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# PROSPECTS FOR FEDERALISM

MAURICE J. HOLLAND\*

Though wholly lacking in any shred of authority, certainly official authority to do so, I would like to bring to the Federalist Society on the occasion of its first national symposium greetings and felicitations from the State of Indiana, one of the most soundly conservative and federalist-minded of the states. The former characteristic is evidenced by, among other things, its constitutional prohibition against deficit financing and its 1.9% flat-rate income tax. I suppose I should have said, given the spirit of this meeting, The Great and Sovereign State of Indiana, but somehow that phrase does not have quite the same ring to it when uttered other than about Mississippi and by someone like Senator Eastland.

The mild irony in this society's choice of name has already been noted. The salient characteristic of the original Federalists, America's first, and some would say last, great conservative political party was its advocacy of enhanced power on the part of the central government. I trust that it is not under that banner that we contemporary conservatives have been invited here this weekend to enlist. But as Jefferson said: "We are all Federalists, we are all Republicans" (he could not tactfully have said "Jeffersonians," as the opponents of the Federalists have come to be known), so I take it that the affirmation we wish to make is the more general one; namely, that the vitality of our form of government, and to an extent even of our society, depends in no small measure on the particular kind of dispersal of political power which is subsumed under the heading of dual sovereignty. Whereas the early Federalists feared that the pre-Reconstruction Constitution made the central government too supinely subordinated to the states, we, as contemporary federalists, are disturbed by what we perceive as precisely the opposite imbalance. From our vantage point we see a process of historical evolution, beginning with Reconstruction and culminating in the Great Society of the 1960's, whereby the states have largely forfeited or been deprived of that degree of partial autonomy requisite for the maintenance of dual

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sovereignty as a politically operative force as opposed to an abstract shibboleth, such that their condition has come to be little more than administrative departments for the execution of policy made in Washington.

As conservatives we do right to lament this imbalance for reasons which go beyond the pernicious uses which its partisans have made of the vast accretion of power in the national capital. More generally, we have come to see the dispersal of power on the vertical plane between the federal and state governments as being nearly as important a prudential, and hence a conservative, value, as is the horizontal dispersal of power among the three branches of a federal government. Conservatives have had their Burkean preference for diffusion of political power, particularly for its devolution down to the smallest, most local levels of government, reinforced by the marked preference of the cultural and political left for precisely the opposite—the concentration and consolidation of power in focal points as geographically and culturally remote from those over whom it is exercised as the practical necessities of effective coercion allow. Whether it is “democratic centralism” practiced in the name of forging “new socialist man,” or American liberals rushing to Washington, hell-bent on “reordering our priorities,” those who regard with contempt and would destroy so much that we cherish and would preserve—the organic relationship between the governed and their government, the respect for the concrete and particular, the life-enhancing variegation in human affairs—the impetus of our adversaries who would make the world anew is unmistakably in the direction of the maximum feasible concentration and consolidation of power.

Edmund Burke was among the first to notice one of the earliest manifestations of the kinship between radical upheaval and the determination to eviscerate all vestiges of local authority and sentiment when he wrote of the doings of the French National Assembly at the height of its priority-reordering fervor:

It is boasted that the geometrical policy has been adopted, and that all local ideas should be sunk, and that the people should no longer be Gascons, Picards, Bretons, Normans, but Frenchmen, with one country, one heart, and one Assembly. But instead of being all Frenchmen, the greater likelihood is

that the inhabitants of that region will shortly have no country at all.<sup>1</sup>

Apropos of Burke's prophecy that, as a result of the centralizing and homologizing program of the National Assembly, Frenchmen would "shortly have no country at all," it is worth noting that, in our own times, the concentration of power at the national level has been attended with a decline of patriotic sentiment. As Senator Moynihan, a sometime conservative, pointed out, one of the reasons the left fared so poorly in the 1980 elections was the perception on the part of the American people that liberals wanted the United States to be weak, but its government strong.

The primary reason for the preference of the left, broadly speaking, for governmental structures which are both highly centralized and predominantly administrative in style is that such structures are designed to enforce fundamental changes in how ordinary people think and feel as well as act, and in more extreme forms, to transform human nature itself. Thus we have seen in recent years something called "psychodramas" emanating from H.E.W. for use in the public schools, the avowed purpose of which was to extirpate what the educationist bureaucrats regard as unacceptably "sexist" stereotypes, and by extension "traditional notions" of all kinds. Some of these grotesque productions were intended to inculcate skepticism toward traditional forms of authority, particularly moral and parental authority, to arouse hostility against the institution of private property, and to foster the belief that all differences in wealth result solely from unfair advantage and exploitation. To those responsible for such efforts at brainwashing (euphemistically labelled "value clarification") localism of any kind is anathema, because genuine localism both produces and reflects important differences among people which the left-ideologue mind dismisses as atavistic, obstacles to the enforced homogenization of the citizenry under the banner of a morbid, Procrustean egalitarianism.

Robert Nisbet, who furnishes rare living proof that the influence of sociologists is not uniformly baneful, has aptly called the forces we are up against the "political clerisy," and, as he describes them, the contemporary role of liberal intellectuals does bear an odd, though concededly imperfect resemblance to the ec-

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<sup>1</sup> E. Burke, *Reflections on the Revolution in France*, in *SELECTED WRITINGS OF EDMUND BURKE* 417-18 (J. Bate ed. 1960).

clesiastical clerisy of the Middle Ages. He describes them thus:

No dogma or superstition in any religion yet uncovered by anthropologists is more tyrannizing . . . than that of the historically necessary or inevitable. But it is this dogma nevertheless that has had greatest appeal to several generations of intellectuals bereft of religion and driven thereby into the arms of the waiting church of historical necessity. The worst aspect of this kind of thinking is its division of the present . . . into the "relevant" and "irrelevant" present. If one is convinced, by his dogma of the necessary future, that progress lies only in the uses of political power, in the sterilization of cultural diversity, the extinction of localism, regionalism, and the whole private sector, and the replacement of all this by something euphemistically called the welfare state, the planned state, whatever, then obviously there is a large realm of the manifest present that can be categorically dismissed as fundamentally irrelevant, as wasteful, as a distraction from achievement of the future, as contemplated by the unitary or monistic mentality. The harshest charge the modern intellectual . . . has been able to hurl at others is not that their ideas are wrong, immoral, or undesirable, but *unrealistic*, conceived in blindness to what is real and objective in the present.

Given this whole habit of mind, conceived in the union of necessity and politics—the two greatest idols of the modern intellectual mind—it will not be easy for a philosophy of pluralism to reassert itself. . . . And yet I am convinced that it will so assert itself, though I do not know when, if only because the ravages of the social and cultural landscape effectuated by the political clerisy and its works are bound to become so great and so visible that there will be no other way for human beings to turn than to some kind of rebirth of a basically pluralist philosophy.<sup>2</sup>

Of course, the paradigm of what Nisbet is writing about is Marxism, and American liberals are not, for the most part, Marxist (though it is occasionally possible to catch a glimpse of one of their number, such as John Kenneth Galbraith or Frank Mankiewicz, casting vaguely admiring glances in that direction, or at least at societies ruled by that brand of secular millenarianism). American liberals are restrained in their impulse to inflict enlightenment upon an obstinately unenlightened citizenry by their allegiance to the Bill of Rights and, at seasonable times—that is, when there is a Republican president—to the separation of powers.

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2 R. Nisbet, *THE TWILIGHT OF AUTHORITY*, 235-36 (1975).

Unlike their medieval counterparts, however, the contemporary political clerisy is not notably restrained by any sense that the task of making "the crooked straight, and the rough places plain"—that is, of resolving the anomalies, perplexities, and dilemmas of human existence—is the Lord's work and not that of man or his government. Nor, to descend to a more mundane plane, is it much restrained by regard for federalist considerations. Rather, it is likely to view claims for a genuine sharing of policymaking authority on the part of the states and local government as an anachronistic nuisance, as creating the potential for the establishment of significant obstacles to the success of its ventures in social engineering. This is because American liberals have lost much of their traditional confidence in genuinely popular self-government. They are no longer assured, as they were until perhaps sometime after World War II, that their ideas are most likely to flourish and prevail at those levels of government closest to the grass roots, those most visible and accountable to the people. Precisely because the brand of enlightenment they tend to favor must be administered rather than elicited from the ethos and more generous impulses of the people, liberals look foremost to the federal government as the favored fulcrum of power. As Willie Sutton once said when asked why he robbed banks, that is where the money is. Moreover, thanks to the combined effect of inflation and the progressive income tax, the federal government has had at its disposal in recent years tens of billions of dollars of revenue which Congress would never have dared raise through voting-explicit tax increases.

Another factor which helps explain the liberals' preference for centralization of power in Washington is that it is at the federal level where the making of broad social and economic policy can best be carried out in a predominantly administrative mode, and responsibility for decision-making can be concealed in a maze of complexity and anonymity. In the unlikely event the agency and cabinet department bureaucrats run short of initiatives for bringing American society into closer alignment with notions one might associate with the Americans for Democratic Action or the National Education Association, just to mention two important fonts of contemporary enlightenment, activist federal judges can usually be counted on to intervene opportunely with "creative" interpretations of one or another provision of the Constitution. To these,

whose motto could well be "despotism in pursuit of reform is no vice and political accountability no virtue," the administrative style of governance is quite congenial.

What we as conservatives must strive for is, as Nisbet suggests, pluralism in whatever forms we can find and encourage it, as the best antidote to the wholesale politicization of our national life which threatens to engulf us in its moralizing and authoritarian sway. (One of the notable ironies of recent decades is that conservatives have become, largely by default, the party of liberty, while liberals have become the party of authority.) We must strive for pluralism in the form of alternative sources of authority, including moral authority, and alternative institutions for the conduct of our common, social lives and having enough heft and durability to shelter our private lives against the gales of priority-reordering authority emanating from Washington. In this struggle, federalism surely has some part to play, albeit a relatively minor one, since our foremost reliance must be on alternative sources of authority and institutions of shared purpose which are voluntary and wholly non-governmental, as opposed to being merely state or local as distinct from federal. A revival of federalism may be of some help, because as Lord Acton, the great historian of freedom, pointed out in one of his essays, any diffusion of power is likely to prove auspicious for the cause of liberty, even if the diffusion is wholly within the governmental sphere, and particularly if the dispersal is from the larger to the smaller unit. In fact, as Acton's writings also make clear, the achievement of liberty has most often taken the form of the winning of specific and concrete liberties by way of concessions from competing centers of power.

We should be modest in our expectations and cautious in our hopes for federalism, however. First, as conservatives we are under no illusion that the voice of the people is the voice of God. While there is good reason to believe that state and local governments are somewhat more responsive to what we hope is still the prudent good sense of the American people, yet we know perfectly well that these are occasionally as prone to oppressive meddling and crackpot measures as is the federal government. So if a resurgent federalism is more likely to "let Bloomfied be Bloomfield," so it will also "let Santa Monica be Santa Monica." (The reference to Santa Monica, I take it, requires no explanaton, but the reference to Bloomfield perhaps does. Bloomfield is an archetype of hun-

dreds of small Indiana towns which largely set the political tone of the state. That tone, of frugal, no-nonsense government, while perhaps somewhat lacking in panache, has so far managed to balk the dreams of empire conjured up by the occasional priority-reordering politician who manages to get a foothold in Indianapolis or Gary.)

Another reason for caution about investing too much hope in federalism as a means of rescue from our present discontents is that it is at best a secondary value culturally, politically, and constitutionally. The strong sense of cultural identity with one's state characteristic of nineteenth century Americans is moribund, a permanent victim of social mobility and the pervasive influence of the national media, among other factors. As a political factor, Americans are simply too unashamedly pragmatic, too little encumbered by political theory of any sort, for us to stake very much on a principled preference for managing public affairs at one level of government as opposed to another. No one has died, figuratively or literally, for states' rights since the Civil War except as a means of furthering some other primary goal, whether it be the maintenance of segregation or some other, worthier objective. Thus the preference for the central government on the part of American conservatives, apart from such anomalies as the Southern Agrarians, until the New Deal derived from their sense that enhancement of its power as against the states was conducive to the flourishing of business and commercial interests in opposition to those of workers and farmers. When in the 1930's that ceased to be so, conservatives and liberals quickly exchanged places on federalist issues without evident embarrassment on either side. I would not be disclosing any secret of the realm by suggesting that current proposals by conservatives to transfer many welfare programs from the federal to the state level are inspired in large part by the expectation that this would produce less taxing for, and spending on, welfare, rather than by any *a priori* conviction that states are inherently better fitted for the task.

My assigned topic called upon me to speculate about the future, rather than ruminate about the past. I suppose it is a token of my conservative disposition that I much prefer the latter to the former. I have also refrained from prognostication about what the future holds for federalism because, although it may be that the past is prologue, it does not furnish a reliable basis for very specific or detailed forecasting of events to come. With that caution

in mind, it can be said that recent history, both secular and domestic, does offer a few portents from which some degree of optimism regarding the future prospects of American federalism might be derived.

In the West generally, there have been recent manifestations of widespread disillusionment with the performance of large central governments. In Britain there has been the push for devolution of legislative authority from Westminster to Edinburgh and Cardiff. The Tories were swept to power three years ago on a promise as yet not substantially fulfilled, to reduce the size of government. In France, even the Socialists, heirs to a radically centralizing tradition, made decentralization a central plank of the platform on which they successfully appealed to the electorate. In Canada, an advanced state of fragmentation along provincial lines has been in progress for some time, and not wholly for reasons centering around the special problem of Quebec.

Closer to home, there are also signs from which mild encouragement might be taken. The demise of the proposed Equal Rights Amendment seems to me to be much more owing to skepticism about affording to federal courts in particular, and the federal government generally, an enlarged point of entry into yet another area of life traditionally within the domain of state law or private mores than to hostility toward its substantive purpose.

The election of President Reagan and so many conservative candidates in 1980 bespoke widespread, grass roots disenchantment with the bloated and over-reaching apparatus of the federal government, though it did not necessarily betoken a renewed attachment to state government. Reagan's New Federalism seems at least for the moment to have died aborning, partly because of preoccupation with huge projected budget deficits and partly because of well founded doubts about any realistic prospect that the federal government will ever actually relinquish its virtual stranglehold on the income tax base.

Perhaps the single most promising development from the viewpoint of a revitalized federalism is the provision for indexation of the federal income tax effective in 1985. If that measure survives whatever changes in congressional personnel result from the 1982 and 1984 elections, the federal government will be deprived of billions of dollars of revenue which will be politically difficult to replace. This should virtually assure that the era of endlessly proliferating, open-ended entitlement programs will have come to a

close. Since many of these programs entail federally imposed standards and constraints on state government, the result can only be beneficial to federalism.

In the uncomfortable role of seer I am sorry that I cannot be much more definite or specific about what the future holds for federalism than to say what hardly needs to be said; namely, that it all depends upon what the future holds for the life of our nation. The primary factor in the equation of federalism will almost certainly be the degree to which the coming decade or so proves free of national crises, real or perceived, for it is crises, military or economic, that the accretion of federal power battens upon. When the country is, or is thought to be, in serious economic or military trouble, Americans will inevitably turn for salvation to the federal government, and especially to the President. The two World Wars and the Great Depression did far more to concentrate vast power in Washington than did any party platforms or machinations of interest groups. If the preservation of American federalism is hostage to achievement of something approaching normalcy, there is room for some hope but not much confidence.

If the prospects for federalism in the sense we have been using the term are as tenuous as I believe they are, we would do well to concentrate our efforts on safeguarding and strengthening the more basic value of pluralism; pluralism which can co-exist with a constitutional structure in which the federal government will probably continue to occupy a dominant position regardless of what conservatives might ideally prefer in a less turbulent world than we are likely to see. In waging the intellectual and political struggle on behalf of pluralism, we ought not be unduly sectarian. We should be alert to the possibilities of alliances and joint efforts with some who do not account themselves conservatives. There remain not a few liberals who are as worried as we are by the ever increasing politicization of American life, and who retain some of the traditional attachment of classical liberalism to the bedrock values of individual liberty, limited government, and community achieved through voluntary association within the private sector. If we are to have any realistic chance of success, we must join our appeal with that of the older brand of liberalism against the new, the liberalism of the priority-reorderers who, in their passion for making the world over anew, have succumbed to the profoundly illiberal doctrine of statism and the all-engrossing ubiquity of politics.

