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A Reassessment of Federalism as a Degree of Decentralization

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The central argument in this article is that it is wrong to conceive of federalism as simply a degree of decentralization. Decentralization can only be applied meaningfully to federalism in matters that belong to the central government. Even then, unlike unitary decentralization, which is entirely at the discretion of the central government, federal decentralization is both mandatory and guaranteed. Much more than this, however, the key to distinguishing federal systems from nonfederal systems, which also have "degrees of decentralization," lies in the concept of noncentralization by which is meant that matters belonging to the states cannot ordinarily be centralized unilaterally. It is this noncentralization, which opposes decentralization (because decentralization presupposes centralization), that makes federalism a highly distinct form of "decentralization."

Extant theorizing on federalism has faced serious challenges in this century. The dramatic transformations in federal systems, which have tended towards centralization of power, and the variety of forms taken by these changes have complicated the study of federalism. Only a thin line now seems to demarcate federal systems from unitary systems, and it has become quite difficult to offer any precise or rigid definition of federalism. Perhaps this is an indication that federal theorizing has been too static to predict directions of change. Few students of federalism would deny that for too long, we have concentrated efforts on analyzing federalism as an immutable *foedus*, as an end in itself. Perhaps if enough attention had been focused on federalism as a means to an end, federal theory would have proved adequate to accommodate the long-drawn changes in federal practice.¹

Now, more than ever, there is a need to salvage the study of federalism as a distinct subject matter. Some students of federalism have risen to the challenge. They have formulated broad and all-inclusive federal spectra and continua that seek to accommodate the varieties of federalism, changes and all.² However, the problem with many of these formulations is that in the

¹The point is that the federal compact is not a dormant arrangement which cannot change along with changes in the society. The federal compact should, therefore, be seen as a point of departure rather than an end in itself.

²Some of the most significant writings include William A. Livingston, "A Note on the Nature of Federalism," *Political Science Quarterly* 67 (1952): 81-95 and *Federalism and Constitutional Change* (Oxford: Oxford University Press, 1956); Carl J. Friedrich, *Federalism: National and International* (London: Oxford University Press, 1963) and *Trends of Federalism in Theory and Practice* (London: Pall Mall, 1968); William Riker, *Federalism: Origin, Operation, Significance* (Boston: Little, Brown, 1964) and "Federalism," *Handbook of Political*

attempt to be all-inclusive, they often "run the risk of encompassing virtually any kind of government at all."³ This is truest of one categorization of federalism which is examined in this essay, namely, federalism as a degree of decentralization.

To conceive of federalism as an unqualified degree of decentralization is to say that every governmental system is a variant of federalism. The problem then is how to demarcate one system from the other. The intention of this article is to reexamine the relationship between federalism and decentralization, specifically, to ascertain the validity of conceiving of federalism as a degree of decentralization, comparable to decentralist unitary systems, especially those that have "federal arrangements."⁴ The major argument is that decentralization can only be applied to intergovernmental relations in federal systems in a qualified and restrictive way. In fact, decentralization is best applied and understood in relation to federalism when its usage is restricted to the policymaking and administrative aspects rather than the legal and constitutional aspects of federalism. The substance of federalism is captured by the concept of noncentralization which best describes the legal and constitutional aspects of federalism. Therefore, any attempt to divest federalism of the principle of noncentralization by conceiving of it simply as a degree of decentralization undermines its essence.

DECENTRALIZATION VS. NONCENTRALIZATION

Having stated the intention, it is necessary to define decentralization and noncentralization. By decentralization I mean a system of dispersal of power from a central government to other units or agencies of government. There are two kinds of decentralization. First, there is what may be called *discretionary decentralization* because decentralization is not constitutionally guaranteed. Rather, it depends wholly on the grace or convenience of the central authority. This is the prevalent kind of decentralization in unitary systems. Second, there is *constitutionally guaranteed decentralization* in which dispersal of power to constituent units is obligatory. This kind of decentralization falls within the ambit of federalism, the implication being that "the regional government's share of power in a federation is relatively large compared to that in unitary states."⁵

Science, vol. 5, *Governmental Institutions and Processes*, eds. Fred J. Greenstein and Nelson W. Polsby (Reading, Mass.: Addison-Wesley, 1975), pp. 93-172; Geoffrey Sawer, *Modern Federalism* (London: C. A. Watts, 1969); P. King, *Federalism and Federation* (London and Canberra: Croom Helm, 1982).

³King, *Federalism and Federation*, p. 71.

⁴The term "federal arrangements," according to Elazar, suggests that there is more than one way to apply the federal principles and, further, that there are federal-like arrangements in addition to federalism. In relation to unitary systems with federal arrangements, Elazar states that: "A technically unitary state is considered to be using federal arrangements when there is a formal agreement between the entities involved that takes on constitutional force . . . as a result of the striking of a bargain that guarantees their respective integrities as specified." See Daniel J. Elazar, *Exploring Federalism* (Tuscaloosa: University of Alabama Press, 1987), p. 46.

⁵Arend Lijphart, "Non-Majoritarian Democracy: A Comparison of Federal and Consocia-

By and large, however, decentralization suggests the existence of a powerful central authority and is best understood, as Daniel J. Elazar points out, in terms of the “core-periphery” and “hierarchical” models, both of which entail the flow of power from a powerful center to subordinate or lower levels of government.⁶

Noncentralization is the antithesis of decentralization. In the words of Elazar, noncentralization implies that “no matter how certain powers may be shared by the general and constituent governments at any particular time, the authority to participate in exercising them cannot be taken away from either without their mutual consent.”⁷ This means that “in a noncentralized political system, power is so diffused that it cannot legitimately be centralized or concentrated without breaking the structure and spirit of the constitution.”⁸ Defined in such terms, noncentralization rather than decentralization aptly describes the constitutional arrangement in federal systems and is best represented by the “matrix model” in which the rank-order of levels of government present in the hierarchical model is counter-balanced by the constitutional dispersal of power to various centers. In other words, in a noncentralized system, power *sharing* rather than *concentration* is the major principle.

AN OLD ROMANCE: FEDERALISM AND UNITARISM ARE DISTINCT(?)

A popular point of departure for most federalist scholars, especially those of the legal-constitutional genre, is to differentiate federalism from unitarism. In general terms, a unitary system has only one effective and determinate level of government—the central government. Territorial (local administrative) subunits of government are determined by, and subordinate to, the central authority, the relationship being one of a *revocable* delegation of power to the territorial units by the central authority. Federalism is characterized by an *irrevocable* division of power between the central government and the component units (e.g., states, regions, provinces, and cantons). This division is a product of a constitutional compact (*foedus*) between the two units of government neither of which, acting alone, can amend (or revoke) the compact. Put differently, while unitarism involves centralization and decentralization of power because both imply “the existence of a central authority, a central government . . . [which] can decentralize or recentralize if it so desires,”⁹ federalism involves both centralization/decentralization and noncentralization. This is so because the central government in a federal system can decentralize or recentralize in its sphere of jurisdiction, but

tional Theories,” *Publius: The Journal of Federalism* 15 (Spring 1985): 6.

⁶Elazar, *Exploring Federalism*, pp. 35–37.

⁷Ibid., p. 166.

⁸Ibid., p. 34.

⁹Daniel J. Elazar, “Federalism vs. Decentralization: The Drift from Authenticity,” *Publius: The Journal of Federalism* 6 (Fall 1976): 13.

matters on which the states make final decisions cannot, in theory, be centralized. This point is well made by Elazar who argues that noncentralization best describes intergovernmental relations in federal systems.¹⁰

When dual federalism prevailed, the distinction between unitary systems and federal systems was fairly easy to make. Dual federalism is best described in the words of U.S. Chief Justice Roger B. Taney: "The power of the general (central) government and the state, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independent of each other within their respective spheres."¹¹ Certainly, no such system has ever existed in practice, nor is practicable if a country is to remain one unit. Even in the United States, whose 1787 Constitution is often said to have provided for a dual federation, there were instances of federal-state collaboration: U.S. senators were selected by the state legislatures, the election of representatives and presidential candidates had to be ratified by state officials, and only federal officials could effect extradition of criminals from foreign states on behalf of the state prosecutors. Above all, the Supreme Court had final jurisdiction in all appeal cases from state and federal courts. Indeed, the authors of *The Federalist* recognized that reasonable centralization is a major requirement for efficient government, and actually advocated greater centralization partly to curtail the excesses of the original thirteen states and to facilitate collective strength against external aggression.¹² Thus, federalism has always involved a large measure of centralization/decentralization and federal-state collaboration, both of which negate the idea of dual federalism.

If dual federalism never existed in practice and the need to strengthen central authority has always been recognized, then the federal-unitary distinction may have been more exaggerated than we are prepared to admit. However, K. C. Wheare, Arthur MacMahon, Geoffrey Sawer, and others who adopted the dual model to distinguish federal from unitary systems argue that, while the constituent units in a unitary system are subordinate to the central authority, those in "true" federal systems are not (or ought not to be).¹³ As Ronald Watts puts it, "what distinguishes federal from other forms of government is that neither the central nor the regional government is

¹⁰Ibid.

¹¹Chief Justice Taney in *Ableman v. Booth*, cited in D. Elazar, "Federal-State Collaboration in the 19th Century United States," *Political Science Quarterly* 79 (1964): 133.

¹²Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: New American Library, 1961), No. 31.

¹³This raises the age-old question of sovereignty in federal systems. Clearly, the centrist notion of sovereignty which assumes that it inheres in the central government, thereby rendering the constituent states subordinate, does not fit federalism. The way to get around this problem is to locate sovereignty in the *people* who subsequently delegate it, in a shared way, to both the central and the state governments, and to say that, for purposes of international relations, the central government is sovereign. This does not quite solve the problem because other students insist on locating the sovereign in the center, but, in the present time, disagreements over locating the sovereign in federal systems have become less relevant than they were in German legal theory of the 18th century.

subordinate to the other as in unitary or confederal systems.”¹⁴ It is for this reason that Wheare regarded as not truly federal, states like India and Nigeria (pre-1966) where the constitution empowered the central government to intervene in the states at periods of crisis or emergency, thereby implying state subordination.¹⁵ This position has been criticized for being too inflexible, however, and even Wheare agreed that where such interventionary powers are not invoked habitually, the system remains federal in practice.

Nevertheless, even the assumed non-subordination of constituent units is no longer a strong point in many federations today. The emergence of “intergovernmental consultation,” “cooperative federalism,” “organic federalism,” “new federalism,” and even “military federalism,” all of which involve increasing collaboration between federal and state authorities,¹⁶ has brought in its wake a recognition of the leadership and policy-shaping responsibilities of the central government. This development has been propelled by numerous factors, two of which deserve to be mentioned here.¹⁷

First, there has been a rapid expansion in the scope of matters of central responsibility. As federations (and indeed all other governmental systems) have moved from the era of the law-and-order state to one of functions—the welfare and service state—there has been an urgent need to formulate common policies and to reduce to the barest minimum, different practices in the states. The onus for doing so has fallen on the central government whose growing fiscal powers helped to equip it for this task.

This accounts for the second factor, namely, the financial ascendancy of central governments, which has made the states their dependents. Central governments have been able to exert varying forms of control over the states, especially through grants-in-aid. In Nigeria, for example, about 80 percent of the states’ annual budgets is provided by the federal government, which also initiates and coordinates the execution of all major projects under the National Development Plans.¹⁸ In the United States, where decentralization and state and local government autonomy remain time-honored traditions, and New Federalism of Richard Nixon witnessed a rapid growth of federal intervention in matters belonging to the states and the localities. This was matched by an increased revenue allocation from the federal government to the states, and by an increased allocation of conditional and non-conditional

¹⁴Ronald L. Watts, *New Federations: Experiments in the Commonwealth* (London: Oxford University Press, 1966), p. 355.

¹⁵See K. C. Wheare, *Federal Government* (4th ed.; London: Oxford University Press, 1967).

¹⁶A good summary of these developments is provided in L. O. Dare, “Perspectives on Federalism,” *Readings on Federalism*, ed. A. B. Akinyemi, P. D. Cole, and W. Ofonagoro (Lagos: Nigerian Institute of International Affairs, 1979), pp. 26–35.

¹⁷Other factors include the “militarization” of states to meet international political exigencies and the overriding need for nation-building. For the factors making for increasing centralization in federations, see Daniel J. Elazar, “The Shaping of Intergovernmental Relations in the 20th Century,” *Annals of the American Academy of Political and Social Science* 359 (May 1965); M. B. Danielson et al., *One Nation, So Many Governments* (Lexington, Mass.: Lexington Books, 1977); David Walker, “American Federalism in a Transitional Era,” *Readings on Federalism*, pp. 336–351.

¹⁸See S. E. Oyovbaire, *Federalism in Nigeria* (London: Macmillan, 1985), pp. 162–200.

grants to supplement state and local revenues and solve such problems as pollution and drug abuse.¹⁹

Indeed, Elazar has pointed out that much of what the Nixon administration believed was a restoration of power to the states and the localities “actually involved federal intervention into spheres previously left in the state and local hands.”²⁰ If the New Federalism had succeeded fully, policymaking would have been centralized and state and local governments would simply have become implementation agencies of central policies. To all intents and purposes, this would have resulted in the replacement of noncentralization with decentralization.

Decentralization, then, is best applied to federal systems when its use is restricted to describing the administrative linkages between the central government and the constituent units, because only when we think of centralized policymaking can we speak of decentralization of power to the constituent units. In this connection, MacMahon has distinguished between the “indirect federal administration” systems in the European federations of West Germany, Switzerland, and Austria and “direct federal administration” in the United States.²¹ Indirect federal administration involves a constitutional arrangement whereby the state governments implement federal policies and laws, usually under the supervision of federal officials. Although the states may have a free hand in the manner of implementation, this must be done within the ambit of norms prescribed by the center. This arrangement is also to be found in Nigeria’s military federalism in which state military governors are appointed by the Head of State and are expected (naturally, as soldiers) to execute his orders. Direct federal administration on the other hand, involves direct implementation of federal laws and policies by federal officials in the states, usually in collaboration with state officials.

It is this expanding centralization of federal systems that accounts for the growing conception of federalism as a degree of decentralization rather than as a strict division of powers. It is now generally recognized that power requires *concentration* (and dispersal) rather than a strict *division*. Indeed, it may be better to characterize power relations in a federal system as a *distribution* between central and state governments in a collaborative sense because state matters in which the center is not interested are rare. The same is true of federal matters for the states. This organic conception brings federalism closest to unitarism, which is also a degree of decentralization. However, federal decentralization still differs from unitary decentralization, which is a matter of discretion rather than constitutional obligation. “As a political principle,” writes Elazar, “federalism has to do with the *constitutional dif-*

¹⁹See Danielson, *One Nation, So Many Governments* and A. H. Birch, *Federalism, Finance and Social Legislation in Canada, Australia and the United States* (Oxford: Clarendon Press, 1955) for a comparative analysis of early trends in these federations.

²⁰Elazar, *Exploring Federalism*, p. 198.

²¹Arthur W. MacMahon, *Administering Federalism in a Democracy* (New York: Oxford University Press, 1972), pp. 22–27. On the concept of “administrative federalism,” see Sawyer, *Modern Federalism*, pp. 128ff.

fusion of power so that the constituting elements in a federal arrangement share in the processes of common policy-making and administration by right, while the activities of the common government are conducted in such a way as to maintain their respective integrities.”²²

In view of the considerable overlaps between unitary and federal practices today, many students of federalism hesitate to strictly distinguish between them, preferring instead to assert that any system is more or less federal or unitary. Certainly, this cannot be so because, as one author has pointed out, “To make empirical comparisons between human organizations . . . one cannot ignore or omit stipulations or conventions which draw a determinate line between the institutions to be compared.”²³ There will, therefore, continue to be a need to distinguish federal from unitary systems as precisely enough as possible. Perhaps the best way to do this is to adopt the legal-constitutional approach formulated by Wheare and others. This approach takes the quintessence of federalism to be the conformity that the constitution and its practice have with certain federal principles.²⁴ These include, among others, a written constitution that divides power between two units of government neither of which can unilaterally amend it; an independent supreme court that serves as final arbiter in all constitutional disputes; financial self-sufficiency of each unit of government commensurate with its allotted functions; a separation of powers between the executive, legislature, and judiciary; non-subordination of one unit of government to the other; a constitutional clause that prohibits secession by any of the constituent units; and a constitutional provision that matters not belonging to the exclusive or concurrent legislative lists (i.e., the residual powers) should be the preserve of the regional (state) governments.²⁵

From what has been said so far, the limitations of conceptualizing federalism according to these “principles” are fairly obvious. First, they fit too neatly into the model of dual federalism which has never existed in practice, and the notion of which has since been rendered obsolete by the centralizing features of modern federalism. Second, these “axiomatic” principles are so restrictive and exclusionary that only a few states qualify to be properly called federal. Wheare himself took the U.S., Switzerland, Australia, and Canada to be the only “true” federations. Although Watts, Sawyer, and MacMahon have broadened the spectrum to include other federations,²⁶ a

²²Elazar, *Exploring Federalism*, pp. 5–6.

²³King, *Federalism and Federation*, p. 78.

²⁴Cf. Wheare, *Federal Government*; G. Sawyer, *Modern Federalism*; and A. W. MacMahon, ed., *Federalism: Mature and Emergent* (New York: Russell and Russell, 1962).

²⁵This last “principle” is not a hard-and-fast one. In India, Canada, and Venezuela, for example, residual matters are allocated to the central government. What is important is that the constitution provides for the locus of residual powers, not that they should be located in any one particular place.

²⁶This is because, as MacMahon contends, although it is important to identify the salient characteristics of federalism, it is “self-defeating” not to allow for varieties or degrees of the federal principles (and federalism). See his “The Problems of Federalism: A Survey,” *Federalism: Mature and Emergent*, p. 4.

leading Nigerian student of federalism has attributed the exclusionary character of the principles approach to the fact that most analysts in this mold consider the U.S. to be the perfect model of federalism; all the others have to approximate the American model to be considered truly federal.²⁷ It is with a view to overcoming this limitation that Carl Friedrich, William Livingston, and William Riker among others have examined the social and political forces that produce the varieties of federalism.²⁸ Though an Americanness is still discernible in their analyses, they are able to treat other federations as real federations although, sometimes, their federal spectra get so wide that virtually any system qualifies to be called federal.

Third, the principles are too static and inflexible (understandably because they imply that federalism is an end in itself) to account adequately for the dynamic nature of federal practice, especially the phenomenal transformations that have taken place in federal systems, including the U.S. The point is that the principles approach underplays the wide discrepancies often observed between constitutional forms and actual practice.

These criticisms point to the need for further developments in federal theory. However, this does not obliterate the utility of the principles in differentiating federal from nonfederal systems because, after all, the federal character of a constitution can only be ascertained by finding out if it meets certain (minimum) criteria. As Sawyer proffers,

so long as the amending procedure (of the constitution), the operation of the judicial review and the pattern of politics or a combination of any of the two of them restrict the ability of the centre to abolish a regional structure . . . the position of a region is sufficiently secured and so, the polity in question should be called federal.²⁹

Preston King makes the same point when he writes: "The likeliest key to federation, to the distinctive character of federation . . . is not directly the promotion of decentralization or centralization or a balance of power. . . . The key to federation is its universal constitutional attribution of entrenched powers at the centre to constitutive and non-sovereign territorial units."³⁰ The form this takes differs from one federation to the other, but as long as the basic requirement is met, the federation remains a true one.

From the foregoing expositions, one fact emerges clearly: however much one may try to distinguish between federalism and unitarism, there are considerable overlaps between the two of them, especially because the most prominent feature of modern federalism is increasing centralization. Even so, notwithstanding this conceptual blurring, federal decentralization is still

²⁷S. E. Oyovbaire, "The Theory of Federalism: A Critical Appraisal," *Nigerian Journal of Political Science* 1 (1979): 78-91.

²⁸Cf. Friedrich, *Federalism: National and International*; Livingston, *Federalism and Constitutional Change*; Riker, "Federalism."

²⁹Sawyer, *Modern Federalism*, p. 125.

³⁰King, *Federalism and Federation*, p. 146.

distinct from unitary decentralization.

FEDERALISM AS A DEGREE OF DECENTRALIZATION

This section begins by identifying the developments which have given rise and meaning to the conception of federalism as a degree of decentralization. The conception evolved partly in reaction to the exclusionary character of the principles approach and partly because of the profound changes that have occurred in federal systems. The principles approach considered as quasi-federal or nonfederal, systems in which the constituent states had some measure of subordination to the center. In expanding the federal spectrum to include such systems, students of federalism after Wheare focused on the social and political forces that give rise to the varieties of federalism and concluded that:

Federalism most distinctively constitutes a variable response to opposed demands for the dispersal and concentration of power. More precisely, federalism constitutes a variable response to opposed demands for the centralization and decentralization of power on a specifically territorial basis.³¹

Second, the coming of “new federalism,” with its centralizing tendencies, brought in its wake the need to devise new terms to describe changing intergovernmental relations. “Decentralization,” “dispersal,” and “deconcentration,”³² are some of the popular new terms. Of these, decentralization is the most popular.

The meaning of decentralization is generally agreed upon. It is a variant of centralization by which is meant, in governmental terms, the concentration of power in only one center of authority. Decentralization, therefore, is the dispersal of power from this center to other centers of power, which may be functional or territorial units. As it were, centralization and decentralization are not discrete because power has first to be centralized (or concentrated) before it can be decentralized (or dispersed). Accordingly, because decentralization presupposes centralization, to conceive of federalism as a degree of decentralization is to say that centralization is not inconsistent with federalism. It is this idea that federalism can be centralist, which seems to imply an abrogation of states' rights, that strict legal-constitutional students of federalism find objectionable.³³ For them, if federalism is to be seen as

³¹Ibid., p. 21.

³²“Deconcentration,” according to Graham, involves retaining discretion over the formulation of political strategy at the top and delegating the responsibility of specific policies to the bottom. See L. Graham, “Centralization and Decentralization Dilemmas in the Administration of Public Service,” *International Review of Administrative Sciences* 3 (1980).

³³A leading Indian student of federalism has contended, however, that “the existence of a strong center is not inconsistent with the concept of federalism. What is of real significance is whether the center and the states ordinarily enjoy substantial autonomy within the spheres delimited by the constitution.” See Amal Ray, *Inter-Governmental Relations in India* (Bombay: Asia Publishing House, 1966), p. 144.

decentralization, it is best to restrict this characterization to the administrative rather than the legal and constitutional aspects of federalism. In this way, the concepts of centralization and decentralization do not offend the primary federal principle of noncentralization.

If this narrow application of decentralization is accepted, then and only then, can federal systems be compared to unitary systems, which are inherently decentralist. After all, supposedly unitary states like the United Kingdom, France, Italy, and China reserve varying measures of autonomy to their constituent units and operate what Elazar calls federal arrangements. However, this narrow application of decentralization to federal systems, valid as it is, is ignored by many students of federalism who conceive of it as an unqualified degree of decentralization and seem to suggest that, because all governmental systems have varying degrees of decentralization, every system is a variant of federalism.

This brings me to the critical problem with conceptualizing federalism as a degree of decentralization: there is a suggestion that because all systems have varying degrees of decentralization, every system is a variant of federalism. This cannot be. To ascertain the validity of this contention, let us examine two well known conceptions of federalism as a degree of decentralization, namely, those of Livingston and Riker.

Livingston sees the essence of federalism in the nature of the society it serves rather than in constitutional forms.³⁴ Although this is a widely acclaimed perspective, Livingston's conclusions suggest that all societies are federal or potentially federal:

Federalism is not an absolute but a relative term; there is no specific point at which a society ceases to be unified and becomes diversified. The differences are of *degree* rather than of *kind*. All countries fall somewhere in a spectrum which runs from . . . a theoretically wholly integrated society at one extreme to a theoretically wholly diversified one at the other.³⁵

Precisely, decentralization is a function of the level of integration in the polity:

Every polity is more or less integrated. . . . Each is composed of elements that feel themselves to be different. . . . These diversities may turn on all sorts of questions . . . economic, religious, racial, historical. . . . If they are grouped territorially . . . then the result may be a society that is federal.³⁶

Taken literally, and to the extent that he does not specify at what point a federal society becomes a federal system, Livingston's exposition suggests that all societies are federal because there is virtually no society in which diversities are not expressed territorially.

In fact, we would expect all African states afflicted by high degrees of

³⁴See Livingston, *Federalism and Constitutional Change*.

³⁵Livingston, "A Note on the Nature of Federalism," 84.

³⁶Ibid., 84-85.

territorially based ethnic conflicts to be federal systems. The fact that they all are not is an indication that what marks out federal systems like Nigeria, the Sudan, and Cameroon is that in addition to their territorially based diversities, they have federal constitutions that guarantee a dispersal of power to constituent units which, being autonomous in certain respects, are centers of power in their own right.³⁷ It is for this reason that Riker criticizes Livingston for divesting federalism of its juristic component. As he points out, federalism "is a juristic concept of sorts and that fact (should be) retained in our definition by emphasizing the existence of two kinds of government and their separate ability to make some decisions independently of each other."³⁸

If we look more closely, however, we find that what he misses in divesting federalism of its constitutional form, Livingston seems to compensate for by specifying the type of social structure peculiar to federalism.³⁹ This notion does not escape criticism either. In the words of Sawyer, the federal society thesis "can be misleading because (it) suggests that there is a sort of general social attitude or type of social structure specific to federalism . . . the favourable social attitude is an attitude towards government, administration and law in general, not towards federalism as such."⁴⁰ In the end, we are left with a suggestion that every system is more or less federal and that there is no precise way of distinguishing federalism or federal decentralization from nonfederal systems or their varieties of decentralization.

Riker's conception, though similar to Livingston's, at least attempts to clearly distinguish federal from nonfederal systems.⁴¹ Federalism, Riker says, is a mid-way house between the two extremes on a centralization-decentralization continuum, namely, fully centralized systems and fully decentralized systems, which he calls alliances. If this continuum seems too all-inclusive, Riker makes up by setting the federal limits within it. Thus, he says that the two extreme forms which federalism may take on the continuum are "maximum" federation, in which the central government has jurisdiction in all but one matter without being required to consult constituent units, and "minimum" federalism, in which the center has jurisdiction over only one specified matter in which it does not require the approval of the constituent units.⁴²

³⁷One view is that the probability that a "federal society" characterized by ethnic cleavages will adopt a federal constitution is a function of the degree of manifest differences which have been articulated by the elites who lead the ethnic units. See E. Osaghae, "Ethnicity and Federalism in Nigeria." (Ph.D. Diss.: University of Ibadan, 1984).

³⁸Riker, "Federalism," p. 106.

³⁹As he says, "Only when a society contains territorial groups so markedly different from one another that they require some instrumentality to protect and express their peculiar qualities, does the need for federalism generally arise." Livingston, "A Note on the Nature of Federalism," 90.

⁴⁰Sawyer, *Modern Federalism*, p. 136.

⁴¹Riker, "Federalism."

⁴²*Ibid.*, pp. 98-100.

Within this federal decentralization subset of the all-inclusive continuum, Riker proceeds to classify federations according to their degree of decentralization. Those which are closest to the minimum federalism extreme are termed "peripheralized" federations, and those closest to maximum federalism, "centralized" federations. The main practical difference between centralized and peripheralized federations is that:

in centralized federalism the central government can force constituent governments to behave as the central government wishes with respect to those functions generally supposed to be vested in the center. On the other hand, in peripheralized federalism it is not possible for the center to discipline a recalcitrant regional government or a recalcitrant group of regional governments. They can be expected to obey an edict from the center only if they agree with it.⁴³

To the extent that Riker does not divest federalism of its juristic character as Livingston does, he provides a useful framework for analyzing the varieties of federalism. In particular, by insisting that federalism should be seen as a variable rather than an absolute constant and, furthermore, by specifying the criterion that a system must meet to be called federal, he extends the frontiers of the study of comparative federalism. As it were, no matter the degree of centralization or decentralization that a federation may have, it remains a federal system if "the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions."⁴⁴

What has been analyzed so far may be summarized as follows: To conceptualize federalism as a degree of decentralization certainly extends the promise of studying federalism in a comparative perspective, as it recognizes the wide variety of forms federalism may take beyond the U.S.-based axiomatic stipulations of the principles approach. However, at some point, because it is rare to find any governmental system that is fully centralized (meaning that all governmental systems are decentralist in varying degrees), it is difficult to differentiate federal systems from unitary systems. This is the problem faced by an unqualified conception of federalism as a degree of decentralization, especially one that divests federalism of its juristic element altogether. Where the conception is qualified by, for example, setting federal limits, as Riker's does, it is not too difficult to distinguish federal decentralization from nonfederal decentralization.

Against this background, it is possible to move one further step to provide a paradigm for differentiating federal systems from other systems which are, like them, "degrees of decentralization." In doing so, a "most similar systems" approach is appropriate because we are operating at the systemic level of federal states. According to this approach, "It is anticipated that

⁴³Ibid., p. 108.

⁴⁴Ibid., p. 101. Indeed, Riker points out that federal constitutions usually leave final authority to one level of government in times of crisis and emergency.

if some important differences are found among these otherwise similar countries, then the number of factors attributable to these differences will be sufficiently small to warrant explanation in terms of those differences alone."⁴⁵

All federal systems are similar to the extent that their constitutions embody most of the federal principles presented in the previous section. The differences among them (which produce the federal varieties) are attributable, as Livingston and Riker separately argue, to the different social, political, and historical forces that bring federalism about in individual federations. In relation to decentralization specifically, federal systems are similar (and differ from nonfederal systems) because they all have a distinct type of decentralization in addition to having matters that cannot legitimately be centralized in a unilateral manner. The differences among them (i.e., their degrees of decentralization and noncentralization) can therefore be explained in terms of their systemic variations.

It is necessary to recall a basic distinction that was made between federal systems and unitary systems at the beginning of the previous section. It was said that whereas unitarism involves *only unqualified* decentralization, federalism involves *both qualified* decentralization and noncentralization. The qualification of decentralization in federal systems is that it is restricted to, and is best applied in, the realm of policymaking and administrative matters that fall under central jurisdiction (i.e., the exclusive central legislative list) and the concurrent legislative list in which the central government provides leadership and coordination. In other words, because decentralization presupposes (prior) centralization, the term can only be appropriate when used to describe the structural and administrative organization of the central government within its sphere of jurisdiction.⁴⁶ Furthermore, unlike decentralization in unitary systems, which may be inevitable but is neither guaranteed nor compulsory, decentralization in federal systems is both inevitable and guaranteed. The federal compact that establishes two units of government guarantees that the central government cannot carry out its functions without the cooperation of the states, which are centers of authority in their own right. In essence, this means that the "central government incorporates regional units into its decision procedure on some constitutionally entrenched basis."⁴⁷

The extent to which central governments do this varies from one federation to another, depending on the constitutional provisions and the prevailing sociopolitical circumstances, but the basic element remains the same. In the U.S., where the states have sought to protect their constitutional rights, consultation and collaboration have been fairly well guaranteed. In

⁴⁵A. Przeworski and H. Teune, *The Logic of Comparative Social Inquiry* (New York: Wiley-Interscience, 1970), p. 32.

⁴⁶This much can be gleaned from a provision in the Swiss constitution which provides that "The confederation, within its own legislative powers, may . . . authorize the cantons to issue regulations in fields which do not require general legislation." This, MacMahon proffers, is a large measure of indirect federal administration. See *Administering Federalism*, p. 24.

⁴⁷King, *Federalism and Federation*, p. 77.

Switzerland, although the cantons carry out legislative enactments of the central government, they retain some freedom in deciding how to do this within basic norms. Even in organic federations, such as West Germany and Austria, where the states act as agents of the central government, they still "have much influence in determining what the federal law shall be which they administer,"⁴⁸ and "on certain matters, the central government is empowered to pass laws 'as to basic principles' but the states have the right to enact the 'enabling legislation' and carry out the laws."⁴⁹ In the case of West Germany, John Holloway reminds us that the federalism of the Basic Law of 1949 was designed to check the overcentralization of power under the Nazi regime by ensuring that power would be decentralized to the *Länder*:

The Nazi state had been a unitary state, in which the federal states (*Länder*) of the Weimar constitution, too weak to offer any opposition, were reduced to administrative districts under the direction of party Gauleiter. This concentration of political power in the hands of the central government was to be avoided in the future by firmly establishing federalism in the new constitution.⁵⁰

When we turn to Nigeria's "military federalism" (actually a misnomer), we find that decentralization involves little or no respect for states' rights.⁵¹ The Supreme Military Council (now called the Armed Forces Ruling Council), imposes orders on state governors who are primarily military appointees. The temptation to conclude that Nigeria is no longer federal must be resisted, however, because the states still retain the autonomy to carry out federal policies differently. This is consistent with Hans Kelsen's argument that whereas unitarist decentralization often involves uniformity in implementing policies throughout the country, federal decentralization allows state differences to figure prominently in policy implementation.⁵²

The second feature of federal systems that differentiates them from nonfederal systems is the principle of noncentralization. Implicit in the definition of federalism as involving a division of power between the central and state governments is the fact that there are certain matters on which states make final decisions. The existence of such matters guarantees the states autonomy in some areas. However, if this autonomy is to be guaranteed, matters on which states make final decisions should not be centralizable. It is this noncentralization that ensures the continued diffusion of power among

⁴⁸R. H. Wells, *The States in West German Federalism: A Study of Federal-State Relations, 1949-1960* (New York: Bookman Associates, 1961), p. 66.

⁴⁹MacMahon, *Administering Federalism*, pp. 24-25.

⁵⁰J. Holloway, "Decentralization of Power in the Federal Republic of Germany," *The Failure of the State on the Distribution of Political and Economic Power in Europe*, ed. J. Cornford (London: Croom Helm, 1975), p. 107.

⁵¹See J. I. Elaigwu, "The Military and State Building: Federal-State Relations in Nigeria's 'Military Federalism' 1966-1976," *Readings on Federalism*, pp. 155-181.

⁵²H. Kelsen, *General Theory of Law and the State* (Cambridge, Mass.: Harvard University Press, 1930), p. 304.

many centers whose authority and existence are constitutionally guaranteed. On this point, Elazar is emphatic:

Contractual non-centralization, the structured dispersion of powers among many centers whose legitimate authority is constitutionally guaranteed, is the key to the widespread and entrenched diffusion of power that remains the principal characteristic of, and argument for, federal democracy.⁵³

One important point that requires elaboration at this juncture is the relative capacity of central governments to take over state matters. They have done so not only in the economic sphere, especially in powers of taxation, but also in such welfare areas as education, health, transportation, and social services which traditionally belonged to state and local governments. This trend may be said to be inevitable, considering the overriding needs of efficiency and effectiveness that make it necessary for the modern nation-state to be essentially centralist. In most cases, constitutional amendments have been effected to reflect the changing division of powers.⁵⁴ For example, Article 109 of the Basic Law of West Germany, which guaranteed the financial autonomy of the *Länder* by providing that “the federation and the *Länder* are autonomous and independent of each other as regards their budgets” has been amended to give the central government some control over the expenditures of the *Länder* and principles “governing budget law, responsiveness of the fiscal administration to economic fluctuations, and plurianual planning.”⁵⁵

In a few other cases where constitutional amendments have not been made, reading the constitution alone is not enough proof that the principle of noncentralization is met. In practice, it may be so flagrantly breached that the constitutional instrument is rendered inconsequential. The result is often a system that is constitutionally federal but practically unitarist. This has happened many times in Nigeria where the constitution is retained (in a modified form), but successive military regimes have operated in an essentially unitarist manner. Apart from the subordination of state governments to the center through their military governors, state matters, institutions, and establishments are “militarily” taken over by decrees that cannot normally be challenged in the courts.⁵⁶

Notwithstanding the increasing erosion of previously exclusive states' matters, two characteristically federal features continue to be retained in most federations. First, matters into which central governments have encroached have usually been placed on the concurrent legislative lists. Central governments acting in collaboration with the states have coordinated policies and provided the bulk of the money required but, at the time, the states are allowed discretion to execute national policies and programs differently. This

⁵³Elazar, *Exploring Federalism*, p. 34.

⁵⁴This often happens in the West German, Indian, Swiss, and U.S. federations.

⁵⁵See Holloway, “Decentralization of Power,” pp. 114-115.

⁵⁶Cf. Oyovbaire, *Federalism in Nigeria*.

situation at once involves decentralization (as the center coordinates and leads) and noncentralization (as the states are still allowed to be different). Therefore, even if all matters become concurrent (the trends indicate that this is possible soon), federal systems will remain distinct. Second, (until all matters become concurrent), one or two matters (whether trivial or substantial) are still retained exclusively by the states. In theory and in practice—actually or potentially—such matters may lose their feature of noncentralization, but as long as the states are allowed to implement (and sometimes formulate) policies differently within the ambit of national standards, the system remains federal.

CONCLUSION

Those who conceive of federalism as a degree of decentralization are only partially right because the soul of federalism actually lies in noncentralization. From the analysis made above, it seems safe to argue that federal dynamics as a “solution” rather than as a sacrosanct compact (an end in itself) has warranted the search for new paradigms. If federalism were a sacrosanct compact, it would be incapable of rising up to the centralizing tendencies of the modern state. As a solution, its form has been determined by the forces at play, precisely the need for greater integration of units and peoples. The most popular of such forms is decentralization, which begins with centralization and terminates with the dispersal of power to constitutionally recognized units. Developments in this direction have also begotten changes in the federal compact, such that very few matters today belong exclusively to the center or to the states. In some cases, federal practice has clearly been at variance with the compact (e.g., Nigeria) because of the peculiar nature of the government at the center.

While all these considerations may lead the skeptic to suspect that most federal systems no longer qualify to be called “federal,” my argument is that the federal variant of decentralization is one that is also noncentralized in two respects, viz, the matters that belong to the states and the manners in which different states are allowed to implement (and formulate) basically the same policies. To this extent, federalism may be seen as a qualified degree of decentralization that retains its basic noncentralization. It is appropriate to end with Elazar’s argument that there is no evidence that the increasing centralization in the U.S., Canada, and Switzerland has led to any decline in the importance of federalism.⁵⁷ Indeed, federalism has shown remarkable resilience, and it is difficult to find any exceptions to the observation that no federal system has ever become unitary.

⁵⁷Elazar, *Exploring Federalism*, p. 155.