CHAPTER 3

Federalism

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The Federalist, No. 46

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Some of the most divisive and bitter political battles in our nation's history have occurred over interpretations of the constitutional principle of federalism—the division of powers and functions between the state governments and the national government. The struggle for desegregation and the civil rights of minorities, the legalization of abortion, the selective incorporation of the Bill of Rights into the Fourteenth Amendment, slavery and the Civil War all ultimately turned on the question, Who has the authority to govern: the states, or the national government? Our federal system is a delicate balance of power and shared responsibility between nation and states, each with constitutional authority to pass laws, levy taxes, and protect the interests and rights of citizens. It is a dynamic balance of power, easily destabilized by economic crises, political initiatives, and Supreme Court rulings, but often resolved in more recent years by the question, Who will pay the price for implementing and enforcing government policy?

The "double security" that James Madison discussed in The Federalist, *No. 51 did not satisfy those who feared that the national powers would encroach on state sovereignty. In* The Federalist, *No. 46, Madison went to great lengths to reassure the states that they would continue to wield a high degree of power, arguing that "the first and most natural attachment of the people will be to the governments of their respective states." While recognizing the potential for conflicts between state and federal governments, Madison concluded that the power retained by the states would be sufficient to resist arrogation by the newly established national government.*

I proceed to inquire whether the federal government or the State governments will have the advantage with regard to the predilection and support of the people. Notwithstanding the different modes in which they are appointed, we must consider both of them as substantially dependent

on the great body of the citizens of the United States. * * * The federal and State governments are in fact but different agents and trustees of the people, constituted with different powers and designed for different purposes. The adversaries of the Constitution seem to have lost sight of the people altogether in their reasonings on this subject; and to have viewed these different establishments not only as mutual rivals and enemies, but as uncontrolled by any common superior in their efforts to usurp the authorities of each other. These gentlemen must here be reminded of their error. They must be told that the ultimate authority, wherever the derivative may be found, resides in the people alone, and that it will not depend merely on the comparative ambition or address of the different governments whether either, or which of them, will be able to enlarge its sphere of jurisdiction at the expense of the other. Truth, no less than decency, requires that the event in every case should be supposed to depend on the sentiments and sanction of their common constituents.

Many considerations * * * seem to place it beyond doubt that the first and most natural attachment of the people will be to the governments of their respective States. Into the administration of these a greater number of individuals will expect to rise. From the gift of these a greater number of offices and emoluments will flow. By the superintending care of these, all the more domestic and personal interests of the people will be regulated and provided for. With the affairs of these, the people will be more familiarly and minutely conversant. And with the members of these will a greater proportion of the people have the ties of personal acquaintance and friendship, and of family and party attachments; on the side of these, therefore, the popular bias may well be expected most strongly to incline.

The remaining points on which I propose to compare the federal and State governments are the disposition and the faculty they may respectively possess to resist and frustrate the measures of each other.

It has been already proved that the members of the federal will be more dependent on the members of the State governments than the latter will be on the former. It has appeared also that the prepossessions of the people, on whom both will depend, will be more on the side of the State governments than of the federal government. So far as the disposition of each towards the other may be influenced by these causes, the State governments must clearly have the advantage. But in a distinct and very important point of view, the advantage will lie on the same side. The prepossessions, which the members themselves will carry into the federal government, will generally be favorable to the States; whilst it will rarely happen that the members of the State governments will carry into the public councils a bias in favor of the general government. A local spirit will infallibly prevail much more in the members of Congress than a national spirit will prevail in the legislatures of the particular States.

* * * What is the spirit that has in general characterized the proceedings of Congress? A perusal of their journals, as well as the candid

acknowledgments of such as have had a seat in that assembly, will inform us that the members have but too frequently displayed the character rather of partisans of their respective States than of impartial guardians of a common interest; that where on one occasion improper sacrifices have been made of local considerations to the aggrandizement of the federal government, the great interests of the nation have suffered on a hundred from an undue attention to the local prejudices, interests, and views of the particular States. I mean not by these reflections to insinuate that the new federal government will not embrace a more enlarged plan of policy than the existing government may have pursued; much less that its views will be as confined as those of the State legislatures; but only that it will partake sufficiently of the spirit of both to be disinclined to invade the rights of the individual States, or the prerogatives of their governments.

Were it admitted, however, that the federal government may feel an equal disposition with the State governments to extend its power beyond the due limits, the latter would still have the advantage in the means of defeating such encroachments. If an act of a particular State, though unfriendly to the national government, be generally popular in that State, and should not too grossly violate the oaths of the State officers, it is executed immediately and, of course, by means on the spot and depending on the State alone. The opposition of the federal government, or the interposition of federal officers, would but inflame the zeal of all parties on the side of the State, and the evil could not be prevented or repaired, if at all, without the employment of means which must always be resorted to with reluctance and difficulty. On the other hand, should an unwarrantable measure of the federal government be unpopular in particular States, which would seldom fail to be the case, or even a warrantable measure be so, which may sometimes be the case, the means of opposition to it are powerful and at hand. The disquietude of the people; their repugnance and, perhaps, refusal to co-operate with the officers of the Union; the frowns of the executive magistracy of the State; the embarrassments created by legislative devices, which would often be added on such occasions, would oppose, in any State, difficulties not to be despised; would form, in a large State, very serious impediments; and where the sentiments of several adjoining States happened to be in unison, would present obstructions which the federal government would hardly be willing to encounter.

But ambitious encroachments of the federal government on the authority of the State governments would not excite the opposition of a single State, or of a few States only. They would be signals of general alarm. Every government would espouse the common cause. A correspondence would be opened. Plans of resistance would be concerted. One spirit would animate and conduct the whole. The same combinations, in short, would result from an apprehension of the federal, as was produced by the dread of a foreign yoke; and unless the projected innovations should be voluntarily

renounced, the same appeal to a trial of force would be made in the one case as was made in the other.

The only refuge left for those who prophesy the downfall of the State governments is the visionary supposition that the federal government may previously accumulate a military force for the projects of ambition. The reasonings contained in these papers must have been employed to little purpose indeed, if it could be necessary now to disprove the reality of this danger. That the people and the States should, for a sufficient period of time, elect an uninterrupted succession of men ready to betray both; that the traitors should, throughout this period, uniformly and systematically pursue some fixed plan for the extension of the military establishment; that the governments and the people of the States should silently and patiently behold the gathering storm and continue to supply the materials until it should be prepared to burst on their own heads must appear to everyone more like the incoherent dreams of a delirious jealousy, or the misjudged exaggerations of a counterfeit zeal, than like the sober apprehensions of genuine patriotism. Extravagant as the supposition is, let it, however, be made. Let a regular army, fully equal to the resources of the country, be formed; and let it be entirely at the devotion of the federal government: still it would not be going too far to say that the State governments with the people on their side would be able to repel the danger.

Besides the advantage of being armed, which the Americans possess over the people of almost every other nation, the existence of subordinate governments, to which the people are attached and by which the militia officers are appointed, forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of.

Let us not insult the free and gallant citizens of America with the suspicion that they would be less able to defend the rights of which they would be in actual possession than the debased subjects of arbitrary power would be to rescue theirs from the hands of their oppressors. Let us rather no longer insult them with the supposition that they can ever reduce themselves to the necessity of making the experiment by a blind and tame submission to the long train of insidious measures which must precede and produce it.

The argument under the present head may be put into a very concise form, which appears altogether conclusive. Either the mode in which the federal government is to be constructed will render it sufficiently dependent on the people, or it will not. On the first supposition, it will be restrained by that dependence from forming schemes obnoxious to their constituents. On the other supposition, it will not possess the confidence of the people, and its schemes of usurpation will be easily defeated by the State governments, who will be supported by the people.

On summing up the considerations stated in this and the last paper, they seem to amount to the most convincing evidence that the powers

proposed to be lodged in the federal government are as little formidable to those reserved to the individual States as they are indispensably necessary to accomplish the purposes of the Union; and that all those alarms which have been sounded of a meditated and consequential annihilation of the State governments must, on the most favorable interpretation, be ascribed to the chimerical fears of the authors of them.

PUBLIUS

DISCUSSION QUESTIONS

1. Is Madison right when he states that people are more attached to their state governments than to the national government? Why or why not? If not, would it better facilitate the democratic process if they were more attached to state governments?

2. Would your answer change at all during different political times? For example, were people more attached to the national government in the wake of the terrorist attacks on our country than they were before September 11, 2001? Do people lose their faith in the national government during tough economic times?