the Federal Government would divide revenue between state governments and municipal authorities, with no programme restrictions or conditions attached, which were a characteristic of the previous system. The formula: "an end must be put to this continuous looking to the federal government" reflected the political philosophy of conservative neoliberalism. It was soon found that the unquestionable process of decentralisation of the federal system noted in the United States in connection with the New Federalism, did not bring the results expected and encountered criticism from many sides [146].

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The above remarks were intended to throw light on certain questions connected with the process of political integration, in which transition from loose ties of confederation to a federal state, and eventually to a unitary decentralised state, by its very nature inclines toward dynamic

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[145] J. Jaskiernia, *Trendy rozwojowe federalizmu amerykańskiego* (Development Trends in American Federalism), „Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1977/3 p.87 and fol.

[146] J. Jaskiernia, *Prawno-ustrojowe aspekty reformy subsydiów federalnych w ramach programu „New Federalism" w Stanach Zjednoczonych Ameryki* (Constitutional Aspects of the Reform of Federal Grants as Part of the New Federalism Programme in the United States), „Zeszyty Naukowe Uniwersytetu Jagiellońskiego", Essays in Political Science, 1/1976, p. 67 and fol.

formulation of juridical and political institutions, and of federalism as a doctrine. Studying juridical forms in which the process specified finds reflection, it would be impossible to deny the need to analyse constitutional rules and court rulings (the morphological aspect), as well as various agents exercising influence on the origins and concrete functioning of the federal state in different stages of evolution, also on the actual role of concepts of federalism reviewed here (the dynamic aspect). These agents include: 1) economic factors such as the economic system, distribution of natural resources, distinctness of interests of specific social groups, etc.: 2) socio-political factors, such as political parties, trade unions, business groups; 3) military factors, such as the influence of civil war, war devastations, external threat, militarisation of public life; 4) demographic factors such as the role of different social classes and strata, distribution of population, dynamics of demographic processes (population increase, labour force balance, disturbed equilibrium of the demographic structure due to war losses); 5) nationality factors such as, predominance of certain nationalities, the role of national minorities, racism, factors advancing assimilation, evolution of a uniform nation, bilingualness; 6) constitutional factors such as the role of different organs (the Senate, President), electoral system, citizenship, settlement of competence disputes by specially appointed organs, role of the budget, planning, social legislation, etc.[147]

[147] Some of these factors are discussed by C. J. Friedrich, *Tendances du Fédéralisme en théorie et en pratique*, Bruxelles 1971, p. 205.