

THEORETICAL PERSPECTIVES ON FEDERALISM: ANALYZING THEORIES AND CONCEPTUAL FRAMEWORK IN COMPARATIVE CONSTITUTIONAL LAW

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Abstract

Federalism, characterized by its multifaceted, elastic, and complex nature, often presents significant analytical challenges. This paper aims to thoroughly analyze and elaborate on the theories of federalism, the elements of federations, and the status and organization of federal units. Despite the inherent ambiguity and lack of a universal definition, understanding federalism requires an in-depth examination of these components. By exploring classical and contemporary theories, this study highlights the dynamic nature of federalism and its role in shaping political structures. Additionally, the paper examines the features of federations within historical and modern political systems, providing insights into the conceptual framework and practical implications of federalism in comparative constitutional law. Through this comprehensive analysis, the paper seeks to offer a clearer understanding of the complex and evolving nature of federalism.

I. INTRODUCTORY NOTES – CONCEPT AND THEORIES OF FEDERALISM

1.1 The concept of federalism is multifaceted, elastic, and complex, often referred to as a "chameleon" concept due to its varying interpretations and applications. Understanding federalism necessitates an analysis of its various aspects. Despite the inherent ambiguity and the lack of a universal definition, it remains essential to thoroughly examine federalism. The challenge in defining federalism is further complicated by the diverse forms it has taken throughout history and in contemporary political systems.

Federalism as an idea, but also as the realisation of that idea, has a long history¹. Constitutional history emphasizes the effort of people to unite their organisational forms and systems on a state-building and political level. This is confirmed by the various alliances of the ancient polis, the first forms of wider territorial communities in Switzerland until the constitutional establishment of the federal principle with the Constitution of USA adopted in 1787. It is believed that in modern times more than half of humanity lives in federally organized states. Hence, the need for a detailed study of the nature and the features of federations, as well as the forms in which the federal principle appears and is established, is understandable.

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¹ Miodrag Jovicic. *Federalism, Izabrani spisi, Sluzbeni glasnik, Beograd, 2006, p.15*

To analyze this category in more detail, it is essential to first define the terms federalism, federation, and federal unit.

Hence, the term **federalism** (lat. Foedus- union) refers to the basic principle on which federal states are based. This principle in its essence implies a combination of central state power (power at the federal level) and power of federal units (cantons, regions, provinces, territorial units, countries, etc.) in a single political system. Namely, the principle of federalism basically means the rule of two levels of government in the same territory, in a single political system. The principle of federalism in its essence is based on the implementation of a vertical separation of power, together at the same time with the principle of horizontal separation of power in the political system.

The use of the term **federation** in the constitutional and legal literature is ambiguous. This term can be used to indicate the form of complex state organisation of a country on the one hand, or the highest level of state power in the established political system (the central state power). Very often the term union is used as its synonyms.

Finally, the term **federal unit** includes all the manifest forms of the constituent parts that compose the federal state. They can include States, Länder, provinces, republics, cantons, etc.

1.2 Constitutional and legal literature abounds with numerous definitions for the term federalism. They can be classified into three groups:

- **Classical theories of federalism (normative, legal theories)** - try to explain what is hidden behind the concept of federalism starting from the classical institutional aspects of federal states, as a system of a government. These definitions emphasize the two-level state power, the federal one and the one of the federal units. Namely, the understanding that a federation represents a form of a political arrangement in which sovereign political power is divided between central governing bodies and those at the level of federal units, in such a way that each of them is independent within its area of action and competence is common to all these definitions. According to these definitions, the federal concept represents the principle of organisation of power in which a compromise is achieved between the competing demands of the union and those of the units. In essence, federalism represents the coexistence of two governments whose powers are exercised within the framework of predetermined competences in the same territory. In order to make this possible, the representatives of the classical theories of federalism establish several precisely determined conditions that must be met. They are:

a) *A written constitution*

b) *The constitution is to be rigid*

c) *There is to be independent judiciary*

d) *Both levels of government directly operate on the life of the citizens*

e) *There should be allocation of adequate sources of revenue for the government at each level, general and regional².*

Thus, M. Vile points out that, "federalism is a system of government in which the central and regional authorities are in a dependent political relationship; in this system, a balance has been achieved in such a way that no level of government is dominant to such an extent that it can dictate the decisions to the other level of

² S.A.Paleker, *Federalism: A Conceptual Analysis*, The Indian Journal of Political Science, Vol.67.No.2 2006, p.304

government; the two levels of government must be mutually harmonized"³. K.C. Wheare emphasizes that "federal arrangement exists when the powers of governing a country are divided according to the principle that there is a single authority over the entire area for certain issues, and independent regional authorities for another group of issues, and each of these authorities in a certain area is coordinated with the other authorities but is not subordinated"⁴. C.J. Friedrich similarly states that "federalism exists when a set of political communities coexist and interact with each other as autonomous units, united in a common order with their own autonomy"⁵.

Critics of the classical theories of federalism emphasize the use of the term "independent" in explaining the relations between the authorities at the central and regional level. Against this term, they point out that the use of some other terms such as individuality, autonomy, and coordination would be appropriate, because complete "independence" in the normative sense cannot exist. The bodies of both levels of government must act in the same territory and in the same political system, and independence must not be interpreted as their isolated action. Livingston defines the federal government as „a form of political and constitutional organisation that unites into a single polity a number of diversified groups, or component politics so that the personality and individuality of component parts are largely preserved while creating in the new totality a separate and distinct political and constitutional unit"⁶.

- ***The origin theory of federalism*** - includes the theoretical views according to which federalism is explained as a consequence of certain social conditions and circumstances. Namely, the essence of these theories consists in explaining the emergence of federal states under the influence of specific sociological and political and historical factors. The origin theory of federalism includes sociological, political and multiple-factor theories.
 - a) In the process of explaining federalism sociological theories find their basis in the very federal nature of the society in which the federal principle is inaugurated. Namely, for the representatives of these theoretical understandings, the elements of the diversity of the society per se represent an assumption for the creation of a federal state system. Racial, religious, linguistic, ethnic differences, as well as the historical background of the communities, the previous independence of the entities that will become federal units, different economic interests, etc. are factors that are often cited as a condition for the establishment of the federal principle. However, although any of these factors can be considered as a basis for the establishment of federalism, the requirement for the diversities to be territorially grouped is a *conditio sine qua non*. Namely, the territorial element is considered to be of crucial importance in the formation of a federal union. Livingston emphasizes that these differences must not be splits in society and must not lead to the dissolution of the union, nor should they be suppressed within the union. For him, "the

³ M.J.C.Vile, *The structure of American federalism*, Oxford, 1961, p.199

⁴ K.C.Wheare, *Federal government*. 3 ed. London.1956.p.36

⁵⁵ C.J. Friedrich, *Man and his government*, New York, 1963, p.596

⁶ William S. Livingston, *Federalism and Constitutional Change*, 1959, London, p.9-10

federation represents a form of political and constitutional organisation that unites a certain number of different groups and communities in a single community"⁷. Montesquieu, with his idea of the federation as a "community of communities" (*société de sociétés*), is one of the first representatives of these sociological understandings of federalism. Namely, the social and political component of the federal states points to the fact that the federation does not represent a homogeneous society, but that the character of this society is determined by the character of the components that compose it. The idea of a community of territorial units where the primary element is diversity, provides a qualitative value to the federation as a creation.

- b) Political theories point to the federation as a *sui generis* creation that represents a solution to existing political problems. The nature of the federation as a political solution should be seen through the prism of the concepts of power, authority, separation of power, concentration, decentralisation. Namely, the claim that federalism is a political solution for the power that is exercised over different communities is at the essence of these theories. As a solution, federalism is a product of debate, discussion, political bargain, and as such, it must refrain from any form of undesirable aggressive methods for securing a solution. Otherwise, instead of strengthening the "enlarged political community", it may face its complete collapse⁸. In that context, Riker introduces three basic elements in the definition of federalism: 1) the existence of two systems of government that are being implemented in the same territory, 2) each level of government must have at least one area in which it is completely autonomous, and 3) there must be certain (constitutional) guarantees for the autonomy of each government in its field of action. It is assessed that the advantage of the political theory of federalism consists in the possibility to theoretically explain the emergence of older federations (USA, Switzerland, Canada) as well as to explain the emergence of federations through aggregation and disaggregation⁹.
- ***The functional theories of federalism*** - they try to explain federalism in terms of the ability of federal states to overcome the challenges and problems they face. Functional theories are basically reduced to the need to indicate that administrative cooperation, forms of fiscal federalism and political independence for decision-making between the federation and the units, arranged in advance, is the basic condition for the survival of federal creations. By emphasizing these elements, these theories go beyond the traditional normative understanding of dual federalism. As a matter of fact, functional theories emphasise the necessity of having many more points of attachment of the units, rather than explaining their relationship through the concepts of degree and duality.

⁷ *ibid*

⁸ Miodrag Jovicic. *Federalism, Izabrani spisi, Sluzbeni glasnik, Beograd, 2006, p.17*

⁹ S.A.Paleker, *Federalism: A Conceptual Analysis*, The Indian Journal of Political Science, Vol.67.No.2 2006, p.307

II. ELEMENTS OF FEDERATIONS

Federalism is a product of liberal thought. The creation of federal states is a reflection of the voluntary association of communities in one creation. The agreement and consent (*foedus*) of the participants to create a new constitutional order is at the core of the federation. Namely, the federation represents such a form of state organisation which per se represents the totality of several unites.

"The Law of Imitation" is often being mentioned in the theory of federalism. It seems that every state that established the federal principle got its inspiration from the constitutional decisions of some other state. An exception to this is the Constitution of the United States of 1787, whose founders did not have a single example and originally established the federal principle as a constitutional solution. However, even if we take as an example the countries that take *ad litteram* the federal principle inaugurated by the Constitution of the United States, as a successful experiment of the founding fathers, we will undoubtedly come to the conclusion that they do not establish completely identical federations like the federation of the United States. Hence, in modern states we cannot identify two completely identical creations, and the differences between any two federations have always been great. These differences are the result of the different circumstances and conditions at the time when the federations were created, the different social, political and legal traditions of the countries and in general the different motives and goals that want to be achieved. Therefore, it is correct to conclude that although the "law of imitation" is being applied in federalism, each federation is a creation per se or a *sui generis creation*. However, although different in many respects, the federations created in the last two centuries contain several basic **constitutional and legal elements**:

- Federations consist of two categories of political and territorial units - the union and the federal units;
- The federal principle must be established and guaranteed by a solid constitution. The constitutional provisions must regulate the status of the federal units and precisely regulate the division of competences. A hallmark of the federal state constitutions is their rigidity and difficult revision procedure. The federal constitution is the *lex superior*. The primacy of its application and the guarantee of its provisions is provided by a special body competent for the assessment of constitutionality;
- The federal principle provides for special authorities with the competence to perform the functions of the union, and special authorities at the level of the federal units, competent to perform the functions of the units. The principle of horizontal division of power, which is realized at the federal level, is reflected in the organization of power at the level of the federal units. Representation of the federal units should be ensured within the federal parliament. In this way, the participation of the federal units in the decision-making process on issues related to the union and in general in the exercise of the federal constitutional and legislative power is realized.
- In the execution of the competences of the federal units, the authorities of the units are established, which enjoy independence in their work.

In addition to legal elements, federations also have a **social and political component**. The concept "community of communities" refers to the social and political component of federal states. It is considered that the federation represents a global community of several small communities that

cherish the same values. The consensual understanding of the units that the federal arrangement is really the most favourable and most appropriate solution, has a great influence on the durability and solidity of the federal creation. The conviction that the federal principle allows at the same time a degree of independence of the units and the possibility of participation of each of them when deciding on common issues of the union, strongly influences the strength and survival of the complex state.

Finally, in every federation, the forms of the so-called centrifugal and centripetal forces of action are constantly present. The former ones tend towards centralisation and the formation of a unitary state, and the latter towards the dissolution of the federation. Hence, it is considered that their balance is achieved by implementing the concepts and instruments of horizontal separation of power, rule of law and constitutionalism understood in the broadest sense at both government levels.

III. FEATURES OF THE FEDERATIONS

In theory, several characteristics of federations, as a form of state organization, are frequently mentioned and are considered to represent their value. Such values are:

- The organisation of the complex state from several federal units corresponds to **the idea of democracy** which is easier to achieve in smaller and more homogeneous communities. Adherents of this theoretical position, cite several arguments in its favour, such as the fact that smaller and more homogeneous communities enable closer relations between citizens, a greater opportunity to realize the forms of direct democracy, the election of representatives in representative bodies closer to voters and the real problems of citizens from the community. On the other hand, the introduction of the principle of vertical separation of power represents one of the powerful instruments of constitutionalism and a means of organising central government. Montesquieu points out that "a federation composed of smaller republics from the inside enjoys a good internal administration, and from the outside, through the strength of association, it gains the strength of great monarchies."
- Federations represent **voluntary communities**. The mutual agreement (foedus) and collective bargaining is at the basis of their organisation and functioning. This form of organisation does not allow hierarchies or any other form of dominance. Therefore, it is considered that federations have a libertarian character, and therefore a good basis for practicing the instruments of democracy through dialogue, tolerance, reconciliation, and persuasion as its mode. However, the establishment of the federal principle does not mean a guarantee that undemocratic forms of government will be avoided.
- **The spirit of compromise and rational decision-making** must exist in the federal state. Namely, this spirit of compromise is a consequence of the cohabitation of the federal units on the one hand, as well as the knowledge that each of them is in the federation because it could not survive independently. Joint existence in the union is possible when each federal unit is prepared in advance for compromise overcoming common problems, and the developed feeling that it must take into account the needs and interests of the other units and the union as a whole. The spirit of compromise in the federation is possible when joint decision-making is primarily based on reasonable behaviour and when the emotional element will always be deliberately removed from the decision-making process. It implies relativising hard attitudes and softening

categorical and exclusive demands. The established guiding idea of the units must primarily rest on reaching a consensus. Hence, the spirit of compromise is a basic feature of the federation and it must represent its constant established during the creation of the union.

- One of the properties of federations is **their changeability and the process of evolution of the principle**. It is a mistake to claim that the federal principle survives throughout history identical to the way it was originally established. On the contrary, in order to overcome the change of social, economic, political and legal circumstances, it has to be flexible, open and alterable. The alterable nature of federalism can most appropriately be seen in the amendment of the acts that govern this matter, as well as in the gradual change in the functioning of the institutions, which is not conditioned by a legal, but a factual change in behaviour. The latter, occurs especially as a result of establishing a new practice or constitutional convention. Both amendments undoubtedly contribute to obtain, to a certain degree, flexibility of the federal principle and to conduct a gradual and subtle change in its application.
- The federation is a form of governance that is constantly under **pressure to overcome problems related to organisation and governance**. Namely, these problems in the federation as a complex organisation, do not refer to the existence of special institutions and authorities, but refer to the specific relations that are established between them. The problems arising from the functioning of the governing bodies, as well as from the relations between the bodies of the union and those of the federal units is what makes the federation a complex organisational unit, and a form of organisation extremely difficult to establish and survive. On the other hand, the existence of two levels of government in the same territory is financially expensive and always brings with it the problem of inefficiency. This feature of federalism is the reason why this form of governance is judged to be historically outdated. Some authors even romantically approach it as an "extravagant and ineffective form of governing."¹⁰

IV. STATUS AND ORGANISATION OF FEDERAL UNITS

The constitutions of all federal states are more extensive and contain a greater number of provisions than the constitutions of unitary states. This is especially due to the fact that part of their provisions regulate the matter related to state government. This group of constitutional provisions can generally be classified into three categories: a) provisions relating to the federation itself and the central level authorities, b) provisions relating to the relations between the federation and the federal units and c) provisions relating to the status and the organisation of the federal units themselves.

The status and organisation of the federal units in the federation is one of the basic issues that should be regulated by the constitutions of the federal states. Considering the latter, comparative constitutional law points out the diversity in constitutional decisions.

There are several criteria that are taken as a criterion that determines the status and organisation of the federal units.

- One of the constitutional techniques for defining the status of federal units, often used by the founding fathers, is the taxative **enumeration of the federal units** that compose the union. Such decisions were introduced in the Constitution of

¹⁰ Jennings I. Some characteristics of Indian Constitution” p.55

Switzerland of 1874, which in Art. 1 provides for that the Swiss Federation consists of „The people and the Cantons of Zurich, Bern, Lucerne, Uri, Schwyz, Obwalden and Nidwalden, Glarus, Zug, Friborg, Solothurn, Basel Stadt and Basel Landschaft, Schaffhausen, Appenzell Ausserrhoden and Appenzell Innerrhoden, St. Gallen, Graubünden, Aargau, Thurgau, Ticino, Vaud, Valais, Neuchâtel, Geneva, and Jura"¹¹. Another similar solution is provided for by the preamble of the Basic Law of the Federal Republic of Germany according to which "Germans in the Länder of Baden-Württemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Lower Saxony, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Rhineland "Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia have achieved the unity and freedom of Germany in free self-determination"¹². On the other hand, an opposite technique that excludes the enumeration of federal units was applied in the creation of the first federal constitution, the Constitution of the United States, which was accepted in the constitutions of the South American countries that were created according to its example (Argentina and Brazil). It is worth mentioning that only this criterion, per se, does not speak much about the status and independence of the federal units in the union, if all other constitutional norms that refer to this issue are not taken into account.

- ***The constitutional guarantee of the sovereignty*** of the federal units is the second criterion that can be an indicator of the status of the units in the federal state. Such a solution is provided for in Art. 3 of the Constitution of Switzerland according to which the Cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution. They exercise all rights that are not vested in the Confederation"¹³. The Constitution of Mexico from 1917/rev. 2015, also in Article 40 emphasizes sovereignty as a feature of the federal units, determining "It is in the will of the Mexican people to constitute into a representative, democratic, secular, federal, Republic, made up by free and sovereign States in everything related to its domestic regime, but united in a federation established according to the principles of this fundamental law"¹⁴. The solution of the Czechoslovak Republic follows the example of Switzerland. Art. 1 paragraph 5 of the Constitutional Act of the Czechoslovak Federation of 1968 provides for "the two republics respect each other's sovereignty, as well as the sovereignty of the Czechoslovak Republic, and the Czechoslovak Republic also respects the sovereignty of the two peoples"¹⁵. The theory points out that, regardless of whether the constitutional norms precisely declare the sovereignty of the federal units in the union, or the constitutions remain silent on this issue, the status and organisation of the units can be determined by the totality of the norms for the federation and the division of competences. This means that the decision to insert a provision with a precise emphasis on the sovereignty of the units, in the constitutional text, does not have any particular meaning if the other norms on federalism issues do not regulate

¹¹ Federal Constitution of the Swiss Federation, General provisions, art.1

¹² Basic Law for the Federal Republic of Germany, Preamble

¹³ Federal Constitution of the Swiss Federation, General provisions, art.3

¹⁴ Constitution of Mexico, 1917/rev 2015, art. 40

¹⁵ Constitutional Act on Czechoslovak Federation, art.1/5

this matter successfully. From a historical point of view, it can be concluded that, although over long periods of time the forces of centralization in federations are more influential, guaranteeing the sovereignty of units has proven to be expedient, as evidenced by the successful dissolution of Czechoslovakia. Finally, it is important to note that federal units within federal states do not possess external sovereignty. This implies that the three rights that determine external sovereignty (*ius belli, ius legationis and ius contrahendi*) are not typical for the federal units.

- The status of the non-federal units largely depends on ***the distribution of functions*** between the union and the units in the federal state. This question is considered to be extremely important, and as a rule it is classified as *materia constitutionis* in comparative constitutional law. Namely, the essence of the distribution of functions in the federal state is related to the right of the federal units to normatively regulate the functions that are under their jurisdiction. The principle premise that the bodies of the federal units are independent in regulating the issues of their competence, as long as they refrain from overstepping them is the initial basis for the regulation of this issue in the constitutions. The mechanism of evaluation of constitutionality and legality is the basic instrument that is provided to limit the federal units in exercising the normative competence only for the issues that are exclusively their functions. The largest number of federal states evaluates the boundaries of the normative competence of the federal units through the control of the constitutionality and legality of the enacted acts. On the other hand, the control of the constitutionality and legality of legal acts has been extended to the issue of their expediency in Austria, Switzerland and Canada. Namely, Art. 186 of the Constitution of Switzerland provides for “The Federal Council may approve cantonal legislation when required to do so by federal law .It may object to treaties between Cantons or between Cantons and foreign countries. It ensures compliance with federal law, as well as the cantonal constitutions and cantonal treaties and takes the measures required to fulfil this duty”¹⁶. Article 98 of the Constitution of Austria provides for a similar solution “All legal enactments of the Land legislatures, shall immediately after the adoption by the Land legislature [and] before their promulgation by the Land Governor, be reported to the office of the Federal Chancellor. (2) Because of the endangerment of Federal interests, the Federal Government can present a reasoned objection within eight days from the day on which the legal enactment arrived at the Office of the Federal Chancellor. If the Federation, prior to the introduction of the legislative procedure, was given an opportunity to state its position, the objection may be on an alleged encroachment on the competence of the Federation. In the case of an objection, the legal enactment may only be made public, if the Landtag, in the presence of at least one-half of its members, reaffirms (wiederholt) it”¹⁷.
- ***Ius secessionis and ius nullificationis*** -are two very important features of the federation that determine the status of the federal units in the union. Namely, the federal units do not enjoy any of these rights. With the introduction of the federal principle, the units give up the right not to apply the decisions of the federation (*ius*

¹⁶ Federal Constitution of the Swiss Federation, General provisions, art. 186

¹⁷ Constitution of Austria, art.98 provision 1 and 2

nullificationis), as well as the right to withdraw from the federation when they wish (*ius secessionis*). Both rights in their nature are contrary to the federal principle which mandates the unity of the constitutional, political and legal order of the union as a whole.

Ius nullificationis directly determines the relationship of the federal unit with the federal constitution and federal laws. In terms of the federal constitution, the federal units participate in the process of its adoption and amendment, through their representatives in one of the legislative chambers. Since federal constitutions are categorized as rigid and difficult to change, the majority required to change them is large, which directly makes it impossible for the federal unit to block this process on its own. On the other hand, comparative constitutional law also knows the solution according to which, in addition to proceedings at the level of the federal parliament, an additional declaration of the federal units (through their parliaments or forms of direct democracy) is often required. Such are the examples of the USA, Switzerland, Mexico. After the adoption of the federal constitution, this act for the federal units is *lex superior*, and they do not enjoy the right to voluntarily change its provisions or not apply them (*Ius nullificationis*).

The second aspect refers to the right of the federal units to withdraw from the union at their own will (*Ius secessionis*). Not one federal unit in any federal state possesses the right to secede. Although this right is inherent in confederations, it is excluded by the federal principle. In federations, it is unacceptable for the federal units to enjoy the right to secede from the unified order, and it is considered a threat to its integrity. An exception to this is the Constitution of the Soviet Union of 1917, which provides for the right to self-determination and the formation of independent states. However, considering that no act regulated its effectuation in more details, it is understandable that it was basically a declarative and unenforceable right (*ius nudum*).

- ***Right to intervene*** - The right of the federal authorities to intervene in the territory of the federal units is another indicator of the status of the units. Usually, two basic reasons can be a motive for the intervention of the federal authorities in the territory of the federal units: an attack on the federal unit from outside and the occurrence of internal disturbances that aggravate the federation as a whole. The first reason for intervention is considered historically overcome, because an attack on a federal unit from the outside basically implies an attack on the union as a whole. Provisions regulating the right of the union to intervene in the territory of the federal units in case of disturbances threatening the union are considered more important and are often applied. Such an intervention can be implemented at the request of the federal units or without their will by a decision of the union. The first case is characteristic of the US constitutional solution which provides for “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence”¹⁸. The constitutions of Argentina, Brazil, Federal Republic of Germany and Switzerland provide for the possible intervention of the union without the

¹⁸ Constitution of USA 1787, Art IV section 4

request of the authorities of the federal units. Article 52 of the Constitution of Switzerland provides for a similar solution “The Confederation shall protect the constitutional order of the Cantons. It shall intervene when public order in a Canton is disrupted or under threat and the Canton in question is not able to maintain order alone or with the aid of other Cantons”¹⁹.

- ***The right to self-organization*** is another feature of the status of the federal units. In the context of this issue, the constitutions provide for different solutions. Some constitutions set this right more widely, but there are also such solutions in comparative constitutional law that precisely regulate it. However, in terms of the right to self-organisation, the basic rule is that the form of government and the political regime must be the same at both levels, of the union and of the federal unit respectively. From here, the solution which stipulates that one of the conditions for admission to the union is the same political regime is understandable. Namely, it is unthinkable for the union to have a democratic regime, and the federal unit an autocratic regime, because they are mutually exclusive. Consequently, in such a case a community based on the foedus is impossible. The second request, constitution sine qua non, which must be guaranteed and enjoyed at both levels of government is the request for the same list of rights and freedoms of man and citizen. Comparative constitutional law records examples when a different scope of rights is provided for at the federal level and newly to the federal units, but the basic principle that the federal units must accept the corpus of rights guaranteed by the federal constitution must be respected.

Regarding the status and organization of the federal units, it is important to emphasize that the principles on which the right to self-organization of the federal units is based, must be determined by the federal constitution of the country. Namely, for the federal regulation, it does not matter how many such principles will be established and guaranteed by the federal constitution. This is especially so because those principles define the range of rights and obligations of the federal units, as well as their mutual relations with the union. Finally, the basic manner through which the federal units in the union exercise the right to self-organization is by adopting their own constitutions. If the constitutions of the federal units and those of the union are being analysed, it will undoubtedly be concluded that their legal nature is not the same. Namely, after the adoption of the constitutions of the units, their duration and legal revision will be directly determined by the constitutional revision of the federal constitution. This basically means that the amendment of the constitution of the federal unit after its enactment and entry into force does not depend on the will to revise the federal unit, but the union. Hence it seems that the constitutors of the federal units do not have the same and indigenous freedom as the "founding fathers" of the federal constitution yet.

¹⁹ Federal Constitution of the Swiss Federation, General provisions, art. 52

V. CONCLUSION

Several key conclusions can be drawn from the above analysis:

1. Federalism as an idea, but also as the putting of that idea into practice, has a long history.
2. Constitutional and legal literature abounds with numerous definitions of the term federalism which can be classified into three groups: Classical theories of federalism (normative, legal theories), the origin theory of federalism and the functional theory of federalism.
3. The federations created in the last two centuries contain two basic components: a constitutional and legal component and a social and political component. Both are very important when trying to analyse and study in detail this form of complex state government.
4. The theory often mentions several features of federations, as a form of state government, which also represent their value. These include the integration of the idea of democracy, the spirit of compromise and reasonable decision-making, reaching agreement in overcoming the problems related to the organisation and governance in the federation, the evolution of the principle of federalism.
5. Finally, the constitutions of all federal states are more extensive and contain a greater number of provisions than the constitutions of unitary states. This is especially due to the fact that part of their provisions regulate the matter related to state government. This group of constitutional provisions can generally be classified into three categories: a) provisions relating to the federation itself and the central level authorities, b) provisions relating to the relations between the federation and the federal units and c) provisions relating to the status and the organisation of the federal units themselves. The status and organisation of the federal units in the federation is one of the basic issues that should be regulated by the constitutions of the federal states.

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