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## FEDERALISM : A CONCEPTUAL ANALYSIS

S. A. Paleker

*Most of the studies on federalism centre around the legislative, financial and administrative relations between the Centre and the States. Very little attention has been paid to the theory-building. In this paper an attempt has been made to deal with certain theories of federalism today. The paper deals with a conceptual analysis of federalism. Here a review of classical theory, origin theory and functional theory has been made but the conclusion is that each theory of federalism contains elements of validity and usefulness though each of the theories also suffers from inadequacies. All the three theories are separate but, at the same time, interrelated and complementary to each other. Taken together they explain federalism as a political system which creates in a society broadly two levels of Government with assigned powers and functions arising from a variety of social, economic, cultural and political factors.*

### Introduction :

Most of the studies on federalism centre around the legislative, financial and administrative relations between the Centre and the States. Very little attention has been paid to the theory-building. In this paper an attempt has been made to deal with certain theories of federalism today. The paper deals with a conceptual analysis of federalism. Here a review of classical theory, origin theory and functional theory has been made.

In the modern period, the Constitution of the United States, of 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 Constitutions of the Switzerland, the Dominion of Canada and the Commonwealth of Australia and India. K.C. 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. But in 1953, Max Beloff noticed that federalism was enjoying "a widespread popularity such as it had never known before."<sup>1</sup> A look at the remarkable array of constitutions, enacted and adopted since the end of World War II would show how federalism has been taken to as a means to political unity among the new nations in Europe, South America, Asia and Africa.<sup>2</sup>

The growing popularity of federalism in recent years as a model of political organisation, the survival of the older federations through the challenges posed by changing circumstances like economic crisis and global wars; Globalization and International terrorism and the launching of functional federalism provide a strong justification for a re-examination of the various approaches to the definition of federalism, and analysis of the federal political system.

### Theories of Federalism

Attempts to explain the concept of federalism have given rise chiefly to three categories of theories of federalism, namely,

- (a) The classical theory of federalism;
  - (b) The origin theory of federalism; and
  - (c) The functional theory of federalism.
- (a) The Classical Theory of Federalism**

The classical theory tries to explain what federalism is. The outstanding exponents of the classical theory were Dicey, Harrison Moore, Jethrow Brown, Bryce, Robert Garran and K.C. Wheare. Robert Garran, an eminent Australian scholar, defined federalism as: "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."<sup>3</sup> Lord Bryce, described the Federal and State Governments as "distinct and separate in their action". Further, he said, "the system was like a great factory where in two sets of machinery are at work, their revolving wheels apparently intermixed, their bands crossing one another, yet each set doing its own work without touching or hampering the other."<sup>4</sup>

Following the definition of Bryce, K.C. 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's and independent of them? If so, that government is federal."<sup>5</sup>

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.
- (II) The constitution is to be rigid.
- (III) There is to be an independent judiciary.
- (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 at each level, general and regional.

The classical definition attempts to explain federalism in juristic terms. The juristic definition enables us to distinguish a federal polity from a unitary state where the constituent governments

exercise their powers in subordination to the will and discretion of the general or Central Government of the whole country. The challenges such as wars and depressions, economic planning and social services have made the classical theory of federalism obsolete. Its critics attack the theory on the ground of legal formalism.

The critics of classical theory raise a further objection about the use of the term 'independent' to represent the relationship between the general government and the regional governments in a federal political 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 government can operate in isolation from the other. Therefore, some students of modern federalism prefer 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 in a federation. Prof. Livingston, for example, redefines a federal government as "a form of political and constitutional organization 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."<sup>6</sup>

#### **(b) Origin Theory of Federalism**

The origin theory of federalism explains the circumstances favorable to the establishment of a federal system, and which there by seeks to define federalism in terms of the circumstantial factors and forces. The origin theory can be sustained by three categories of definitions such as: (I) the sociological theory, (II) the multiple-factor theory, and (III) the political theory.

(I) **The Sociological Theory.** William S. Livingston is recognized to be the first exponent of the sociological theory. The central thesis of the sociological theory is that it is the federal nature of 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 differences of economic interests, religion, race, nationality, language, 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 result 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 Wildavsky who distinguished 'social federalism' from 'structural federalism.' Wildavsky 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 as a good example of "social federalism"<sup>7</sup> adopted because of the social make-up of territorial, religious and other diversities located in distinct geographical

areas, corresponding roughly to boundaries of the States which united under the Constitution of 1787 to form the federation of the United States.

The sociological view of Livingston and Wildavsky and others has not been spared of critical scrutiny. The critics content 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.

The chief drawback 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 the one of Wildavsky 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. Venkatragaiya 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."<sup>8</sup>

(II) Multiple-factor theory. Some students of federalism, K.C. Wheare and Karl Deutsch in particular, have enunciated what may be called the multiple-factor theory in order to explain the origin of modern federations. This theory takes into account the necessary as well as the sufficient conditions of the birth of federal systems.

Where lays stress on (a) the desire for union and the desire for establishing independent regional governments, and (b) 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 defence, a desire to be independent of a 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 desires, the desire for union as well as the desire for regional independence and identity, a right kind of leadership with the foresight and vision of statesmen would be necessary, according to Wheare, to devise a federal system for accommodating both the tendencies.

Although Wheare lays 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 as 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.

(III) 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 centres around power and stands for the division of political power (as distinct from its concentration and monopolisation). 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 William H. Riker's *Federalism: Origin, Operation and Significance*. In this book, Riker raises two questions and tries to answer them. The questions are: (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. He says federalism provides for an enlarged political community without the use of coercive and 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 seeks 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 this territorial control over the whole area of the empire that collapses in order to meet military or diplomatic threat and are unable to extend their control 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 the formation of the new federations (since 1945) such as India, Pakistan, Malaysia, Nigeria, West Indies etc. The significance of the theory lies in the fact that it explains the origin of federations formed either by aggregation or by disaggregation. As an example of the latter, India might be cited. By the time the British left in 1947 provincial leaders, who had already tested provincial autonomy, wanted to make it more real and substantial without losing national independence to a new foreign power. While the threat of foreign aggression generated in them the desire to build up a common system of defence and protection, they were not prepared to abandon provincial autonomy. The centralists like Nehru, Patel and others wanted expansion for enlarged governments, unity and security and were prepared to achieve this through negotiation and concession. The outcome of this bargain

was the federal system of the constitution giving the whole country a strong central government and regional governments of the former provinces and acceded princely states a large measure of autonomy.

**(c) 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 to two coordinate and independent levels of government in a federation. The advocates of "dual federalism" claim that 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 functional division between the two levels of government is the key to the maintenance of a genuine federal system.

The theory 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 theory of "dual federalism" has been rejected by M.J.C. Vile and D.J. Elazar.<sup>9</sup> Both of them suggest 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 them, in the nineteenth century, as in the twentieth century, administrative cooperation and political interdependence between federal and state government was a dominant characteristic of the American federal system, in spite of the formal division of powers of the constitution.

This view, argues R.L. Watts, holds good of other developed federations such as Canada and Australia. "Interdependence and cooperation between the two levels of government are instead their characteristic features."<sup>10</sup> This trend is also inherent in the structure and operation of the new federations formed after the Second World War. An empirical study made by Watts of the six new federal constitutions of India, Pakistan, Malaysia, Rhodesia and Nyasaland, Nigeria and 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. All these have resulted in partial financial dependence of the regional governments upon the general government, and the administrative dependence of the latter upon the former.

**Conclusion :**

A review of all these theories shows us that they deal with one or the other aspect of federalism, but not all the aspects. Therefore, each theory of federalism contains some elements of validity and usefulness, though it suffers from gaps and inadequacies. For a proper understanding of federalism as a system, we may conclude that all the three theories are separate but, at the same time interrelated and 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 combination of the essential elements of all these theories call upon us to formulate a new definition which may be stated as follows: Federalism is a political system which creates in society broadly two levels of government 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 a process of adaptation through creative modes of institutional as well as functional relationship.<sup>11</sup> Taken together all three theories explain federalism as a political system which creates in a society broadly two levels of Government with assigned powers and functions arising from a variety of social, economic, cultural and political factors.

**Notes and References :**

1. M.Beloff, "The Federal Solution in its Application to Europe, Asia and Africa", Political Studies, 1953, p.114.
2. The federal principle in its legal and formal sense has been embodied in the Constitutions of Germany, and Yugoslavia in Europe, in the Constitutions of Brazil (1946), Venezuela (1947) and Argentina (1949) in South America, in the Constitutions of Malaysia (1943), Rhodesia and Malawi (1953-63), Nigeria (1954) in Africa; the West Indies (1958) and in the Constitution of India (1950) and Pakistan (1956). It is observed by R.L. Watts that Burma's claim to have adopted in 1947 a federal constitution is doubtful as in intent the Constitution is unitary. Some new born federations, such as the U.S.S.R. (1958), Mali Federation (1959), the Union of Central African Republics (1960) proved to be short-lived federal systems.
3. Sir Robert Garran, Report of the Royal Commission on the Australian Constitution, 1929, p. 230.



4. Quoted by Morton Grodzins, "The Federal System", on Aaron Wildavsky (ed). *American Federalism in Perspective*, Little Brown and Company, Boston, 1967, p. 261.
5. K.C. Wheare, *Federal Government*, fourth ed. Oxford, 1963, p. 33.
6. William S. Livingston, *Federalism and Constitutional Change*, 1956, p.9.
7. Aaron Wildavsky (ed.), *American Federalism in Perspective*, Little Brown & Company, Boston, 1967, p.178.
8. M. Venkatrangaiya, *Some Theories of Federalism*, 1971, p.41.
9. See M.J.C. Vile, *The Structure of American Federalism*, ch. X and D.J. Elazar, *The American Partnership*, 1962, ch. 1.
10. R.L. Watts, *New Federations: Experiments in The Common Wealth*, op. cit., p. 12.
11. Sharada Rath, *Federalism Today*, Sterling, New Delhi, 1984, p. 11.