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*Federal government*

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## THE DECAY OF FEDERAL THEORY

As a beginning, I take it that a good theory about any phenomenon has something to do with its ability to explain why something is as it is, or how it came to be what it is, or even what it may become. I take it further that a good theory should be able to give a clear identity to its subject, and desirably, in doing this, it should be able to distinguish it from phenomena that are either superficially similar, or entirely different from it. I take it again that the constitutive elements of any theory, as they are professed, must FIT the behaviour of the phenomena which the theory seeks to explain.

All this may be easily assumed, but for one thing: namely, the question, what kind of FIT do we have in mind, or how are we to distinguish a good fitting theory from a bad one? Should the FIT, for example, be like the perfect FIT of the Pythagorean theorem, or should the FIT be the nearly perfect FIT of the proverbial Savile Row suit, or should it be something less than this, say the almost FIT of the street market suit, or should the FIT be like the "hand-me-down" suit from one's larger and older sibling? How near should "near-enough" be, to be good enough?

I'm not sure what the precise answer is. One reads, for example of Richard Feynmann, a Nobel Prize physicist's elation in achieving a 91% fit for his theory of the neutron/proton relationship. But in our kind of business, which is nothing like the business of physics, what kind of FIT are we entitled to expect? It seems to me that there is nothing in the history of social or political theory that entitles us to expect that the perfect fit - whatever that may mean - will ever be available to us, pace August Comte. And if this is so, then, at the very least, it is reasonable for us to expect that the fit between our theory of a particular phenomenon and the way that phenomenon acts out in life, should be comfortable. Comfortable, that is, according to the moral of "Goldilocks and the Three Bears" - the porridge should not be too hot or too cold, the chair should not be too high or too low; the bed should not be too hard or too soft; everything should feel just "right". In a word, we can call a theory good if the facts have not been forced into place, if they have not been denied their specific valency, if they have not been emasculated, belittled, or thrust aside to accommodate the impatience of a theorist's theory.

If these are the hallmarks of a good theory, then it must follow that the direct opposite of the qualities that make for a good theory will be the mark of a bad theory. Thus for example, a thoroughly bad theory will be one, even if beautiful in form and content, that explains nothing, identifies nothing, distinguishes nothing, and

misinterprets everything. And by the same token, as there are degrees of FIT between "good" and "bad" theory, so too there will be variations in quality between a thoroughly bad theory that explains nothing, a poor theory that explains very little, and a slightly better than average theory that goes only half way towards an explanation.

What has provoked these commonplace thoughts about what "good" and "bad" theory may be, is, what I believe to be, the unhappy state of FEDERAL THEORY. There was once a day when many looked upon federal theory as the jewel in the crown of political science. Whatever else was in dispute - whether the influence of pressure groups, the role of elites, the locus of political power, the sources of obedience, the proper ambit of government power, etc., it was confidentially assumed, both by the champions and the critics of the federal state, that the core of the theory that sustained it was constant, its elements well known, and its promise to those whose chose unity without union was clear, unambiguous and predictable.

But if good theory it was once, it is not so now. It has become uncomfortable, ill-fitting, confused, unreal, and misleading; it is without confidence and it is no longer capable of giving secure directions to the endless questions that politics put to it. There were once concepts such as "sovereignty" or "coordinate and independent" status that served it well enough, but now they are simply pretty maps, fictitious, irrelevant and befuddled. Worse, out of an ethnocentric pride and concern

for the corrosion and decrepitude of an ancient principle, hyperambitious theorists have tried to restore federal theory by either bowdlerising its history or calling upon arithmetic and the language of laboratory science. The result is that in seeking to explain the "federal" world, they end by falsifying it.

How did this come about? It is not necessary to dwell upon the beginning of it all. It is enough to go back to what the fifty-five delegates from the thirteen American colonies composed in Philadelphia in 1787. Over the years their work has been universally extolled for its originality, boldness, acuity and foresight. The work of the Federal essayists, Madison, Hamilton and Jay has been hailed as a superb, if partisan, testament to the ingenuity of their political analysis and political imagination. But when we are done with the richly deserved encomium, what have we? What precisely is the testamentary disposition of the Philadelphian federalists? What did they make in Philadelphia, and what did the world take from them?

After two hundred years, the answer is much less clear than it was once thought to be. Thus, if we strip the "Grand Debate" of its rhetoric, to ask the fifty-five delegates in Philadelphia what they believed they had made, then all would have had to acknowledge the three visible elements of the new American constitutional system: FIRST, they had established TWO levels of government where before there was one: SECOND, they had "divided" (what they understood to be) the limitless powers of a sovereign

parliament between the two levels of government in the manner of - specified but limited powers to the new national government, and unspecified but also limited "residual" powers to the existing governments of the thirteen colonies: THIRD, they had given each level of government, national and state, the right to act directly upon its own citizens within the limits of the powers given by the constitution.

These are the three elements that form the visible foundation of the federal idea in 1787. And it is on this foundation that the "federal principle" rests. It is on this foundation that contending notions of federalism revolve; it is on this foundation that all variations on the federal theme have been built; and it is on this foundation that the American experience of federalism begins and develops. The Presidency, the Senate, and the judicial adjudication of constitutional disputes were, of course, key institutions of American government that the federalists also brought into existence. But these institutions were not of the essence of the federal idea as the delegates to Philadelphia saw it. The Presidency was the expected response of the anti-monarchical and anti-Westminster sentiments of the colonies; the Senate that gave equal representation to all the states, irrespective of their size and population, was the price of the "Grand Compromise" between the large and the small colonies; and the settlement of constitutional disputes by judges was the federalist's commitment to the principle of government by



law. These institutions were vital to the new machinery of government, vital to compromise, and, as they saw it, vital adjuncts of the division of power. But vital as they were, the entire thrust of the meeting in Philadelphia, from its beginning to the end, was to build a new system of government on the basis of three elements, and three elements alone.

Hence, if one wishes to speak of a consensus among the Philadelphian delegates, it is on these three elements, and no other, that there was the clearest consensus. Beyond this, there is little or nothing to indicate that the fifty-five delegates would have been as one in spelling out the implications of what they had done, or what they expected to come about. Beyond the three essential elements of the federal idea they brought into being, everything else was either inference, presumption, belief, self-delusion or wishful thinking. In both their speech and writing the principal Federalist advocates held out an optimistic vision of what the future should be compared to what their condition was then. They spoke of the future relations of the two levels of government in the language of "coordinate and independent" status, but few understood these novel terms, or what these terms could mean when the line of authority was no longer certain, and the principle of federal supremacy gave the national government command of the heights. It is little wonder that many of the delegates harboured the suspicion that the new language of "coordinate and independent" status was

little more than the seductive guile of the federalist partisans.

Yet, how could it have been otherwise? How could the new constitution-making, have been other than cloudy, uncertain and undefined. If they were not the first federalists, there was certainly no such constitution as theirs before. If others had practiced "federalism" before them, the analogies of ancient times and other places were too weak, too distant, and without relevance. The visible form of the U.S. Constitution was clear, the content was not. The system that the federalists had created imposed no imperatives on the manner in which the national and state governments should go about the business of government. Neither had the federalists attempted to give them a detailed blueprint of what each should do or not do. However rich the federalist's imagination, they could do no more than predict, fictionalize and suggest. They had given specific things to the national government to do, but no one could tell them where any task began and where it ended. No one could tell them precisely how the legitimacy of one action by one government might illegitimate the action of another. True they had created a judicial instrument to adjudicate disputes and decide what activity belonged to whom. But to devise such an institution for such a purpose was one thing; it was another thing to prescribe a canon of interpretation that would not disappoint the expectations of either side; and yet unless this were done, it left it quite uncertain what power over

what things belonged to whom. What the federalists had created, in brief, was a constitution of words, and by doing so, they became wedded to uncertain vessels of policy that swayed and rotated in the changing moods of the political seas. Only trial, practice and experience would tell them what they had done, or failed to do, but not before then.

To speak therefore, as if the federal principle was both a clear mode of constitutional design and a clear principle of action does not reflect the circumstances nor the different beliefs of the federalists in 1787. What must be remembered especially is that the American federalists had come to Philadelphia with the single purpose of founding a national government and grafting it upon the existing governments of colonies. They - or the great majority - did not intend that the "old" should destroy the "new", nor that the "new" should destroy the "old". They had come away from Philadelphia believing that each level should be "independent" to do what it wished to do within the powers given to it, and the prohibitions imposed on it. But they did not define what the idea of "independence" or prohibition implied, neither did they define the way the two governments were to live together, or what principle should guide their relations to each other.

Why it might be asked then did the delegates agree to the promise of a principle that was at once so foggy, so imprecise and so lacking in assurance. It is

scarcely conceivable that, in their daily affairs whether commercial or legal, many of the delegates would have agreed to any arrangement that was so vague and so cloudy as this. Why here then? There are many answers. But of the many, none exercised a greater influence than the compulsion to union. It was for this reason after all, that the fifty-five delegates had come to Philadelphia. It was for this reason that they pressed on with the settlement of the constitution in the remarkably short four months of an oppressive Philadelphian summer. The notion of failing, of returning to their legislatures with little to show but a pale improvement on the unsatisfactory Articles of Confederation had become unacceptable to the great majority of the delegates. Closer union and a national government able to decide and act where there was none before, became the dominant drive that overcame their misgivings. But not this alone. What one must remember also, is that the Philadelphian delegates were not political innocents. They all knew their own political world and its practices; most knew what parliamentary government of their time was about; and a few knew something of the forms and practices of the governments of Europe. True they had composed a new form of government with no precise, no defined, no known principles of action. But at base, experience would have told them that as a people conducts its politics, so they give content to its institutions and its principles. Therefore, both those with doubts and those without doubts accepted the fact that if the movement to a national government should not be

resisted, it was in their hands to mould it to their own desires. A delegate, Mr. Mercer, put it well:

"It is a great mistake to suppose that the paper we are to propose will govern the United States. It is the men whom it will bring into the government and interest in maintaining it that is to govern them. The paper will only mark out the mode and the form. Men are the substance and must do the business."

What theory therefore can we make of this? What theory indeed, can we make of the babel of theories and the babel of definitions that have grown over the years since 1787? More: what shall we make of the 460 names that have been given to various types of federal systems? Is there but one federalism and one only, or are there many, and many imposters? It is true that the Philadelphians created a distinct form and mode of government unlike that of any other in the world. What they did not do in 1787 was to breath life into it - cloth the form and the mode with flesh and blood, with nerves, sinews, muscles, heart and lungs. This they began to do from the very beginning, and this they continue to do. The question that begs an answer is this - how much of what they have created over the past 200 years is the product of their own mode and forms of life, and what can be copied and exported to others - the form, the mode, the practices, the conventions, the understandings, the perceptions of its citizens, the way they value the system, what?

Some forty years ago, in a post-war world seeking to fill the cavities of de-colonization, Kenneth Wheare wrote in a text on federal government that, "the federal principle has come to mean what it does because the United States has come to be what it is". It was a gracious but mistaken view of the matter. Mistaken because it rested on the fallacy that the form and mode of American government remained constant, immunized from both the visible and the invisible influences of political change. It presumed that the form and the mode of the American federal system in 1948 - the date of the first edition of his text - was the same as it was in 1788 and 1888. It presumed that what Canada imported in 1867, or Australia in 1901, or India in 1947 was essentially the same as U.S., mode and form of federal government. But more questionable than this, it presumed that it was possible to detach a form and mode of government from a way of life and the political roots that gave character to it and fed it. But this is mistaken, as mistaken as it is to argue for example, that the Australian, or Canadian, or Indian constitutions, even if they were stripped of their formal amendments, were the same in 1987 as they were in their beginning.

The United States constitution unquestionably deserves the reputation of being the "first" modern federalism, and it is probably the dominant model in the mind of all those who have engaged in the business of federal building. But what must never be forgotten is that a model is a model, a pattern, a paradigm, a dummy, a mock-

up, a formal abstraction, a frame, a conceptual artifact, a non-living thing, a simplification of a highly complex and elusive reality. To become a living thing, to take colour, to occupy space and time, it must be invested with a history, with a political culture of perception, values, policy, circumstance, personality, opportunity, will and action. It should therefore surprise no one that if the U.S., Constitution is the Mk. 1 model of federalism, it is also the sole product of the Mk. 1 model, because no federal system has ever been built, or could be built in the mirror image of the U.S. 1 model. No system for example, has come to the federating act for precisely the same reasons, the same needs, or the same circumstances; no system has designed its legislative and executive authority in the same way; no system had adopted the schema of the U.S. constitution; no system has adopted the same division of legislative power, nor the language of the division; no system has erected the same prohibitions to protect the national government from the states, and the states from the national government; no system has practiced its federalism in the same way; and not only does each system vary in its form, mode and practice of federalism from the Mk. 1 U.S. model, or the model they had before their eyes when they themselves took the first "federal" step, but no two later models are exactly alike. In a word, each political system has adapted and practiced its federalism precisely as the United States composed and practiced its federalism that is, solely in response to the imperatives of its own politics, its own needs, its own circumstances,

and its own time. Indeed, if at any time the federal world took anything they may have believed was useful from the Mk. I, II, III..... U.S. model of their time, they either abandoned it later, or so coated it with their own practices that its origins became barely recognizable.

The result is that such is the present diversity of form and practice, that we cannot avoid the question, - how significant is the GENERAL and how significant the PARTICULAR? Is the resemblance significant enough to mount a multi-story federal theory - as some claim - a three-story, two-story, one story, or no story theory at all, only a series of particular histories? It is difficult to avoid the feeling that we have arrived at an important cross-roads in the history of the subject. On the one hand, the challenge of the growing diversity of experience to past federal ideas is now crucial. On the other hand, the vast body of scholars still cling to the belief that federalism remains one thing, with one set of purposes, one set of distinguishing elements, one set of operating principles, and one set of vices or virtues. Is this reductionism run wild or what?

Consider for example, the habit of contemporary federal scholarship. What one should note is that though various writers (e.g. Friedrich, Wheare, Frenkel, etc.) may differ from each other in describing what federalism is about, or in denoting its quintessential elements, or in accounting for its origins, or in attributing consequences - either good or ill - that may flow from the federal form,



or in ascribing particular political values to the "division of power", or in predicting the fate of federal systems; they are steadfast in the belief that the federal system is, a single distinctive thing, capable of being talked about as a single thing and evaluated as a single thing in the same way that we might talk and evaluate the one-party state as a single thing.

Yet consider again that while most scholars hold the federal state to be a single thing, it is rarely if ever said to be true of the unitary state? What does this mean? Does this mean that beyond their unitariness, unitary states are so much more varied, or have so little in common (e.g. Great Britain and Iraq) that it is impossible to draw any significant conclusion by virtue of the one thing they have in common, viz unitariness - whereas in those cases where power is divided in the way of the American constitution, such is the force of the element they have in common, viz., divided power, that it becomes permissible to draw highly significant generalisations about such systems.

But what kind of significant things can we now say apply to each and every federal system if we take account of such differences as their age, space, people, wealth, education, beliefs, and values? Certainly none of the pejoratives that Dicey hung around the necks of all federations as if they were leper systems of government. We know now that the attributes of "weakness", "rigidity" and "legalism" do not apply to all federal systems in the

same way, to the same degree, at the same time, or to some at all. If some are weak, some are strong; if some are rigid, some are not; and if some are prone to test constitutional power in the courts, some are not. And as for the virtues of adaptivity, efficiency, prosperity and liberty, we also know that whilst some systems are highly adaptive, others are not; where some are highly efficient in servicing the needs of the modern state, others are not; where some reach high levels of economic welfare, others do not; where some are sensitive to political liberties, others are not; and if - as Vincent Ostrom believes - "federalism makes a difference", then it makes different differences between systems, and in some barely any difference at all. All this should be known now. But what is often difficult to know, is whether the condition of any federal system is what it is, because of its federalness, or the particular character of its federalness or the special way it practices federalism, or whether it is so despite its federalness.

In a word, we are dealing with systems that are never identical clones; systems in which the marks of similarity are elusive, the imprints of similarity are ambiguous, the degrees of similarity are uncertain, and there is only the fallible eye of the observer to distinguish true and false likeness. And because this is so, shall we abandon the pursuit of a federal theory because it is destined to fail either because it says too much, or it says too little, or shall we give the reply

that Dicey did when derided for placing the United States Congress, an English School board, and an English railway company in the same box - "non-sovereign" legislatures?

"There is, it is said, a certain absurdity in bringing into one class, things so different in importance and in dignity as, for example, the Belgian Parliament and an English School board. This objection rests on a misconception. It would be ridiculous to overlook the profound differences between a powerful legislature and a petty corporation. But there is nothing ridiculous in calling attention to the points which they have in common. The sole matter for consideration is whether the alleged similarity be real. No doubt when features of likeness between things which differ from one another both in appearance and in dignity are pointed out, the immediate result is to produce a sense of amusement, but the apparent absurdity is no proof that the likeness is unreal or undeserving of notice. A MAN DIFFERS FROM A RAT. BUT THIS DOES NOT MAKE IT THE LESS TRUE OR THE LESS WORTH NOTING THAT THEY ARE BOTH VERTEBRATE ANIMALS."

There has rarely been a time in the history of the subject when it has been a more depressing and uncertain condition than it is now. And this is so not because we know less about the facts of federal life; on the contrary, there has never been a time when so much has been known about the subject. Only the more we have come to know about it, the less satisfying and the less reputable has become almost the whole of our legacy of federal theory.

The realization that all is not well, has begun to show in the growing uneasiness and discomfort of a number of scholars, notably American. Consider for example, a paper submitted to the American Political Science Association conference in 1983, FEDERALISM: THE CHALLENGE OF CONFLICTING THEORIES AND CONTEMPORARY PRACTICE. The mood of the three authors, David Beam, Timothy Conlan, and David Walker of the Advisory Commission on Intergovernmental Relations may be gathered from these selected passages.

"Federalism represents America's greatest contribution to the science of government. It is, as Sheldon Wolin observed (in 1964) an innovation in Western political theory and practice that has been widely copied. Indeed, over the past four decades something of a federalist revolution has swept the globe, embracing a substantial portion of the world's population under systems based, at least in part, on this key invention of the Founders.....

YET, IN ITS NATIVE TERRITORY.....THE SUBJECT HAS COME ON HARD TIMES.....TROUBLED BY AMBIGUITY AND INCONSISTENCY, AS WELL AS BY AN INABILITY TO MARSHALL EVIDENCE TO SUPPORT KEY ASSERTIONS, THE THEORY OF FEDERALISM HAS FALLEN INTO DISREPAIR.....

POSSIBLY THE MOST SERIOUS PROBLEM FACING THEORIES OF FEDERALISM IS THAT...THEY HAVE BEEN UNABLE TO ACCOUNT FOR DRAMATIC CHANGES IN AMERICAN

GOVERNMENTAL STRUCTURE AND OPERATION OVER  
TIME....

The three authors speak of the "trivialization" of the subject by a number of political scientists who had begun to view federalism in 'behavioural' terms as 'process' or as 'bargain' to the point where "the vague concept of the federal process.....was stretched to encompass 'infinite variety' and ultimately to the conclusion of one scholar that the concept was simply meaningless and without value....." They draw attention to the failure of the "Hamiltonian vision of independent government levels of operation, separately finances and administered.....and to the absence of clear or consistent guidance on questions concerning the proper allocation of functions and powers among governmental levels or for managing intergovernmental programs."

Their concluding note however is optimistic. For they close with the words:

THIS IS NOT TO AGREE THAT THE CONCEPT OF  
FEDERALISM IS OUTMODED.....THERE IS TO BE SURE  
THEORETICAL DIVERGENCE AND EMPIRICAL  
DEFICIENCIES.....HENCE THE CLARIFICATION OR  
REFORMULATION OF FEDERAL THEORY APPEARS TO BE AN  
URGENT TASK.

But what can clarification or reformulation mean? They do not say. When a miner digs for gold, he may not know where to dig, but he knows what the metal looks like.

But are we sure, are we of the one mind what the federal metal looks like so that we can dig it out, wash it clean and free it from all its accumulated dirt. What are we looking for - is it the idea of federalism or the practice of the idea of federalism; and if it is the latter, does it mean that the idea varies as the practice varies?

Presumably "clarification" or "reformulation" means more than merely the compression of new facts into an old theory with an old name. But if it cannot mean that, are we not in the dilemma of the grower who having crossed a tomato with an apple, or a potato with a banana, or a strawberry with garlic - all genetically possible - is uncertain whether to call the product a fruit, a vegetable, a fruity vegetable, or something entirely new and uncategorizable by the old categories.

What the current state of the federal art is in American today, I do not know. But in a perverse sort of way, I am greatly heartened by the repeated capacity of scholarship to break free from its own paradigms. The pity is that it takes so long to do so. For from the beginning of this century and before, there were signs that things were not as they were said to be: that encased as American, and indeed British, scholars were in the pride and prejudice of their own institutions, they were driven to find far more in the words and phrases of 1787 than the American Founding Fathers could have known, could have intended, or would have welcomed.

Clearly while the Founding Fathers told their disciples much, there is also much that neither they, nor indeed any one, however wise and prescient, could tell them. And even if they knew these things, what the federalists could not possibly tell their disciples without prejudicing their cause, were all the implications of operating a system of politics built on such a complete artificiality as the "division of power" - for indeed complete artificiality it was, resting as it did, not on a division of tangible things, but a division of the names of tangible things, symbolic in the ways of language, imperfect, contingent, time dependent, malleable, and ambiguous.

True, Madison had tried to convey the general difficulties in a number of passages of brilliant advocacy, but what he could not do was to convey the facts of federal life as we have come to know them. If we know anything at all about federal life, we know that political life cannot be perfectly or permanently segregated into water-tight compartments. We know too that there is no science that can cluster the infinity of human activities in such a way that they can remain separate and distinct from each other. The language of politics, the names of things, players, resources, policies, issues all change. However ingenious constitutional draftsmen may be in composing a "division of power" that will please the most demanding judicial mind, or a division that will work for and beyond their time, their words and names for things, can rarely be more than

approximate and temporary guides to the ongoing or permissible political activity of any political system. They cannot anticipate what meanings will be given, or what limits will be set to their words and names, or to what uses their words and names will be put; they cannot anticipate new political demands, or whether these demands will be dressed in a new language (e.g. ecology, environmental policy), or whether new combinations of powers will be called for to cope with new demands. Words and names are the coinage of civilization, and it is impossible to insulate them from the changing whims of the human beings that live and do their business with them.

What price federal theory then? There is, undoubtedly a crisis. But it should not depress us too much. Theory after all, is grey, and the tree of life is green. And if Faust is right in believing that all theory and fiction must confront reality, then it is as true of those we have long envied as exemplars of theory making, the economists, as it is of all political science. Listen to the confession of one scholar who discovered that models, however ingenious, are but models, artificially coherent representations of a world of incoherence, inconsistency, and unpredictability.

"The pursuit of abstract and formal theories has its attractive side [writes Jan Pen the author of "Harmony and Conflict in Modern Society," 1966]... There is something surprising and gratifying in the fact that the biological equilibrium between wolves and rabbits, the



competition in price between two suppliers and the animosity between two nations can all be analysed by more or less the same set of concepts: in all three cases the ultimate equilibrium is described by two equations with two unknowns. It is, of course, true that something of reality is lost in the process, but perhaps essential properties are better brought out as a result..... And yet, there comes a moment in one's life when such abstractions strike one as too colourless. I remember as if it were yesterday - it is fifteen years ago, how proud I was of the fact that my newly discovered theory of bargaining held good for all bargainers, irrespective of their capacities, insights, objectives and moods. Whether they acted in a sharp and calculating fashion, or recklessly, or inimically, or in a spirit of collaboration and friendship, the equations were applicable. But since then my enthusiasm has abated, and not only because some critics have roughly reminded me that this universal validity has something to do with the tautological nature of the mathematics used. A very general theory can give intellectual satisfaction, but another kind of satisfaction is possible, which is more the result of the evaluation of a number of heterogeneous factors that are difficult to capture in a formal model. Pure conflict theory is often rigorously pursued at the cost of neglecting many details; its formalisations easily become bloodless, an advantage for scholars who do not like blood. It implies extremely elastic definitions of conflict, covering both atomic war and the choice between two ice-creams."

And similarly others in recent years: Leontieff in 1971 ("Theoretical Assumptions and Non-Observed Facts"), Phelps-Brown in 1980 ("Radical Reflections of an Applied Economist"), or Isaac in 1983 ("Industrial Relations and Economic Policy"). In metaphor, what they are saying to their own is that, like young foolhardy Icarus, they have flown too high, too close to the sun, burned their wings, and been thrown back to earth: they have tried to quantify what is not quantifiable, make precise what cannot be given greater precision, model what can only be modelled in art, and presume to understand more than can be understood. And all this because they have forgotten philosophy, history, the perversities of human beings, and worst of all, they have committed the sin of hubris.

One might, unkindly, draw comfort from the discomfort of others, were it not that we are in the same, or worse predicament. And if true, WHAT SHOULD WE DO? It is tempting to call out "Enough!" - enough of definitions, enough of categories, enough of cross-cultural generalisations, and enough of propositions claiming universal validity. They have not been trustworthy and constant friends. Indeed, we are at the cross-roads of federal theory because we have been borne along, albeit willingly, on the tide of a vast literature that has evolved over long stretches of time. To acknowledge our debt to those from whom we have learned however, is not to see things as they did, or to conclude as they did. Our business is to re-assess their insights in the light of the

world as we ourselves experience it, not the world as the 18th, 19th, or early 20th century federalists saw it.

To the question "whereto" then, there is doubtless more than one answer. But of all the ways we may choose to travel, I believe the least profitable is to continue on the same path we have been travelling. It is barren and futile. It can only encourage new fictions, and teach us new ways of evading reality. More: we must not delude ourselves that we can refresh the idea of federalism, or restore it to its former throne in political science by adding a new name to the present list of 460 other federal names, or by devising another way of classifying federal states, or, by discovering new statistical modes of quantifying what cannot be quantified. No new definition, classification or abstraction, however sophisticated, will cure the nagging doubt that they can convey the flesh and colour, the moods and the idiosyncrasies of all that we know of our own society. Worse - they tend to harden the received dogmas, falsify our recommendations, mislead our expectations, and weaken our ability to explain what is taking place around us. There is no better monument to the persistence of outmoded stereotopic thinking in our time, than the Kilbrandon Report on the English constitution (1973). All the worn shibboleths of Diceyan antipathy to federalism are on display there.

Obviously there are similarities and dissimilarities - great or small, real or apparent - among

all political systems wherever a diffusion of power is intended by constitution or practice. But for all their varying similarities and dissimilarities, no federal system can be shaken free from the ways of its society, unless its ways can be politically homogenised by homogenic rule. To assume otherwise, to assume that we can be guided by a lifeless abstraction in the belief that it can illuminate the different political character of each federal society, is no better than if we were to assume that the idea of invertebrateness alone enables us to illuminate the political life of men and rats in the same way.

We have generalised on the theme of the Philadelphia since the early 19th century, and the increasingly low yield of this orientation has made it apparent that we must shift our focus from the pursuit of the general to the pursuit of the particular. What we must grasp, in sum, is that American federalism is, above all else, not federalism so much as it is AMERICAN federalism; and for the same reason, it is so whether it is Australian, Canadian, Indian, Swiss, German or any other federalism. It is "national identity", however we define it, that impregnates our entire subject matter. And to the extent that this is so, it renders Wheare's proposition - "the federal principle has come to mean what it does because the United States has come to be what it is" - simply a tautology wherein he mistakes the implications of his own assertion. The origin and practice of federalism in American is quintessentially American federalism. While we

can replicate its "mode and form", we cannot replicate its practices because no society is, or can be what the United States is. Georges Lavau came close to the heart of the matter when in seeking to explain the nature of the Egyptian Wafd party, he wrote:

"L'element decisif qui explique le 'Wafd' ce n'est ni sa structure, ni le systeme partisan ou electoral ou il s'inscrit, c'est l'Egypte."

In a word, the key to the understanding of the Egyptian Wafd party is not the organization of the party, its basis of support or its electoral system; it is Egypt itself. Translated: To understand American federalism we must understand America; to understand Australia federalism we must understand Australia.

The purpose of this argument is not to applaud or recommend ethnocentricity. Rather, my purpose is to commend the paramountcy of history and culture as the proper basis for understanding the nature of the "division of power" in the political life of a nation. For in the same way that the Americans built a system of politics around the "mode and form" designed by the Philadelphian federalists, so others adopted the "mode and form", and planted it in the soil of their own political environment. It is from this particular vantage that an understanding and evaluation of federalism must begin. For in the end, it IS only history and culture than can reveal the particular, and it is the accumulated weight of the irrepressible particulars that humble and artificialize

every attempt to mount hyper-ambitious theories of  
federalism.

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