

# COMPARATIVE FEDERALISM, SECESSION, AND CONSTITUTIONALISM

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## ABSTRACT

*The sanctity of federalism seemingly retains the impulse of constitutionalism and the pledge of good governance in a political heterogeneous society where a sizable number of groups live with their own identities. Multi-nationalism or ethnic diversity impacts on structuring a state in a layers-oriented pattern that has been developed and categorized with the titles of federalism, devolution and decentralization. Nonetheless, this taxonomy involves the accommodation of people of different ethnicities, and optimizes the public good and services even at the last possible stages of a given state. To reinforce the governmental order connecting such motivation, fiscal federalism seems an acceptable technique of governance, and ethnic federalism remains an order to reconcile the factions amongst the ethnic groups declining the exclusive majoritarian rule. This essay can be seen as an effort to unpack the variation of the practices and consequences of the said forms of federalism in some selected countries where these have been constitutionally adopted, and mature by the influx of time. In addition, when they lack proper execution and abandon the accordance of constitutionalism, the understanding offered throughout this research can guide to assess their impact on the process of secession.*

## I. INTRODUCTION

The famous words of American short story, *Mother in Mannville*<sup>1</sup> as ‘size doesn’t matter for chopping wood’ retains an analogical relativity to the uses of federalism whereas a coercive idea exist among politicians whether federalism should be opted for the countries having large territory or a huge number of populations. It may, other way, throw a question whether federalism qualifies the ambit of good governance ensuring constitutional rights of people and accountability of government, or merely a fashion introduced by the US Constitution, 1787 followed by many European and Latin American countries. In case of answering the first question, federalism can be assessed as a fairly adopted system to deal with the faction among the nations. Federal institutions emanated from federal constitutional structure can offer democratic practices among different nations, races and ethnic groups that were confronting each

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<sup>1</sup> Marjorie Kinnan Rawlings (1896-1953) who published her bestselling short story in 1936.

others.<sup>2</sup> However, it can be considered as a political trend since a plausible number of countries throughout their constitutional framework have established this arrangement while debate can be possibly put on its efficacy in their political societies.<sup>3</sup> Turning to global governance from a sovereignty-centric approach of nation-states demonstrates, in the first place, the tendency for being a part of the new format of federalism where the states compromise some of the imperative issues which previously were regulated by the states alone with their strong central government. Thus, federalism can be potentially treated is not just a method of governance; rather a project of cooperation that facilitates good governance. The prominence of federal governance has met the test of endurance that is adequately articulated by the thesis of KC whereas he juxtaposed federalism, a composite political society where two levels of governments act simultaneously but with constitutional division and sharing.<sup>4</sup> In defining 'modern federalism', he repeatedly recalled the American model of federal government while demonstrating the balance of powers between two types of constructed governments *e.g.* federal and state in the same polity since the new type of political institutions started impacting upon the economic and political outcomes in the country.<sup>5</sup> Accumulating the components of federalism in a constitutional piece, the state can design the power-map to deal with some exceptional situations.<sup>6</sup> On the other hand, the federalist scholar, Livingston emphasized on the sociological values of federalism besides its political convenience.<sup>7</sup> While the initial motivation was to relinquish the tension among the faction of states<sup>8</sup>, it credibly prevents the emergence of tyranny, and focused on the concept of power sharing.<sup>9</sup> Apart from the preceding utilities, the benefits

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<sup>2</sup> Horowitz, D. L., "The Many Uses of Federalism", 55, (2007) *Duke Law Review*, pp. 953-966, at p. 954.

<sup>3</sup> Currently 24 states across the world are being governed invoking federalist style but all of them cannot claim their expected success financially, politically and socially. For example, the Latin American countries namely Brazil, Mexico, Argentina, Venezuela etc are suffering for availing democratic values and the rule of law.

<sup>4</sup> Wheare, K.C., *Federal Government*, London: Oxford University Press, 1946, at page 11.

<sup>5</sup> See Peters, G.B., *Institutional Theory in Political Science: The 'New Institutionalism'*, London: Pinter, 1999.

<sup>6</sup> Reynolds, A. (ed.), *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*, Oxford: Oxford University Press, 2001, at page 78.

<sup>7</sup> Livingstone, W.S., "A Note on the Nature of Federalism", 67(1952) *Political Science Quarterly*, at pp. 81-95.

<sup>8</sup> The idea advocated by James Madison in his Federalist Paper No. 10.

<sup>9</sup> Adler, M.D., and Kreimer, S.F., "The New Etiquette of Federalism: New York, Printz, and Yeskey." 1998 (1998) *The Supreme Court Review*, at pp. 71-143, and at p. 80.

of federalism are found multiplied in a polity when it especially embraces the fiscal affairs, and addresses the ethnic crisis.

However, the challenges of structuring and featuring these institutions too often require the resolutions in a specific manner suitable and pragmatic to the respective country. With regard to this proposition, the states can invoke a wide range of separation of powers in the vertical level, *inter alia* federalism, unitary governance, decentralization, devolution, asymmetric autonomy and the like. Nevertheless, conceding federalism, historically, an accommodative system where the countries can address the issues of racial divisions, ethnic conflicts, religious clash, fiscal anomalies and also other issues that in many terms defy the validity of statehood.<sup>10</sup>

To undertake an organized structuring and fabrication of this work, it has been partitioned among few sections. This paper attempts to analyse the features and relative narratives of fiscal and ethnic federalism in a prolific manner first. Especially, in the first part, the facets and consequences of ethnic federalism have been illustrated with a comparative study on its practices in Ethiopia, Pakistan and Malaysia. The second part, more specifically, outlines, and compares among the practices of fiscal federalism in the US, Canada, and India. Nonetheless, it would be unfair if we feature out federalism with all about positivity. Believing the effects of these two federal structures of governance intersect the claim and settlement of secession, this research also tends to investigate the interplay among the said areas. The third part, therefore, has articulated secession and how it is accelerated with the discussed forms of federalism since the risks of secession is located as an unpleasant shortfall in maintaining federalism. This assertion conceives its justification with the current cases of Quebec referendum, and Catalonian political and legal actions. The crisis in Ethiopian federal mandate case can also be referred to as an alternative preview of secession, not a conventional deal.

This research claimed as a qualitative one that has been accomplished with the deployment of a certain number of methodologies. It is pertinent to mention that the analysis and articulation have been facilitated here through a comparative approach. Apart from the traditional methodologies used for the qualitative research, the theoretical framework was also grounded to figure out the models of federalism and secession and their corresponding features existing in different jurisdictions. A careful analysis of the components waged in investigating federalism and secession, and selective comparison in the corresponding areas have fostered to synchronize the work.

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<sup>10</sup> See the empirical work illustrated in George Tsebelis, *Veto Players: How Political Institutions Work* (Princeton, NJ: Princeton University Press, 2002)