

# CHANGING THEORIES OF FEDERALISM: TOWARDS A PRAGMATIC SYNTHESIS

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## *INTRODUCTION*

For a student of modern politics and government, federalism offers a wide field of study, complex<sup>1</sup> and fascinating<sup>2</sup> at the same time. In the modern period, the constitution of the United States (1787) is treated as the first experiment in establishing a federal system of government. Subsequently, federalism as a mode of political organization was embodied in the constitution of the Swiss Confederation (1848), the Dominion of Canada (1867) and the Commonwealth of Australia (1900). This trend of increasing appeal of the federal idea is discernible also in the twentieth century, inspite of the suggestion of some critics like Laski that "the epoch of federalism is over" (Watts, 1966:5)<sup>3</sup>.

Even Wheare, a leading exponent of federalism conceded in 1945, that under pressure of war and economic crises the trend in existing federations was towards a concentration of central powers sufficient in some cases to threaten the federal principle. Interestingly, wheare classified India as "a unitary state with subsidiary federal principles rather than a federal state with subsidiary unitary principles" (Wheare, 1945). Aiyar, a renown Indian scholar, went still further and refused to accept even 'quasi federal' term for the Indian constitution and preferred to call it a 'union constitution' (Aliyar, 1953 : 9). At the same time, federalism was enjoying a widespread popularity such as it had never known before, a look at the remarkable array of constitutions, enacted and adopted since the end of the World War II would show federalism has been taken to political unity among the new nations in Europe, South America, Asia and Africa.<sup>4</sup>

The growing popularity of federalism in recent years as a model of political organization, the survival of the older federations through the challenges posed by the changing circumstances, economic crisis and global wars and the launching of functional federalism provide a strong justification for a comparative reexamination of the various approaches to the definition of federalism and analysis of federal political system.

Attempts to explain the phenomenon of federalism have given rise, chiefly, to three categories of theories, namely, the classical theory, the origin theory and the

functional theory. The pros and cons of these theories are discussed in the following sections; and in the concluding section, matrices of a possible synthesis are briefly pointed out from the pragmatic angle.

### *THE CLASSICAL THEORY OF FEDERALISM*

The main concern of classical theory is to explain what federalism is. This view is based on the study of the constitution and system of government obtaining in the four classical federations, namely, the United States of America, Switzerland, Canada and the Commonwealth of Australia. The outstanding exponents of the classical theory were Dicey, Moore, Brown, Bryce, Carran and Wheare.

At the end of the nineteenth century, Lord Bryce in his book, *American Commonwealth*, described the federal and state governments as "distinct and separate in their action". The system, he said, was "like a great factory wherein two sets of machinery are at work, their revolving wheels apparently intermixed, their hands crossing one another, yet each set doing its own work without touching or hampering the other" (Grodzins, 1966: 261)

Carran, an eminent Australian scholar, defined federalism thus: "A form of government in which sovereignty or political power is divided between the central and local governments, so that each of them within its own sphere is independent of the other" (Carran, 1929: 230).

Following Bryce and Carran, Wheare gave a traditional concept of federalism. In order to assess whether a constitution is federal or not, wheare applied the test as follows: "The test which I apply for federal government is then simply this. Does a system of government embody predominantly a division of power between general and regional authorities, each of which in its own sphere, is coordinate with the other and independent of them? If so, the government is federal" (Wheare, 1963: 33).

The above definitions make it clear that the idea of independence of each government of the other in a dual polity of two levels of government, general and regional, is central to the classical theory. In order to make the 'independence' of each government real and secure, the classical theorists enunciate the following conditions for a federal system: (i) a written constitution which lays down the powers to be exercised by the general and regional government: (ii) the constitution is to be so rigid that none can amend the constitution by unilateral action; and only by joint action of both the governments can alteration be made in the division

of powers; (iii) there is to be an independent judiciary to settle conflicts of jurisdiction between both the governments; (iv) both levels of government directly operate on the life of the citizens; and (v) there should be allocation of adequate sources of revenue for the government of each level, general and regional.

The classical definition attempts explain federalism in juristic terms. One merit of such juristic definition is that it enables us to distinguish a federation from a confederation or a mere league of states brought to existence by a treaty where the common agency created remains dependent upon and subordinate to the will of the governments of the constituent units. On the other hand, the juristic definition enables us to distinguish a federal polity from a unitary polity where the constituent governments exercise their powers in subordination to the will and discretion of the general or central government of the whole country. In contrast to both these positions, the jural relationship between the two levels of government in a federation remain coordinate, none being treated as subordinate to the other.

The challenges of the twentieth century such as wars and depression , economic planning and social welfare have made the classical theory an obsolete. Its critics attack the theory on the ground of ' legal formalism'. According to them, the classical theory explains the nature of federalism purely on the basis of law enshrined in it and the institutional structure created by it. But the legal division of powers is not strictly adhered to by the two levels of government each of which by practice and usage might encroach upon a field that does not belong to it legally. The theory is also too much legalistic to take into account the convention and usages of extra constitutional character which shape and influence the governmental process in a federal system..

The legal institutional approach has also been criticized as suffering from the ' formalistic fallacy'. N. G. S. Kini for example, has complained: " Formalistic fallacy consists in the belief that political behaviour and factual operations of groups and levels within a polity can be adequately understood and explained in terms of formal provisions of law and constitution ( political and legal myths) of a political organization. The conventional model did not go beyond a bare legal description of the formal properties of a federation" ( Venkatrangaiya, 1971 : 6)

The critics of classical theory raise a further objection about the use of the term ' independent' to represent the relationship between the general and regional government in a federal system. 'Independence', they apprehend might mean isolation. But, if a federal polity is to be a working system, neither the general government nor the regional governments can operate in isolation from the other. There-

fore, some students of modern federalism, prefer the words like 'potentiality and individuality' 'coordinate and autonomy' to 'independence' for a more appropriate expression of the relationship between the general government and regional governments (Lowenstein, 1951: 191 -224; Davis, 1956: 233-244; Macmahon., 1962; Earle, 1968; Friederich 1968).

### ***THE ORIGIN THEORY OF FEDERALISM***

It is pointed out by the critics that the classical theorists concerned themselves with a legal institutional explanation of what federalism is; they did not take into account why federal systems were at all created. This gap is sought to be filled up by what we call the origin theory of federalism which explains the circumstances favourable to the establishment of a federal system, and which thereby seeks to define federalism in terms of the circumstantial factors and forces. The origin theory of federalism can be sustained by three categories of theories such as the sociological theory, the multiple-factor theory and the political theory

### ***THE SOCIOLOGICAL THEORY OF FEDERALISM***

Livingston is recognized to be the first exponent of the sociological theory which was set forth by him, first, in his article, "A Note on federalism" (1952) and subsequently in his book, *Federalism and Constitutional Change* (1956)

The central thesis of the sociological theory is that it is the federal nature of a society that gives birth to the federal political system. A federal society according to Livingston, is one which contains within its fold elements of diversity. Usually, diversity is caused by difference of economic interests, religion, language, race nationality, separation by great distances, differences in historical background, previous existence as independent states or separate colonies and dissimilarity in social and political institutions. One important condition laid down by Livingston is that diversities must be territorially grouped, in order to issue ultimately in the formation of a federal union.. These diversities must not be too great to break up the community into independent groups, nor should they be suppressed to make way for a unitary form of government.

The sociological approach is also applied by Wildawsky who distinguished 'social federalism' from 'structural federalism'. He cites the Commonwealth of Australia as an example of structural federalism, a framework devised and adopted to retain the unity of the Australian people as a nation. To him, the United States serves a good example of social federalism, adopted because of the "social make-up of the territorial based groups". In the United States, the underlying economic

ethnic, religious and other diversities, located in distinct geographical areas corresponded roughly to boundaries of the states which united under the constitution of 1787 to form the federation of the United States( Wildawsky, 1967).

The sociological view of Livingston and wildawsky and others has not been spared of critical scrutiny. First of all, the critics contend that Livingston has merely pointed out the various kinds of diversity but he has not explained the factors which generate the desire among the diversities for establishing a general government within a federal framework.

Secondly, it is also not true that every society containing elements of diversity necessarily results in the establishment of a federal political system. The Welsh, The Scots and the Ulster Irish are instances of diversities inhabiting distinct geographical areas; nevertheless, they are co-existing in the unitary system of the United Kingdom. The same is true, it may be said of France, China, South Africa and Indonesia.

In the third place, Sawyer has pointed that social attitudes and diversities as enunciated by Livingston are not specific to federalism; they may result in any kind of constitutional and political system ranging from a confederal alliance to a centralized system with a good deal of de facto devolution (Sawer, 1979: 181).

The chief drawbacks of the sociological theory is the absence of definite indices and criteria by which a federal society can be distinguished from a non-federal society. This has sometimes led to paradoxical claims such as one of Wildawsky portraying the United States as a federal society and the other of Riker who characterizes the same as sufficiently integrated to justify the abandonment of federalism in preference to a Unitary system, provided the American leaders elected to do so. A scholar, therefore, considers the theory as unsatisfactory and concludes that " the idea of federal society on which the sociological theory rests is vague and full of ambiguities, each scholar interpreting it and its bearing on federalism in his own way" (Venkatrangaiya, 1971: 41).

### ***THE MULTIPLE - FACTOR THEORY***

Some students of federalism, Deutsch is prominent among them, have enunciated what may be called the multiplefactor theory in order to explain the origin of modern federations (Deutsch, 1966). This theory takes into account the necessary as well as the sufficient conditions of the birth of federal systems.

Proponents of multiple factor theory lay stress on (i) the desire for union and

(ii) the capacity to give reality to the desire. Among the factors that together produce the desire for union the most noteworthy are a sense of military insecurity and the need for common defense, a desire to be independent of foreign regime, a hope for economic advantage, geographical neighborhood, similarity of political institutions and previous political associations in a loose treaty system or confederal union. The desire for union must be coupled with a similar desire for independence of regional governments. This is produced by several factors, namely previous existence as separate and distinct states or colonies, a divergence of economic interests, geographical factors favouring regional consciousness, dissimilarity of social institutions (like the civil law of French speaking Quebec in Canada) and so forth. Given both the desire for union as well as the desire for regional independence and identity, right kind of leadership with the foresight and vision of a statesman would be necessary according to the multiple factor theorists, to devise a federal system for accommodating both the tendencies.

Although, they lay down no criteria to determine capacity, it might be taken to mean the capacity of the regional governments to raise the financial resources needed to maintain their autonomy.

It is true that the multiple factor theory lays emphasis on a combination of several factors that give birth to federalism but it does not adequately explain the creation of federal systems by the process of devolution or disaggregation. Therefore, it is necessary to turn to the political theory of federalism which seeks to explain the origin of federal systems formed by aggregation and those established by disaggregation.

### ***THE POLITICAL THEORY OF FEDERALISM***

The principal thesis of the political theory is that federalism is a solution to what is essentially and primarily a political problem. The solution is political because it entries round power and stands for the division of political power (as distinct from its concentration and monopolization): hence it is to be recognized that political motives play a dominant role in the origin of federal systems.

The political theory finds a forceful exposition in Riker's *Federalism: Origin, Operation, and Significance* (1964). He raises two questions and tries to answer them. (i) What occasions the adoption of a federal government? and (ii) what induces societies to maintain and preserve federal governments they already have?

Riker puts forward the thesis that federalism is one way of solving the problem of government in expanding societies. The traditional method of imperialism i.e.,

by enlarging the area of political control and government by founding an empire has become unpopular and out of fashion with the advancing human civilization. But the purpose is well served by federalism which provides for an enlarged political community without the use of coercive or aggressive methods of imperialism. As a political solution, federalism is the result of a political bargain in the situation which follows either the collapse of an empire or, which seek to strengthen the enlarged political community while respecting and protecting the autonomy of the constituent units. Federalism reflects a bargain between those political leaders who desire to expand their territorial control over the whole area of the empire that collapses in order to meet military or diplomatic threat and unable to expand by conquest, and those who stand for the independence of the constituent provinces to whom concessions are offered. This, according to Riker, constitutes the essence of the federal bargain.

The merit of the political theory is that it represents federalism as essentially a political solution to different situations that involve the potency of a political bargain. The theory successfully explains the origin of older federations like that of the United States, Switzerland, Canada and Australia as well as it explains the formation of the new federations since the second World War such as that of India, Pakistan, Malaysia, Nigeria, West Indies etc. The significance of the theory lies in that it explains the origin of federations formed either by aggregation or by disaggregation.

### ***THE FUNCTIONAL THEORY OF FEDERALISM***

The origin theory of federalism tries to explain the causes responsible for the creation and sustenance of a federal system of government, but it fails to point out how federalism, despite its extinction, tries to persist in the face of new challenges that have raised their heads in the present century. To explain this gap, we have resorted to the functional theory of federalism which has found a vigorous exposition in the hands of a number of modern students of federalism.

The classical definition of federalism has given rise to the concept of 'dual federalism' on the basis of the existence of two coordinate and independent levels of government in a federation. The advocates of dual federalism claim in a truly federal system the central and regional governments must have their respective demarcated spheres of activity in which each can operate independently of the other, and that the maintenance of a functional division between the two levels of government is the key to the maintenance of a genuine federal system.

The idea of dual federalism has come in for severe criticism on several counts. It is argued that in spite of constitutionally guaranteed demarcation of the spheres of functions and powers between them, the two levels of government in a federal system are no longer substantially independent of each other. In fact, the emphasis has gradually shifted to their partnership, interaction and interdependence in the performance of functions allocated to each of them. Dual federalism fails to stand the empirical test of relevance and continuing applicability to older federations and to new experiments in federalism as well.

In its applicability to the American federal system, the idea of dual federalism has been outrightly rejected by Elazar. He suggests that the traditional conception of federalism as involving a sharp demarcation of responsibilities between two independent sets of sovereignties has never worked in practice in the United States. According to him, in the nineteenth century, as in the twentieth century, administrative cooperation and political interdependence between federal and state governments was a dominant characteristic of the American federal system, in spite of the formal division of powers of the constitution (Elazar, 1966:ch-1; Elazar et al. 1969).

An empirical study made by Watts of the six new federal constitutions of India, Pakistan, Malaysia, erstwhile Rhodesia and Nyasaland; Nigeria and the West Indies shows that 'Cooperative federalism' became the inevitable trend in their systems. This trend has taken place because of the extension of nation wide commercial enterprise, the development of an interdependent economy, the ever enlarging concept of the positive functions of government in modern society, the growth of national sentiment etc. (Watts, 1966:12). All these have resulted in partial financial dependence of the regional governments up to the general government and the administrative dependence of the latter upon the former. Functional analysis of federalism can be best understood in relation to social welfare, which constitutes one of the prime functions of modern governments.

### **FUNCTIONAL FEDERALISM AND SOCIAL WELFARE**

Whatever may be the legal demarcation of powers between the central and state governments, social welfare constitute a field of endeavour in which the two levels of government have become co-sharers of common goals and objectives (The Pioneer, 1995:5). Provision of education, health care, housing, social security and welfare services as well as special care of the neglected and under - privileged minorities are subjects which might have been originally allocated by the constitutions to the states as the latter's primary responsibilities; but in all these matters



people in all federation look up to the central government to intervene and accept responsibility for better and more adequate provision of the above services. Here federalism can never be understood as the relationship between centre and states merely in terms of the constitutional division of powers. But beyond the formal arrangement, we have to look to the varied devices and institutions of extra - constitutional cooperation and collaboration that has steadily grown over the years between the centre and states in the field of social welfare. The existence and operation of these institutions have, over the past decades facilitated the emergence of a relationship of contact and consultation disagreement and consensus, mutual sharing and interdependence (Korten, 1990) which no student of federal government can afford to overlook.

A common trend observed in all federations is that the central government has taken leadership in determining legislative policies, setting standards, reviewing implementation and providing finances needs for the various programmes. This might have tended to result in the supremacy of the central government and subordination of the state governments in a federal polity. But, instead of reducing federalism to a mockery, by maximization of powers of one and the inverse minimization of powers of the other, the trend is one of partnership in ways more than one, which gives equal recognition to both the national and regional governments as though they are co-partners in a common functional endeavour (Healey, 1992). This is discernible from the following developments: (i) the absence of total conformity of the state governments to the national policy in almost all cases; (ii) the ever rising demand for financial autonomy of the states; and (iii) the increasing use of the informal forums for constant consultation between the federal and state governments( Reagan, 1972, Nathan, 1983: 1 - 4)

To elaborate the point a little further. First, the partnership of the autonomous states in the various national policies and programmes does not show their total conformity to the dictates of the federal government. Sometimes, the state have said 'no' to proposals emerging from the centre and, at times, the intensity of their resentment has compelled the federal government to accommodate their view points and to persuade them to implement common policies (Nathan and Doolittle, 1985: 1). For instance, in the U. S. A, resentment of the states was reflected in the Senate and the House debates over the enactment of various federal aid education bills including the National Defence Education Act of 1958 and the Elementary and Secondary Education Act of 1965. In India, before the Forty - Second Amendment came to force, the attempt to transfer the subject education from the state to the ' concurrent list' met with failure because of the vehement opposition of the

state governments.

In the second place, the responsibility to provide social services in response to increasing demand of the present century has involved greater financial commitment on the part of both the central and the state governments in all the federations. The federal government because of its access to elastic sources of revenue such as tax on income, custody etc., is in a more advantageous position to meet its commitments. But the state governments with their limited resources have found it difficult to bear the ever growing financial burden. This has compelled them to be financially more and more dependent upon the federal government, asking for more grants and aids. But, when federal grants and aids have been given with strings and conditions attached, the state governments have sharply reacted and resented. As a result of this, financial partnership between the central and state governments have shown a tendency towards 'alterations and accommodations' (Kumar, 1978; Healey and Robinson, 1992). For instance, in the United States the block-grant system has been introduced since the enactment of the Partnership for Health Act (1966) and former President Nixon gave his proposal of revenue - sharing in order to leave the states with greater discretion in determining the policies and priorities of expenditure (Conlan, 1984). In the 70 s, the state governments in the Commonwealth of Australia preferred block-grants to project - type grants and in the Primeminister's' conferences they have always demanded the return of income tax in order to enable them to meet their growing financial commitments. In India, notably after the 1967 General Elections, the Tamil Nadu Government has, on the basis of the Rajmannar Committee Report (1970) advocated for decentralization of revenue to the state governments (The Statesman, 1994:3).

Finally, we come across another channel through which the centre and the states cooperate in evolving agreed policies and decisions on social services and the method of their implementation. This channel comprises frequent meetings, seminars, and conferences which take place at the ministerial as well as officer's levels. For example, in the United States, if a national policy is to be made on education, the decision making authorities will be the federal government, the state governments, the state governments, the National Education Association, American Federation of teachers etc. Similarly, decision on health or housing or Negro welfare takes into account the view point of Health Planning Agencies of the National and state governments, Ad hoc Committees on Housing, the civil Rights commission etc. In India too, similar practices have been followed. Regular and frequent consultations between the centre and the states is facilitated through the agency of

such bodies as the council of Elementary Education, the Central Advisory Board of Education, the Central Council of Health, the Central Social Welfare Board and their counterparts in the states ( Ray, 1966). In all federations, we find constant and frequent conferences and meetings of the legislative heads, executive Heads, of administrative departments of both the federal and state governments which lend an element of persistence to federal system in newly emerging and challenging situations.

Functional federalism has been defined in terms of such metaphors as ' cooperative', 'shared,' ' interdependent', ' intertwined', 'interlocked', 'creative', 'contact', 'consociational', 'new', 'permissive', or simply 'marble cake'<sup>5</sup>. In substance, these various metaphors emphasize that contemporary federalism is based on dynamic approach and it is to be viewed as a process of interdependence and cooperation between the two levels (or even more) of government serving one and the same people<sup>6</sup>. In other words, all these terms emphasize the growing importance of a relationship of cooperation, partnership and coordination between the central and state governments as being the essence of federalism as it exists and operates in different societies. All these concepts signify that the federal polity has not lost its significance but tends to persist by evolving new modes of response to challenges posed by changing circumstances<sup>7</sup>.

## *CONCLUSION*

To sum up in the preceding pages we have tried to discuss the classical, origin and functional theories of federalism with a view to presenting their relative values in the changing environment. A review of all these theories shows us that they deal with one or other aspect of federalism but not all the aspects. Therefore, each theory of federalism contains some elements of validity and usefulness; nevertheless it suffers from gaps and inadequacies. For a proper understanding of federalism as a system, we may conclude that all the three theories are complementary to each other. The first one seeks to explain what federalism is when viewed from a legal angle; the second provides explanations of the forces and factors that play an active part in the origin and formation of federal systems; and the third and the last provides an analytical framework to study federalism not as a rigid legal structure but as a dynamic and flexible process of cooperation and sharing between two levels of government of one and the same people.

A judicious synthesis of the essential elements of all these theories call upon us to formulate a new pragmatic definition which may be stated as follows: Federalism is a political system which creates in a society broadly two levels of govern-

ment with assigned powers and functions originating from a variety of factors and political bargain and displaying a tendency to persist through active response to the challenges of changing environment by process of adaptation through creative modes of institutional as well as functional relationship.

## NOTES

1. Concerning the complexities of federalism, Hughes remarks: "We often treat that federalism as a procrustean bed lopping off or stretching empirical data which do not fit . . . . what sort of concept is federalism? Is it a word or thing? . . . . How ( if at all) can a particular definition of federalism verified? But these are cloudy matters and it would be un- English to discuss them abstractly" (Hughes, 1964:2).
2. Concerning the fascination of federalism, Duchacek remarks: " "Federalism has now become one of good echo words that evoke a positive response but that may mean all things to all men like democracy, socialism, progress, constitution, justice or peace" (Duchacek, 1970 : 191).
3. In 1939, Harold J. Laski in his article 'The Obsolence of Federalism' declared: " I infer in a word that the epoch of federalism is over". Conversely Dahl thinks: " Whether ' federal' or ' unitary' in legal theory, modern democracies tend to be ' federal ' - i.e., pluralistic in actual practice" (Dhal, 1963: 37). Compare Lipson's statement:: "Not all democracies have federal governments. But all genuine cases of federalism are found in democratic states" (Lipson, 1964:1).
4. There are at present twenty one federal nations; and except china, all big nations are federal. It is true that a federal polity may reflect the qualities of a unitary polity and vice versa. As Livingston aptly opines: "The essence of federalism lies not in the institutional or constitutional - structure but in the society itself. Federal government is a device by which the federal qualities of society are articulated and protected" (Livingston 1952 : 81 - 95). Compare Alexandrowicz's observation: "A regid definition of the federal principle to various types of existing federations, may deprive it of any practical meaning". (Alexandrowicz, 1954: 402)
5. Coined by Elazar and developed by Grodzins the term 'marble cake federalism' implies that (as distinct form the ' layer cake' ) colours are mixed in the 'marble cake', so functions ( of the centre and states) are mixed in the (American) federal system.

6. Attitudes towards, as well as institutional forms of, a federal system gradually change under the impact of (i) charismatic leaders and political movements. (ii) interests vested in the continuation or alteration of given orientations. (iii) new economic, social and international realities (iv) the decline of legislative assemblies as rule initiators and rule makers and the shift of rule initiation and rule making towards the national executive and national bureaucracy; and (v) functional interests organized on a national, non- federal basis (Duchack, 1970: 343).
7. Duchacek feels: "... the term (federalism) seems to be acquiring a different meaning (and) perhaps a new word should be coined for the new combination of decentralization and autonomy on the subnational levels with participation on the national level" ( Duchacek, 1970:357).

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