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THE CONSERVATIVE PAPERS

WITH AN INTRODUCTION BY
Representative Melvin R. Laird

ANCHOR BOOKS
DOUBLEDAY & COMPANY, INC.
GARDEN CITY, NEW YORK
1964

The Challenge to Western Civilization by Charles Malik is a condensation and fusion of various addresses, including: *Passing to the Offensive*, a commencement address delivered in June of 1961 at Seattle University; *Some Urgent Tasks*, an address given at the John Carroll Society in Washington, D.C. on October 18, 1961; *Will the Future Redeem the Past*, delivered at Colonial Williamsburg in June of 1960; and *The Renewal and Doom of Civilization*, a commencement address delivered at American University in June of 1961.

The Essentials of Solidarity in the Western Alliance by Henry A. Kissinger is an adaptation of two articles: "Nato's Nuclear Dilemma," published by *The Reporter*, March 28, 1963 (Copyright 1963 by the Reporter Magazine Company); and "Strains in the Alliance," which appeared in the October 1962 issue of *Foreign Affairs* (Copyright 1962 by the Council on Foreign Relations, Inc., New York).

Do Deficits Matter? by Raymond J. Saulnier is based on a Mead Lecture under the same title given at Trinity College, Hartford, Connecticut, April 4, 1963.

Inflation by Gottfried Haberler was adapted from his *Inflation: Its Causes and Cures*, published by the American Enterprise Institute for Public Policy Research (rev. ed.) June 1961, and reprinted by permission of the American Enterprise Institute. Copyright © 1960, 1961 by the American Enterprise Association.

Labor Union Power by Edward H. Chamberlin is adapted from an address delivered by Mr. Chamberlin to the American Mining Congress at its 1962 Metal Mining and Industrial Minerals Convention and Exposition in San Francisco, California, September 23-27, 1962.

Library of Congress Catalog Card Number 64-11731

The Anchor Books edition is the first publication of *The Conservative Papers*.

Anchor Books edition: 1964

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FIRST EDITION

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FEDERALISM

by Alfred de Grazia

Dr. Alfred de Grazia is Professor of Government at New York University. He has taught political science at various American universities and is the author of numerous books, among them *Public and Republic* (1951), *The American Way of Government* (1961), *The Elements of Political Science* (1952, rev. 1962) and *Politics and Government* (1962).

Modern life is complicated enough. Yet, to every question of social policy, be it outdoor recreation facilities or school lunches for children, we must add the question: should the states or the federal government perform the proposed task? Is there some reason behind this practice, or are we perennially victims of a primeval compromise called federalism, an accident of time and the desire to create a nation?

The reason for the practice, it might be asserted, is implied in the success of American federalism for ninescore years. What has worked, brought wealth and power to the country, and engendered ample liberties can be justified by these facts.

However, the sheer ritualism of that argument will not satisfy the thoughtful person. He may hope that such is the case. He may even take it as a prior article of faith. But finally he must analyze it. If there is an association between a country's success and federalism, it needs to be demonstrated.

Of dozens of historical federations, most have failed. The United States has been the only one to grow to greatness while still a federated nation. Moreover, its successes may have been due both to the original nationalism that was

provided and to a subsequent new nationalism that undercut federalism. Furthermore, if it was federalism that underwrote America's successes, that federalism may itself be fast disappearing, whence we must urgently inquire into its nature in order to learn how to preserve it.

American federalism was an invention composed of traditional and tested parts. Perhaps nothing save the Electoral College for choosing the President was a new instrumentality in the new Constitution. After the Union was established, a number of states copied its forms, but originally the Union imitated the forms of the states. Then each proceeded to work independently with the people and their social institutions, while the limits of its actions were watched over by the federal judiciary.

The federal government got its initial force from a brilliant plan and a few tough and versatile leaders. Its early drive fed upon its direct relation to citizens as individuals, upon its proprietorship over a vast domain of land (including dominated territorial governments), and upon small wars. It could probably not have succeeded, furthermore, if it had been born in an age when the philosophy and practice of mercantilism or of the welfare state prevailed, for it would then have been committed to ruling the whole economy, and, failing that, would have collapsed. That is, federalism could prosper under the constitutional rules freeing business and creating institutions, such as a uniform currency, favorable to enterprise; but it could not endure the centralizing effects of heavy governmental regulation and ownership of business. In view of the last consideration, the Civil War becomes more understandable: a growing industrial society of the North and Midwest was riding upon the early forces of federalism but still, because its policies and those counterposed by the South strove for ever higher stakes in favorable federal legislation, in effect failed to gain its objectives within a federal structure. The war was a blow from which federalism has not yet recovered: the one question, whether it is prohibited to secede, was finally resolved, but a new set of grave questions arose that still beg for solution.

The Infrastructure

Whatever the reasons for its original growth, American federalism has provided enough experience to permit its analysis in the light of general federal theory. Federalism is a way of ordering human relations that gives final authority on some questions to governments of areas smaller than the whole union. It contains a division of functions. It guarantees this division and more by a form of pluralism in which autonomous groups are based on geography. It is a form of decentralization with special powers of initiative and veto granted to the decentralized areal units.

The final authority and independence of the parts depends upon their possessing certain critical institutions. To enjoy what may reasonably be called federal authority, a state must have an independent active public, an independent set of officers, an independent legislative power, an independent protective and police power, and an independent judiciary. Without any one of these, the federal nature of the arrangement will disappear in favor of centralization. What is particularly federal about these institutions is that a very powerful political force is required to undermine them; ordinary political and legislative activity leaves them unscathed; they can be damaged only by a shocking concentration of power or by cumulative attrition applied to their "load-bearing" points.

When Madison and Hamilton defended the federal Constitution in the debate over its adoption, they were most impressed by the strength of the states. To them it was obvious that the states carried the aforesaid instruments of independence and also that they would continue to possess them in the face of any foreseeable contingency arising under the proposed Constitution. Thus Hamilton wrote, in Number 28 of *The Federalist*, "It may be safely received as an axiom of our political system, that the State governments will, in all possible contingencies, afford complete security against invasions of the public liberty by the national authority."

The public and elite of the states, he says, will be atten-

tive to such dangers: "Projects of usurpation cannot be masked under pretenses so likely to escape the penetration of select bodies of men, as of the people at large. The legislatures will have better means of information." The states have the power to oppose and know how to use it. "Possessing all the organs of civil power, and the confidence of the people, they can at once adopt a regular plan of opposition, in which they can combine all the resources of the community."

It must be admitted that the two distinguished authors were quite unable to picture the mobilization of forces of which the *national* government would be capable.

They could not know, of course, how the Electoral College would be converted into an instrument for the direct popular election of the President. They could not have foreknowledge of the nationalizing decisions of Chief Justice John Marshall. They might have seen the nationalizing effects of nationally organized political parties. But they could not anticipate the Civil War and its consequent nationalizing amendments, or the amendments of the early twentieth century, permitting a national unapportioned income tax, and requiring the direct election of U.S. senators by the public of the states. They might have taken into account the powers inherent in a President who is chief executive, commander-in-chief, and the expresser of the national will. Furthermore they gave too much credence to the theory that political revolutions occur as conspiracies and to the related converse theory that the states would be so much in touch with one another that they could organize and plan an opposition to centralization. The apparent naïveté of the last two ideas may be partly owing to the authors thinking still of small interconnected groups as running the states and nation. It may be due also to their desire to sell the Constitution to the public then and there; long-range hypotheticals had to wait. In any event, rather than to criticize them, we should do better to criticize those who have failed to draw the appropriate lessons from the century and a half of experience that followed.

Today the position of the states is vastly weaker. The scope, domain, and intensity of state actions relative to na-

tional governmental action have greatly diminished. Two basic causes are evident. Popular attention has turned away from the problems of the states, and without a public a rule is weak and undirected. Furthermore, a resignation of authority on the part of state officials is notable, not so much in particular cases and issues as in the lack of drive toward a better life within the state through using the numerous instrumentalities available to the state.

Actually the ability of the states simply to survive as anything beyond administrative subdivisions of a unitary government hinges only upon the structural safeguards accorded the states in the federal Constitution. If one were to write a set of *Federalist* papers today defending the Constitution, he would probably allow the same desperate importance to the defense of the states in the scheme of the union as the original authors gave to the defense of the national interest. To him, public opinion and the leadership must appear just as indifferent, hostile, and skeptical as they did to the original federalists.

A closer examination of those structural bulwarks of federalism is therefore in order. The first is free elections. The elements here are many. They include a free state electorate with an independently established suffrage requirement. They include a freely established republican form of government that cannot be altered by the national government. They include a political party system that, while associated with a national party, operates independently on a local and state level; it can take contrary or minority positions without incurring unbearable reprisals from its national association. A free electoral system also includes a legislature and a governor whose election does not to any great degree depend upon the policies of the central government. So long as these structural features remain, one important condition for federalism exists.

The free legislative power must be granted considerable scope. There must be a reservoir of competence to decide important issues without occasioning massive retaliation by the central government. The scope of these powers, which even originally were never unlimited, must have a boundary at which the total co-ordinated forces of the state can

be lined up for defense and offense. Somewhere there must be a defensible line in relation to the regulation of commerce, the power to tax, the care of the indigent, and so forth. There is no perfect or even logical boundary between central and local authority to legislate. Yet there must be a battle line. And the territory on each side of the battle line must be of some value to both sides and to the population of the area.

The definition of the line is the original great compromise settlement of every federal constitution and from then on a source of unending contention. What rights of intervention in society are exclusive, which concurrent, which denied to both—these are the concepts that come into play over time. When, however, the legislators and the people are uninterested in the line, then it may be rapidly extinguished, and the whole apparatus of federalism can become antiquated and meaningless. When the courts charged with constitutional review become rigidly confident as to where the line lies, as if it were written in some nationalistic or statist text, they may deadlock the federal system.

Additional strong points of the system are the independent police and protective power and the independent judiciary. In each case, as in the legislature and principal executives, the sources of independence lie in the manner of selection and sustenance. Originally the state militias were counted upon as a counterpoise to power at the national level and at the same time a national resource; separately constituted, they might be used for the defense of the state internally and externally except insofar as they might conflict with the national military authority and as they might be assimilated to the national forces in conditions of emergency. Today the state militias are a national guard so tightly bound to the national military establishment that their personnel can carry little force by reason of their state origins. It was a federalized national guard unit, it may be remembered, that in Alabama in June of 1963, directed its state Commander-in-Chief, the Governor, to obey the federal Commander-in-Chief, the President.

On the other hand, the state and local police forces operate free of such built-in pressures. The Federal Bureau

of Investigation and other federal police units provide and receive certain co-operative services from them but are still far from a commanding position. The expansion of the federal enforcement arm has occurred in connection with the extension of federal powers into new areas of social behavior. It has not struck at the principal basis of the state and local enforcement system.

The relations between the state and federal judiciary have changed in the same general way. Independently chosen, the state judiciary has ruled a separate court system. A state judiciary that would have been a branch of the federal, or vice versa, was and is conceivable. But it would probably be less resistant to unifying forces than the present scheme, which was only partially dictated by the Constitution. It results in some overlapping of jurisdiction, but the two structures are independent.

The power of the federal courts, however, to define the meanings of the Constitution, coupled with their national method of appointment and their typically national outlook, has often enabled national executive and legislative authorities to carry out policies that would, if they had been presented to the state court systems for determination, have been constitutionally disputable.

Meshing of Federal and State Machinery

This latter aspect of the judiciary highlights the important question of the machinery used to resolve difficulties in the American federal system. Not only the judiciary but also the political and legislative machinery and the enforcement system of the two governmental levels must come into frequent contact in the course of their activities. From the beginning of the republic there has been a mixture of modes of contact and communication.

In all of them are involved both the need to make federalism possible and the possibility of impairing the system. Thus, it is apparent that the laws of state and federal governments must be meshed to some degree to prevent widespread conflict and injustice. Hence state and federal courts perform many of the same tasks, as well as separate tasks,

and do so both as independent and as dependent bodies.

At the same time, for the aforementioned reasons—the power to read the Constitution—a considerable centralization and conceivably a complete centralization might occur by means of federal court opinion. The *Baker v. Carr* decision of 1962 on the subject of apportionment is an instance of how the federal courts can not only assume jurisdiction over a subject once almost exclusively that of the states, but also go to the root of determining the structure of another branch of government in the state government, the legislature, by setting rules of “equal” apportionment.

There is presently no institution in American constitutional law to check the Supreme Court in this regard. Assuming a willingness on the part of other federal branches to countenance and exploit such a development, it may proceed apace. The Supreme Court can blast a hole in the federal fence through which another federal authority can drive its truck.

How do the other branches of government stand in this respect? The federal executive may of course follow up initiatives allowed him by the federal courts. For instance, whereas the initial effect of the decision in the case of *Baker v. Carr*, referred to above, was, among other things, to enhance the power of the courts, the long-range effect will be to strengthen the “presidential” faction in many states. The chain of causes and effects here is elaborate; it develops, in sum, out of the tendency of reapportionments fostered by the courts to favor the elements in both parties that are most influential and dependent upon the Presidency.

The President may also seek to unite the political parties and public opinion behind his program in order to accomplish politically a unified course of action of the federal and state governments. This is permissible and common behavior. The federal system depends, after all, upon the mutual consultation, co-operation, and alliance of decentralized and federal authority. Federalism should not be a synonym for automatic resistance to state-federal co-operation.

But, going beyond political co-operation of the tradi-

tional type, which arises out of common perceived needs and mild mutual sanctions, additional possibilities arise for rigging the political machinery of the country to ensure national predominance. Thus, if presidential patronage is very heavy, as it was in the early New Deal, national political domination can be promoted.

Moreover, to take a case where the causation is more indirect and yet more important, too, whenever the powers of the central executive are strengthened, the powers of the states are weakened. This comes about because the national legislature is more oriented to maintaining state power than the national executive is. Increasing federal executive power reduces the strength of those favorably disposed to federalism and carries right down to the grass roots of state and local politics.

There are really four general political parties in the American Congress: the presidential Republican party, the presidential Democratic party, the congressional Republican party, and the congressional Democratic party. The latter two are more federally rather than nationally oriented.

They would be far stronger than the presidential parties and therefore, one might say, more readily capable of defending states' rights if it were not for the fact that they are chaotically organized, with separate roots in each and every state. Furthermore, for them a number of substantive issues, such as race relations and labor-union rights, are more important than the shape of federalism, so that the interest struck up in the latter is likely to be extinguished by the disputations concerning the former. It would appear, therefore, that an attempt to organize a true federal interest must cut across party lines and embrace compatible substantive positions on social and governmental issues as well. Here as everywhere, the states'-rights interest is feeble politically; despite its ultimate and long-range importance, its protection depends upon being a by-product of a politically more volatile combination.

The beginnings of such a volatile and therefore organizable combination can be closely related to the issue of federalism itself. There is nothing spectacular about a number of structural reforms of state government, but if persistently

sought and generally enacted, they can lend stability, intelligence, and long-run effects to the movement toward a new federalism.

Reform of the state representative structure to assimilate the true urban interest is one step to take. By this is meant not reapportionment by equal population districts but representation of metropolitan areas and some degree of functional representation of social and industrial interests in the state legislatures. The need here is for a representation somewhere between sheer lobbying and specific corporate seats.

States may also ease directly the pressure of metropolitan problems, which, along with the problem of race relations, is a threat to our federal system, by helping to organize metropolitan government so as to evade the conflicts of jurisdiction that plague the urban places of many states. This would involve both new general planning and governmental authorities, and also functional authorities operating over specially created districts.

Moreover, the states, whose metropolitan areas converge with those of adjoining states have an urgent obligation to compact under the federal Constitution for the solution of problems common to both. As complex as such interstate compacts may appear to be in prospect, they are probably no more difficult than the problems facing the businessmen and organizations already operating (even if under difficult circumstances) in the same interstate area.

Four Important Federalist Issues

Also basically related to the issue of federalism and yet possessed of considerable political potential are the grant-in-aid programs by which the federal government extends funds and services to the states under a variety of conditions. In a typical year, from 10 to 14 per cent of state and local revenues come from such grants. The range of functions is wide, but of a total of \$7.4 billions in 1962 (est.), \$3.0 billions went for highways, \$3.2 billions for social welfare, \$.3 billion for agriculture, and \$.3 billion for education.

This relationship has been called "co-operative federalism" to distinguish it from "dual federalism," by this writer and others. Under co-operative federalism, usually, state and federal personnel, funds, and rules of action are jointly approved and administered by the two levels of government. Under "dual federalism" any similar tasks of the two governments are performed independently, exclusively, concurrently, if at all.

At the beginning of the republic, the dual method of conducting federalism was preferred to the co-operative way. "Good fences make good neighbors" was the policy. James Madison wrote once that the national government working on a purely nation-to-state basis would require compulsory procedures that might readily bring "equal calamities to the innocent and the guilty, the necessity of a military force, both obnoxious and dangerous, and in general, a scene much more resembling a civil war than the administration of a regular government. Hence was embraced the alternative of a government which, instead of operating on the States, should operate without their intervention on the individuals composing them."

For a long while this feature of the American federal system was considered a mark of superiority. Then, however, came a period beginning early in this century when national policies began to be imposed through offers of money and assistance to the states. Some of these, such as social welfare programs, were conceived to be probably unconstitutional, given the attitudes of the Supreme Court as then constituted. The grant-voluntarily-received was thought to be a way of evading legal nullification. As it turned out, the Constitution will not "permit" just about every national activity that today is found in the form of co-operative federalism, so that if that were the only reason for grants, they would be unnecessary.

There are other reasons for the programs of grants. One is the fear of state inactivity in areas where an "American standard" is desired by a great many people and is regarded as more important than any issues of state self-rule that may be involved.

The next reason would have to do with finances. It is

widely believed that some states are too poor to pay for their own programs in these areas. Such a judgment is highly subjective. On a scale of capacity to tax, the states vary widely, and a goodly number of the poorest are among those that have tried least to stretch their capacities. By contrast, a few states, such as New York, not only tax their own citizens highly in relation to resources, but also contribute disproportionately to the federal grant programs.

But again, it may be urged that national standards are highly efficient in a society whose members move about so frequently. Uniform state codes might be one answer but not a satisfactory one, since the states have been historically slothful in employing them. A second answer would be to let the national government legislate (in co-operation with the states) the uniformities, while abandoning the grants and the supervision.

What is being suggested here is that the whole set of grant-in-aid programs be examined to determine whether their form any longer serves their function. It may be that they serve negatively a federal system. State governments are notoriously malorganized: the grants-in-aid have not served to better this condition.

Even if they had not rendered state government more chaotic, they have helped to diminish the sharpness of the state image and therefore weakened the sense of accomplishment and personal responsibility that we would wish the leadership of a state to develop, both as an end in itself and as a means to a free society. Here the question is: are "certain American standards" impossible to attain without depressing the more important, if less tangible, "American standards" of initiative, voluntarism, and localism?

Still bearing Madison's words of caution in mind, let us re-examine three major additional problems of contemporary society that have a federal aspect. One is race relations, another is city government, yet a third, education. The race-relations issue is particularly poignant. It enveloped the republic in a disastrous civil war, and it is an agonizing cause for the country today.

If we are to retrace our steps in this case, with a view toward establishing a solution for the future, a policy closer

to the idea of dual federalism might be preferred. The national government has for some time lacked very little of the power and means needed to combat racial discrimination in America. Without touching the state governments directly, it might have established a federal electorate, federal elections for federal offices, federal aid to housing, non-discrimination in federal jobs, non-discrimination in the armed forces, and federal schools. In fact, practically everything that the sociological mind might conceive of as calculated to reduce discrimination and increase opportunities among Negroes might have been planned and executed without compelling the states that were directly involved.

The preparation, therefore, of an omnibus legislative program that would use the national government as such, alongside but separate from the state government, in certain states and counties would be an expeditious and relatively conflict-free way of accomplishing the same purposes as stand today back of continual disorders and a probably extended period of continued discrimination.

The case of the government of cities is different. The basic failure of the cities is leadership. Leadership is wanting in the cities, in the states, and in the nation for metropolitan problems. People who have a vision of what city life might be like are singularly absent from the metropolitan political scene. Inasmuch as over 60 per cent of the people of the country and more than that much of the wealth of the country, and most of its educational, cultural, and technological resources are embraced by the metropolises of the country, such a statement might appear astonishing, but one constant fact of all social life must be realized: all the resources of the world do not bring direction or drive.

One of the hardest illusions of democracy is that leadership springs spontaneously out of the mass of people once they are provided a license to participate fully in politics. The illusion stands and causes a locality, a state, or a nation to act in accordance with it even when the patent facts of life are to the contrary. Perhaps never does a community contain more than 5 per cent of active and informed

citizenry. The average is closer to 3 per cent, or three out of one hundred adults. And when these are distributed among the various functions and levels of government, the number of persons from whom leadership may be obtained is extremely low.

It should surprise none, but it always does, that a metropolis should be in effect headless under the conditions of American political life. Over half of the population is formally disqualified from participation in much of central city politics by the fact of living in a suburb during the night. The intricacies of party organization eliminate many others who have neither the patience nor the time for politics as such.

The fragmentation of metropolitan organization into independent agencies, towns, committees, commissions, boards, civic and welfare associations, and educational and other functional specializations of government, prevent any sizable group from constituting what might be called the civic or political community. When both formal requirements and social pressures operate to reduce the number of leaders, a jurisdiction of any kind must be in deep trouble. It will not continue to operate as an open society and cannot adopt policies for the whole that are anything but catch-as-catch-can.

Consequently the metropolis is always on the verge of intellectual and organizational bankruptcy, if not fiscal bankruptcy. Thereupon the city group leaders set up a cry of outside interference, of being strangled in their attempts to cope with the problems of government and, depending upon the times, attack either the machine or the state government. They turn to the national government for support, since the national government has never been closely tied to city government. They see in it a benefactor, a sympathetic and financially benevolent friend, a disinterested provider of the wherewithal of good government.

It is difficult to justify this view empirically. Why can a national government provide more solutions to city problems than state government? One argument has it that a number of metropolitan districts cross over state lines. Yet interstate compacts are fully competent to handle this type

of situation. The Port of New York Authority, for instance, is the lusty offspring of a compact between New York and New Jersey to control and develop transportation facilities of the region.

That a whole nation should act to solve such a problem is an unprincipled position that says only the policy in itself matters, not how it is done, who does it, or what its consequences are. The argument that national law, by superseding state law, simplifies the situation in comparison with trying to reconcile two bodies of state law, cannot be valid, inasmuch as the national law is in fact a third law jostling the other two systems with just as much conflict.

Supposing the metropolis in question to be contained in one state, a second argument advanced for national intervention is fiscal. The cities, it is said, cannot afford the costs of unification. That they pay the greater costs of non-unification somehow does not seem to enter the picture.

Moreover, the state in many cases does not assume its full obligations to tax its citizens to provide the circumstances that make a city workable and livable. Why should the citizens of other states be taxed for this purpose? And, if they are, will not the typical result be to discourage those metropolises and states that put forward the greater effort to relax and ride along on the promise of national aid? Regrettably, the general response of local leaderships is to seize the opportunity provided by Washington and "ride on it." Those more responsible elements of local leadership who seek to make their own way with local resources are thus sometimes discredited as "do-nothings" or "suckers."

Still another argument for national action is that the services performed are national in effect. But no viable philosophy of individualism or local autonomy ever asserted that national effects are produced only by national initiatives and that all local causes produce local effects. The philosophy of Athens educated the Roman Empire; the Roman Empire reduced Athenian culture to mediocrity; the florins of Florence helped stabilize the bookkeeping of England. The engineers of Glasgow ran the ships of the British Empire. If the proof here is not ample there is the *reductio ad absurdum*: nothing that happens in a city is

without national effect. Should the national government then do everything?

A related contention is that many activities are national *per se*. The government uses the cities for the mails, housing its employees, transporting its personnel, and so on. Should it not pay for these uses? It should, and can very easily, by direct assessment on the same bases as other users of city facilities. Contracts of this kind should cause no concern except to the few who would use the doctrine of governmental sovereignty for free-loading.

What then of mass transit programs, city planning, public housing, support of the fine and performing arts; should they be left to the states and their cities to tend to? They should. Indeed they must, because such programs are at best gambles of the public treasury, and the treasury that gambles should be the one that best knows the odds, the state and local community. Why the latter should best know the odds can be explained and will be, but only after an effort at judging the intervention of the central government into education.

It is of course improper to treat the question of federal aid to education as if it were something for the future. The nation aids public education in many ways: by grants to research, by conducting research itself, by carrying on or aiding the school systems of the states to carry on education in those areas where federal personnel are numerous. At least a billion dollars goes to these purposes annually.

It is further proposed that the central government go directly into the support of education on all levels and for purposes of constructing physical facilities and improving the quality of instruction. Such worthy aims cannot be lightly treated. Yet for several reasons and not alone out of regard for the structural formalities of federalism, federal aid to education should in most cases be opposed.

General federal aid to education can never be so general as to prevent injury to the slighted and unaided portions of education which are bound to consist of some of the most important kinds of education—civic, religious, humanistic, and social science.

It must, if it is rather general and extensive, damage the

private school structure of the country—both religious and secular. It must tend to create uniformities in a picture that is already far too uniform in curriculum and administration. It cannot help but produce controls, informal if not legal, and reduce the large body of lay board members around the country and many professional educators to rubber stamps or apathetic imitators.

Certainly here as in other areas, the reliance upon federal funds is a double-edged weapon. It does get money where and when money is temporarily available. (A number of federal aid programs, it is significant to note, have not at all increased since the first flush of generosity that created them.) But then the provision of the money must be referred back to the taxpayers. Again it is difficult to see the inherent virtue in passing money through federal hands: it does not become wise, efficient, and sanctified.

Are we here faced with an element of ideology, just as in the case of our cities? In both areas there is a flight of confidence from the known to the unknown.

Or is the central government known to contain as a permanent feature of its politics some predisposition to good and wisdom that the states and localities do not themselves possess?

Or granted the incredibility of this, may there not be some strong latent desire to transfer, under the guise of democracy, certain functions from the hands of politicians to the hands of experts? "The rationalism born of technological pride," wrote Yves Simon, "hates human liberty both on account of its excellence and on account of its wretchedness." Many a professional educator and anti-authoritarian liberal would like to be rid of the school boards and uncertain popular support that they suffer locally in exchange for a bureaucratic school order managed by their mirror images.

Again it should be insisted that money—in education, for cities, and for other purposes as well—is to be had almost wherever in America the service is being performed. In a few highly limited and specialized areas, activity or aid by the central government is desirable. The great majority of states are at least as competent as the central government

to say what makes a city a good place to live in, what makes good racial relations, and of what consists a good education.

It is scarcely understood by the general public that the states have performed creditably in all of these regards in many places. Furthermore, the states are increasing their activity, their taxing, and their spending. General revenues of state and local governments went up 101 per cent between 1952 and 1960, and their direct general expenditures rose 99 per cent. Their debt increased by 132 per cent. These percentages have risen at a faster rate than the Gross National Product in recent years. We need not go into the merits of the new activity at this point, but it certainly cannot be offered as an argument for nationalization of functions that the states are inert.

Unfortunately, the analysis of the problems just treated and of the general topic of federalism are at a rather low level of theory and method. The numerous studies of federalism that emanate from official sources are concerned almost entirely with financial and administrative problems of federal-state relations. At other times, the agencies of reform merely warm up cold chestnuts; they tell the government that the states should and must remain a keystone of our national structure, and let it go at that, hoping for the best. They could use some of what John C. Calhoun once called "those higher faculties of the mind (called metaphysical by those who do not possess them) which decompose and resolve into their elements the complex masses of ideas that exist in the world of mind . . . and without which those deep and hidden causes which are in constant action, and producing such mighty changes in the condition of society, would operate unseen and undetected." In short, we need better philosophy, better sociology, and better political science in dealing with the issues of federalism.

The comparative studies of social customs and institutions as they differ from state to state, where they are available, are generally ignored by the agencies that are responsible for telling us about the effects of federalism. Their own recommendations are all too often of a petty kind and

indeed the scope of the action which they carve out for themselves is often of that order. One cannot read, for instance, the record of the Joint Federal-State Action Committee from 1957 to 1959 without some dismay. That group, charged with identifying problems and recommending the shifting of functions and revenue sources from national to state, achieved minor changes in the Atomic Energy Act, disaster relief arrangements, and migratory labor. Most of its other suggestions went unheeded by Congress, the President, and the public, although its birth came about as a suggestion of the President. It must be emphasized that the problems of federalism are basic to American society and must be programmed in that light.

The Advisory Commission on Intergovernmental Relations, which began its work in 1959, has been more active and lends more hope. It carries members from all levels of government, on the whole of a somewhat sanguine frame of mind respecting the problems of federalism. Over half of its resources have gone wisely and necessarily into developing the ramified net of government relations without which research alone is helpless. Its reports have been methodologically more advanced than any others in the field. The commission needs more financial resources to deepen its research into the psychology and social significance of federalism. It needs an ever more forceful presentation of its findings and recommendations before the legislatures and Congress.

Inherent Advantages of Federalism

In the final analysis, the argument against the states on *specific* matters must become an argument against federalism *as a whole*. Ultimately, the case for federalism must rest upon some peculiar advantages possessed by a nation composed of many independent units. There are such advantages.

It is no longer of much use to speak of federalism as preserving a nation as a unity that might otherwise be dissolved into independent and possibly conflicting states. That situation and phase of American federalism are fin-

ished. We must look deeper and more generally for its justification.

We can find it in the resistance to majoritarianism. Why should not at least some minorities find a thoroughgoing means of expressing themselves, not alone as dissident voices outside the halls of power, but as locally triumphant activities?

Even if the results of federalism do not produce major local cultures, that is to say, if American life becomes quite standardized by the technological revolution and rapid communications, federalism can supply sources of experiment. Political scientists used to think in "big" terms about the experimental value of federalism; they imagined whole new societies testing under the umbrella of the union. To-day one must think in much smaller terms. The scale must be that used in industry, where a given innovation may change a procedure of work, capture many thousands of dollars of profit, and add to human satisfactions and where numerous such innovations justify large effort, a numerous profession of management consultants, and research and development on a broad front.

We do not know the extent to which experts from one state learn from other states unheralded and how the federal government does too. If we could know, we should probably be pleased, but we should also realize the value of continuous and extensive study of comparative procedures and legislation of the states. Like the medieval alchemists, we have been ignoring useful metals while seeking to manufacture gold.

Supposing again that experimentation as well as independent minority cultures were rare, the excitation of initiative that federalism brings to many areas of life is itself a value transmutable into the national advantage and individual welfare. As society becomes increasingly bureaucratized, the sources of initiative have to be preserved and fostered, for they are practical rehearsals for larger things, and they are beneficial and humanizing in themselves.

There would be those who would feel pleasure at the idea that the states might disappear, because some cherished conviction of theirs is being frustrated in some one

late, tax, and administer themselves; the savings from experimentation and initiative; and from all the other advantages. It is manifestly unfair to weigh federalism on a balance of money when direct money advantages are obviously solely on the nationalist side. If it may be concluded that federalism is of some cost to a country, at least in the direct and immediate sense, it is likewise apparent that the cost cannot be heavy and cannot loom large in considering the merits and demerits of a federal system.

With costs, as with other arguments raised against federalism, we are faced more with dangerous illusions than with a matter of fact. Federalism is, when all is said and done, an attitude, and that attitude is more important than any institution in determining the success or failure of federalism. The federal attitude regards due process of law as vitally important in a political order. It has confidence in people and bespeaks it by letting them suffer through their problems. It tolerates differences of many sorts. It tolerates, furthermore, a large measure of ambiguity in society. It does not insist upon the one best solution, though it may fight against the one worst solution. It has a sympathy for local sentiments, customs, and interests.

Many persons may support a federalist position out of many different motives. But unless they possess something resembling this constellation of attitudes, it is unlikely that they will be more than fair-weather friends of the federal system. If, however, such a set of attitudes is possessed by a large number of active citizens, and if they can agree that the principles set forth here are actually operative in society, then a considerable hope may be held out for the continued development of American federalism.