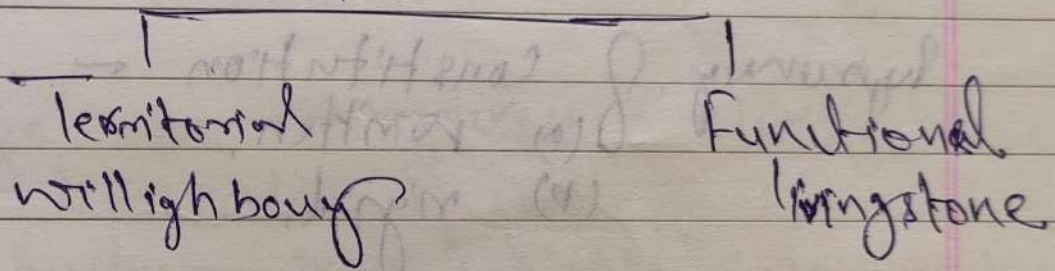


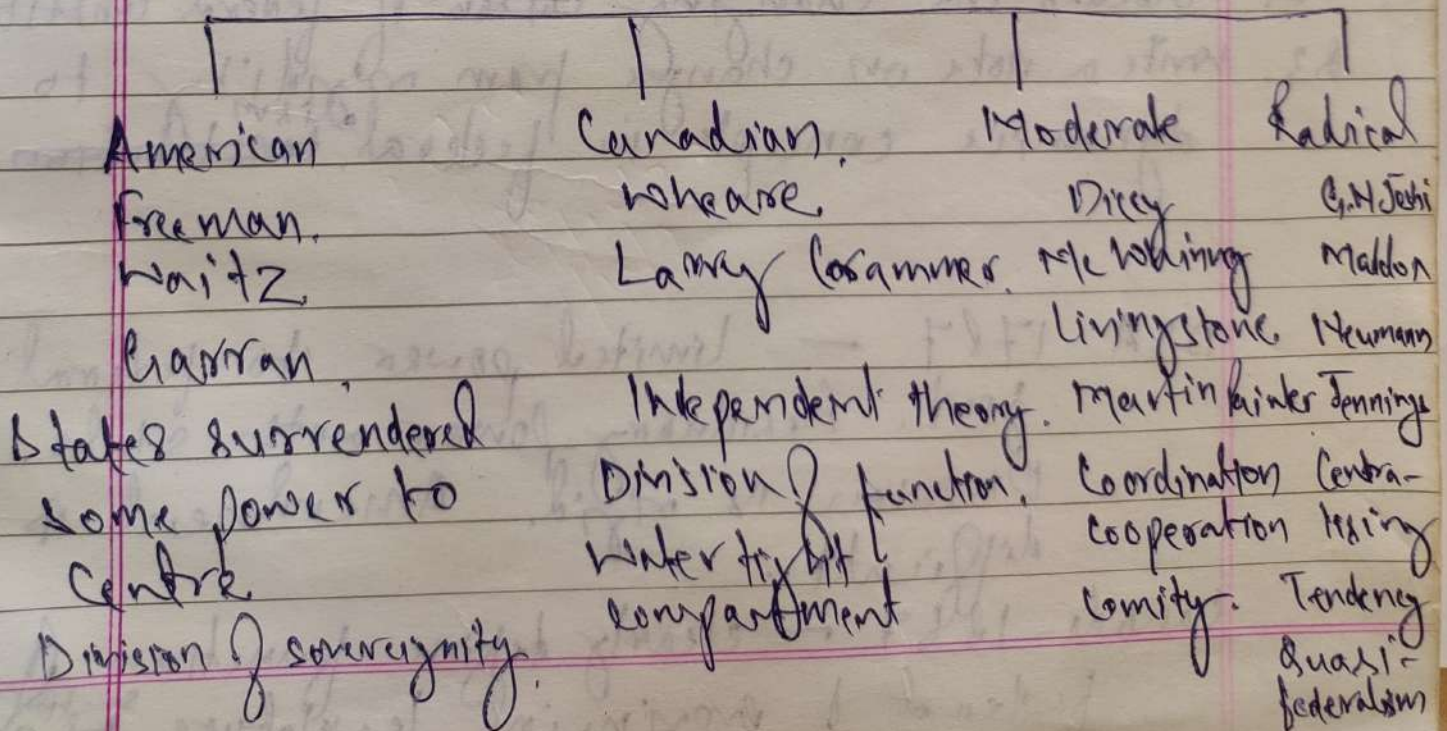
Bylee's - Comparative
Constitution.
Seervai's Constitution.

In Federalism.

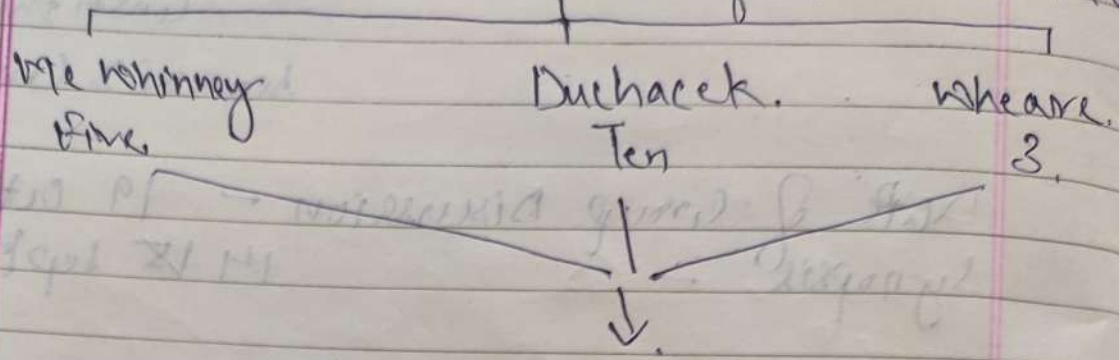
Changing Dimensions Basis



Schools: Changing base



Main Characteristics of Federal Constitution



1. Supremacy of Constitution
2. Dual Government with clear specific Powers.
3. Supremacy of Judiciary
4. Common interests for common good.

Supremacy of Constitution →
(a) written
(b) rigid.

USA 1787 — limited power to federal govt. Residuary power with state. Division is rigid. Amendment is difficult.

Canada 1867 — clearly define function of federal & provincial legislature section 91/92.

1874 Switzerland — cooperative federalism,
b/w federal and canton legislature,
limited cooperation.

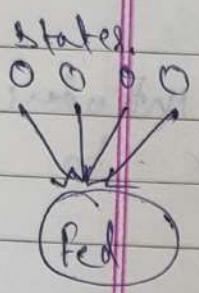
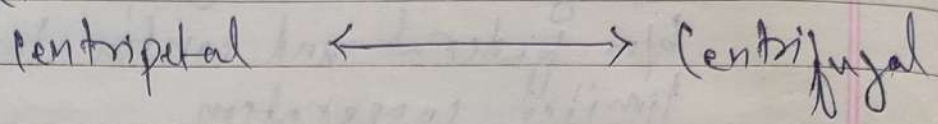
1939-2000 — Concurrent list introduced.
More cooperation, More power to
federal legislature.

1900 Australian Constitution — Powers of
commonwealth parliament, s 51, 52
to 7. Situation similar to American
constitution.

Change — i) vagueness to clarity, clear del-
demarcation of power.
ii) Residuary power shifts from provincial
to federal legislature.
iii) Federal constitutions moved towards
cooperative federalism.

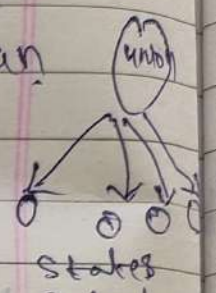
Origin of Federalism -

- Maddox.



States to federation.
ISSA
Australia.
Switzerland
Nigeria.
Malaysia.

Union to federation
India
Canada
Pakistan



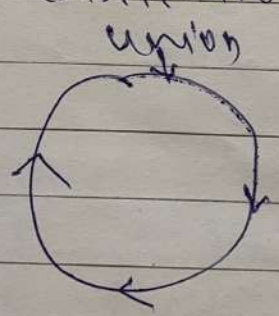
- Rigid constitution.
- Dominance of States.

- Dominance of Centre
- Constitution is flexible & dynamic

Michael Beloff.

- Beloff

Federal constitution is a transient form of ~~non government~~ government constitution which rotates from unitary to federation and then back from federal constitution to unitary constitution.



Criticism →

Dicey →

- weak government (centre appearing states)
- conservatism (amendment is difficult)
- legalism (interference of judiciary)

Byrge & Maddox - Transient form - constitution keeps changing from federalism to unitary vice-versa.

Wade and Phillips -

Conflict of interest. brings separatist/irresponsible tendency.

Menski - slow development and delay in decision.

Stoke - Division causes confusion
Difficulty to handle globalization.

Laski - federalism is dead and buried.

Appreciation -

- Internal Security.
- Economic Security. (Art 301)
- Diversities in Unity.
- Administrative Efficiency.
- Participatory Democracy
Federal
Provincial
Grass root level.
- Division of Labour.
Central
State

Present Status -

- Regan
Old federalism is dead but federalism with new system alive.
- MacMahon & Duchack -
40% of world population accepted federalism.
- Max Baer -
Family of Nations Adopted (EU, SAARC)

- World Over:

Duckraek - 1970

27 countries Adopted

- Indian Position -

British Raj:

Ull 1919 there was unitary government.

In 1919 the legislature was divided into

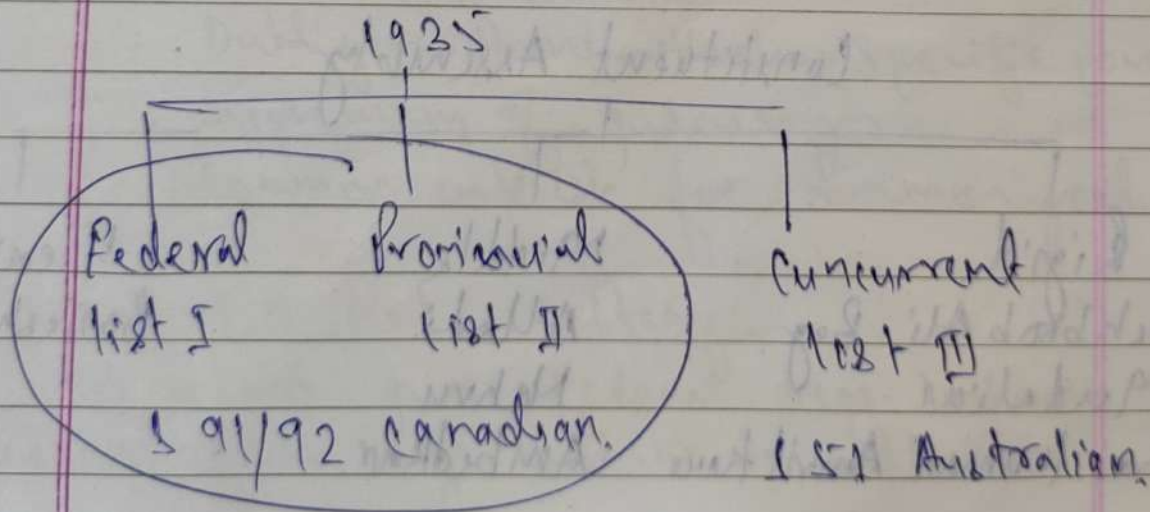
between Centre & State. The subjects

(Dyarchy) given to state were further divided into

Transfer subject and Reserved subject

Reserved subject were under central government
so there was federation as to transfer
subjects.

In 1935 through Government of India Act
1935 federal constitution was adopted.



Concept of Residuary power was new and
unique. Governor General was given power
to decide who decided who makes law on ~~these~~

residuary subjects.

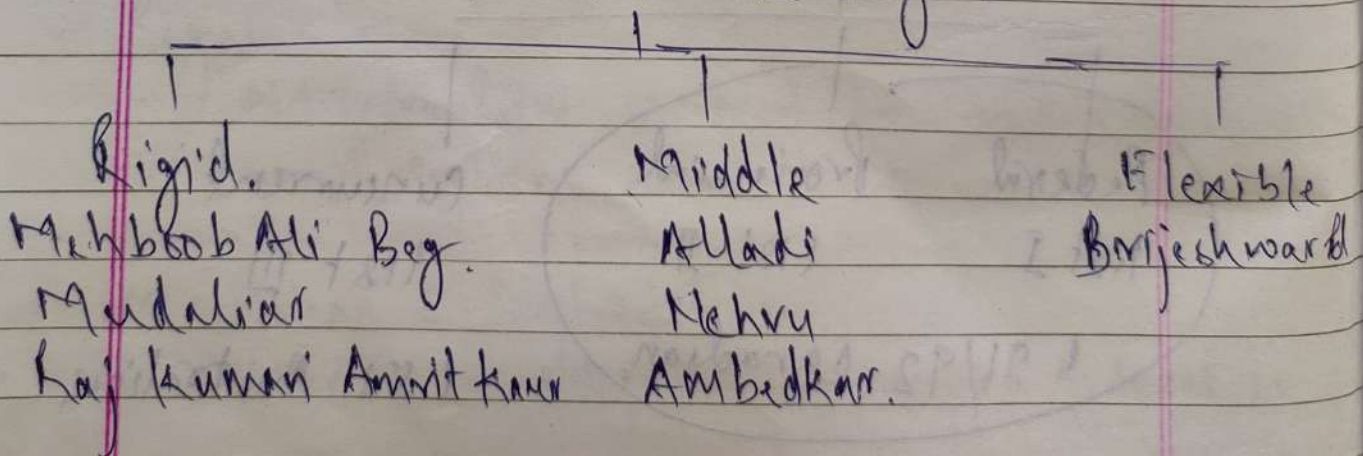
In Re ~~Reston~~ spirit 1939
CJ, Bhanjer says there is ~~the~~ clear demarcation of ~~the~~ subject between federal and provincial legislatures. So there is District federalism.

1945 Sapru Committee -

In order to appease princely states to join Indian union ~~it~~ suggested that ~~states should~~ federal constitution with strong states.

Union Committee also suggested federalism with strong states with centre having only three subjects - defence, communication and external affairs.

Constituent Assembly



1949 - India adopted federal constitution with strong centre.

Academic Evaluation

Federal.	Quasi Federal.	Unitary
Beerani	Wheare	J. N. Joshi
M. P. Jain	Alexandrowicz.	
Karji		
Jennings		

Main characteristics of federal constitution. -

- Supremacy of constitution.
- Dual government with clear & specific powers.
- Supremacy of judiciary
- Common interest for common good.

So it is not unitary.

It is not quasi-federal because Wheare has not given any criteria to call it quasi-federal.

Therefore it is federal federal with strong centre -

Art 249, 250, 252, 253, 356, 246(1)
251, 248

- Post Constitution phase -

- 9 amendments in centre state relations.
- 92 & 93rd Amendment added Schedule 11 & 12 bringing three year federalism.
- 1976 amendment (42nd) has brought in more centralising tendency because powers were transferred from list II to list III. Some were transferred in list I.

- Dhillon's case is bringing centralising tendency.
- Sri Krishna v. Gujarat University
- DAV College v. UOI
- St of W.B. v. UOI
- Gopal Nath v. St of Punjab.
- Phary v. St of Bihar.
- Indubhushan v. Kamadeni

— Contemporary Challenges —

- Separatist & or Fissiparous tendency.
- Emergency.
- Financial Crisis.
- Multiparty and Coalition Politics.
- States Oppressive, Aggressive and Autocratic Tyranny.
- Discriminatory Treatment
- Judicial over activism.