

## Our Federal Republic

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**T**he United States of America was, not the first, but has unquestionably been the most successful, attempt to reconcile the presumable desideratum of general freedom with the necessity of social discipline.

Even if this unusually experimental form of government is doomed to eventual failure, the record of its tangible accomplishment will have proved unprecedented. During its lifetime, now approaching two centuries, the political system of this representative Republic has done more for its people as a whole than any other ever devised. The reason lies in a simple paradox. By the adoption of arrangements strongly negative towards the power of government, the Republic has so far permitted and encouraged its citizens to act affirmatively in their own interests. Many Americans do not realize that when first attempted this political plan was extraordinary, indeed revolutionary in the full sense of the word.

The United States, as the name implies, are a union of

sovereign States, federal in nature. Certain characteristics, herewith enumerated, are common to all federations. First and foremost, federalism involves dispersion of political power. There will, of course, be some delegation of overriding authority to the general or central government. This requires the establishment of a national capital, the presence of which itself distinguishes a federation from a mere league or alliance of independent sovereignties. The seating of the central government is the material reflection of the process of federation, whereby the component parts—while reserving certain powers to themselves—have permanently surrendered some prerogatives of sovereignty to a common national pool.

This division of sovereignty between the central government and the constituent states must be defined. In consequence, a constitution is prerequisite to any federation, and it is in practice necessary that this should be a written contract so that both the state and central governments may have reasonably precise understanding of their respective functions and authority. Even when this division of governmental authority is meticulously set forth there will be disputes as to the allocation, especially if economic or social development seems to require uniform national regulation. This certainty of changing circumstance gives rise to two other essential features of a federation. The written constitution must, as a practical matter, be subject to amendment by some prescribed process. And there must be a supreme court, empowered to decide just where the division of sovereignty lies in any contested case, at any particular time.

Flexibility is an outstanding asset of the federal form of government. By the device of keeping certain governmental powers under strictly local control, people with great diversities may be encouraged to unite under one flag. Thus the Swiss Confederation has successfully joined together German-speaking, French-speaking and Italian-speaking cantons. In Canada federation has united communities which are distinctively English and French in their linguistic, religious and cultural backgrounds. The German Empire, from 1871 to 1918, was a federation of monarchies. A mixed federation, of both republics and monarchies, could now conceivably be developed by those Western European nations which have subscribed to both the Common Market and Euratom treaties. Of the six states attempting to pool their sovereignty in these respects, two (Belgium and Holland) are kingdoms, one (Luxembourg) is a grand duchy, three (France, Italy and Western Germany) are republics, and one of these (Western Germany) is itself federal in form.

Another interesting, though unacceptable, illustration is the Union of Soviet Socialist Republics. This is nominally a federal union and indeed was able on that assumption to obtain separate membership for two of its constituent units (Byelorussia and Ukraine) in the United Nations. All Soviet republics, however, are subjected to a centralized, socialistic regimentation which in practice confines their autonomy to cultural matters and makes the claim to federal form extremely shadowy. Moreover, the first article of the Constitution of the U. S. S. R. defines this union as "a socialist state." Socialism and federalism

are necessarily political opposites, because the former demands that centralized concentration of power which the latter by definition denies.<sup>1</sup>

The federal form of government has certain obvious deficiencies. The preservation of a multiplicity of relatively powerful local governments, within the union, creates a complicated and legalistic system. It makes the conduct of foreign policy, necessarily entrusted to the central government, unusually difficult for a true federation, since actions taken in regard to other sovereign powers are always likely to react on the domestic balance. In times of unusual strain, whether foreign or domestic, the central government is likely either to evade its constitutional limitations, or be frustrated by them. There is no question that a unitary state—where all significant governmental power is centered in the national capital—is in a better position to act promptly and decisively than is a federation. This explains the tendency of federations to alter

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<sup>1</sup> The Constitution of the Union of Soviet Socialist Republics (1958 edition) lists 24 separate “spheres” (Article 14, paragraphs a to x inclusive) in which the central government is all-powerful. These cover almost every conceivable governmental activity, including (i) “Safeguarding the security of the state”; (p) “Contracting and granting of loans”; (r) “Determination of the basic principles in the spheres of education and public health”; (t) “Determination of the principles of labor legislation”; (w) “Determination of the principles of legislation concerning marriage and the family.” Article 20 further stipulates that “In the event of divergence between a law of a Union Republic and a law of the Union, the Union law prevails.” Nevertheless Article 15 maintains that “Outside of these spheres [as listed in Article 14] each Union Republic exercises state authority independently.” See also, John N. Hazard, *The Soviet System of Government*, Univ. of Chicago Press (Chicago 1957) esp. Ch. 6.

their character, in the direction of strongly centralized government, during periods of stress. Once underway, that centralizing process is difficult to reverse, largely because of the vested interest in power which every governmental agency quickly establishes for itself unless continuously checked by those who pay for its support.

The great overriding advantage of the federal system is that it operates to avert the dangers inherent in government by remote control. The essence of federalism is reservation of control over local affairs to the localities themselves, the argument for which becomes stronger if the federation embraces a large area, with strong climatic or cultural differences among the various states therein. One justifying assumption for such a loose-knit system is that citizens as a body are both interested in, and for the most part competent to handle, local problems. When that assumption is valid there is little doubt that federalism, despite its disadvantages, serves admirably to foster freedom without the sacrifice of order.

What has been said applies to federations in general. That of the United States has certain special characteristics which make it the most interesting, as well as the most complicated, illustration of this type of political union. As De Tocqueville wrote: "In examining the Constitution of the United States, which is the most perfect federal constitution that ever existed, one is startled at the variety of information and the amount of discernment that it presupposes in the people whom it is meant to govern." And he further predicted that if this discernment should languish,

as it certainly is languishing today, Americans would eventually “fall beneath the yoke of a centralized administration.”<sup>2</sup>

The outstanding feature of the American form of federalism is that it carries the doctrine of the separation of powers a great deal farther than is required by the mere structure of federalism—a great deal farther than Canada, for instance, has attempted. In addition to the allocation as between Washington and each of the State capitals, such as Albany, Little Rock or Sacramento, there is a further specified division of power among the three branches of government within each of these capitals.

Both the Constitution of the Federal Union, and those of each of the 50 States that now together compose it, separate the legislative, executive and judicial powers, and balance the one against the others. This has been a uniform interpretation of that rather vague clause in the Federal Constitution which says (Art. 4, Sect. 4): “The United States shall guarantee to every State in this Union a Republican Form of Government.” Republican, as contrasted with monarchical or democratic, meant to the founding fathers the division, as opposed to the concentration, of governmental power.<sup>3</sup> The Republic, while

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<sup>2</sup> Alexis de Tocqueville, *Democracy in America*, Alfred A. Knopf edn. (New York 1945) Vol. I, pp. 166 and 95.

<sup>3</sup> Madison, in the *Federalist*, No. 39, argues that no government where power is concentrated and absolute should be called a Republic. “We may . . . bestow that name,” he says, “on a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior.”

launched in revolt against the personal tyranny of a king, was most carefully designed to prevent any recurrence of monopolistic power, not merely by its federal form but also by establishing check and balance within the machinery of federalism.

The theory of check and balance, as superimposed on our federal structure, was derived from the writings of the French philosopher Montesquieu and has no relation whatever to the English political tradition. From the latter has evolved the wholly different, though widely adopted, system known as responsible parliamentary government. The Prime Minister, who is the leader of the party that controls the legislature, holds his executive office as long, but only as long, as he retains majority support in the House of Commons. By gradual steps, over a long period of political evolution, he has been made wholly responsible to this majority. If defeated in a "vote of confidence" this Premier must resign and is succeeded by the leader of the Opposition. In the United States there is no such device as a vote of confidence, neither in the national nor in any of the State legislatures. While President and Governors are customarily party leaders they hold office for fixed terms, during which they cannot be ousted, except by death, disability or successful impeachment.

This executive independence is but one of the extraordinary features of the American form of government, not the less worthy of clear understanding because its processes are as normal for us as they are baffling to many of our friends and allies. As a check to the guaranteed power of the executive the legislature may of course defeat

bills which the former proposes, or adopt legislation which it opposes, though here the President has a qualified power of veto not possessed by prime ministers in parliamentary systems. While the Congress retains, at least nominally, the "power of the purse" it is further weakened, vis-a-vis the executive, by the fact that ministers or their deputies are not, as in England, present in the legislature to submit to questions from the elected representatives of the people. The vitally important substitute procedure, whereby Congressional committees may summon and interrogate executive officials or any other persons, is neither too well understood nor always too well handled, as the confused furor over what came to be called "McCarthyism" attested.

The Congress also appears to be at something of a disadvantage with respect to the Federal judiciary, which must decide the question of constitutionality whenever a test case to that end is brought. A huge amount of State legislation, and no small quantity of that enacted by the Congress, has been rendered invalid by this process of judicial review. In theory, the judiciary is as independent of the executive as of the legislative branch. And throughout our history the Supreme Court has often countermanded Presidential wishes, in addition to overriding the will of Congress. But in practice, whenever subservience on the part of the Court can be noted, it tends to be towards the President rather than towards Congress. This is not primarily because the President appoints the Federal judges, on life tenure. Rather it is because the Congress



can seldom exhibit the concentrated resolution of a single man, as it did in the extraordinary period right after the Civil War, and because the executive can more subtly ignore or circumvent judicial decisions than can the legislature. On the other hand, the judiciary is by its nature deprived from seeking that favorable publicity for its decisions which is always open to manipulation by spokesmen for the legislature and executive.

The Congress of the United States is undoubtedly a powerful body, especially because of the constitutional privileges of the Upper House, which must give consent to all treaties concluded by the executive, as well as to the appointment of diplomatic representatives, judges of the Supreme Court and all but "inferior officers" of the Administration.<sup>4</sup> The six-year tenure of Senatorial office, and the fact that Senators from the least populous State are in every respect peers of those from the greatest, gives them substantial individual importance. This is increased by the Senate rules, alterable only by that body itself, permitting blocking tactics, or outright "filibustering," which have time and again permitted a Senate minority successfully to frustrate the Presidential will. It is the Senate which represents par excellence the federal basis of American government. And the tradition that a Senator should not hesitate to place the welfare of his State, as he sees it, above that of the nation as seen by the President, is still very much alive.

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<sup>4</sup> *Const.*, Art II, Sect. 2, Par. 2. The Senate's power to reject Presidential appointments is a sharp check on the authority of the Executive.

There is, of course, nothing haphazard either about the federal structure of the United States, or about the careful balance of powers built into that structure. It may be said that the federal form was historically ordained, by the fact that the original thirteen colonies were separately established and had by the time of the Revolution developed widely differing political and social customs. Only a system which protected those diversities could combine these varying units in a general unity. But behind the determination to keep the rights of the several States inviolate was the even deeper determination to protect the citizens of these states from centralized governmental oppression. That is why the Republic was established not only as a federation of semi-sovereign States, but also as one of balanced authority, in which it would be extremely difficult to establish a nationwide monopoly power of any kind.

We could infer this hostility to monopoly power from the text of the Constitution, even without the abundant evidence available in the prolific writings of the founding fathers. Thus, Article I says flatly that: "No title of nobility shall be granted by the United States," insuring that no small group shall enjoy honorifics entitling its members to claim a social prestige—permitting them to "lord" it over others. Similarly the First Amendment says: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." That is directed against any upper church, just as the denial of titles is directed against any upper class. This provision

has insured that “dissenter” or “heretic” carry no religious opprobrium for Americans, any more than the word “commoner” means socially declassae. As already noted, the opposition to concentration of political power runs through the entire content of the Organic Law, but is specifically emphasized in the Ninth and Tenth Amendments, which say:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The men who wrote the Constitution were personally familiar with the evil potential of social, religious and political monopoly, and therefore were for the most part insistent on these specific safeguards. There seems to have been no anticipation of economic monopoly, yet the spirit of the Constitution is clearly hostile to this also. Congress was given the power “to regulate commerce,” in consequence of which the deep-rooted dislike of monopoly in time produced the Sherman, Clayton, and Taft-Hartley Acts. What is still lacking is an agency comparable with the Federal Trade Commission, designed to keep Big Unionism as well as Big Business within bounds.<sup>5</sup>

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<sup>5</sup> In two ponderous volumes on *Politics and the Constitution*, Professor William W. Crosskey propounds “a unitary theory of the Constitution” maintaining, *inter alia*, that the intent of the commerce clause was to give Congress the power to regulate “all gainful activity” throughout the country. Professor

The fact that American trade unionism has been able to establish extraordinary legal immunities for itself is a matter of growing concern. But no aspect of this monopolistic phenomenon is more significant than its revelation of the tendency to disrupt a democratic social system in the name of democracy.

This desire to secure privileged position is by no means limited to labor leaders and is found in all strata of society. The "worth" of a man is habitually reckoned in dollars. In spite of the prohibition against titles of nobility there is scarcely a festival throughout the length and breadth of the land that does not crown its "queen." No American girl is more assured of publicity than one who manages to marry a foreign princeling. And the love for the trappings of distinction—Knight of Pythias, Blue Book listing or even a gaudy fin-tailed automobile if one can do no better—illustrates a most undemocratic trait in a nominally democratic society. One may even hazard that many Americans would be happy to see an established church in their Republic, if it could be the one of their own choosing.

In short, the mistrust of privilege among Americans has never been strong enough to dampen the individual desire to get ahead of others, even if that end involves the at-

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Crosskey is highly intolerant of the States' Rights viewpoint. The value of his research is lessened by a vehemence of unsupported asseveration, as when he says "it is virtually certain that much of the *Federalist* was written only to fill up space in the New York 'federal' newspapers and thereby to make less obvious the exclusion therefrom of opposing views." *Op. cit.*, Univ. of Chicago Press (Chicago 1953) Vol. I, p. 9.

tainment of a monopoly position. Democracy, as the word is used in the United States, does not imply equality.

Probably the most remarkable characteristic of our governmental design is that it merely "holds the ring" for those who are endeavoring to get ahead of their competitors. Its basic purpose, not always successfully achieved, is to deny privilege to any so that opportunity may be kept open for all. This is very close to, if not identical with, the age-old ethical aim of Justice and it is no accident that to "establish Justice" is set forth as an objective second only to that of "a more perfect Union" in the Preamble to the Constitution. Since people, in a competitive or any other society, are by no means always just to each other, some regulation by the state in its capacity of umpire is unavoidable. What must be kept in mind is that the greatest injustice of all is done when the umpire forgets that he too is bound by the rules, and begins to make them as between contestants in behalf of his own prejudices.

The comparison with an athletic contest is valid to the extent that it emphasizes the strongly competitive nature of American society, and what originally seemed to Americans the true function of civil government in merely supervising competitive enterprise under definite constitutional rules. The merit of a supervisory, as opposed to a directive, state is that the former keeps "the power in the people," to use the phrase of William Penn. Our system encourages the individual to exertion for his own sake, instead of requiring exertion by an elite in behalf of the masses, which is the principle of communism and of national socialism put in the most favorable light. Our system further

assumes that self-assertion will be for the good of all if balanced by self-discipline. To meet that proviso it relies heavily, as we shall see, on the services of organized religion.

Under the communist, or socialist, systems it is the function of the state and not the church to teach humility. For that reason the church is at best merely tolerated, and is likely to be actively suppressed, wherever totalitarian rule triumphs. To Lenin, religion was "the opiate of the people."<sup>6</sup> To Washington it was the "indispensable support" of "political prosperity."<sup>7</sup> From these polarized conceptions it follows that religious revival is a serious threat to the success of the Soviet system, just as the decay of religious observance is a serious threat to the success of our own.

This is by no means the only fundamental in which meat for the one system is poison to the other. A strongly centralized government is aided by political ignorance and apathy among its subjects. But the docile acceptance of paternalism spells morbidity for a federal system, which can only prosper if its self-governing localities take politics seriously. So there is cause for concern in the fact that so many Americans have come to regard their Federal Republic as a centralized democracy. And this concern is not lessened by noting that the communists describe their system as "democratic centralism," operated through the medium of "People's Democracies."

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<sup>6</sup> Quoted, David Shub, *Lenin*, Doubleday & Co. (New York 1948) p. 369.

<sup>7</sup> The Farewell Address.

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This anomalous use of identical terms for political opposites demands a much more thorough examination than it habitually receives. We are proposing to demonstrate that it is incorrect, and therefore injurious, to call our Federal Union a political democracy. In so doing we shall also consider whether Soviet Russia has a better claim to that description.