
The Issue Disrupts the Union

The federal system of the United States is incompatible with political democracy, construed in terms of the nation-wide enforcement of Rousseau's general will. Yet federalism in no way discourages democratic government in any and all of the States considered separately. On the contrary, the principle of federalism serves to maintain all the many advantages of majority rule while preventing its degeneracy into dictatorship. Failure to realize that democracy functions best when localized, and worst when centralized, accounts for much of the confusion that surrounds the term. This is the more curious because, ever since colonial settlement, there have been great differences between the degrees of political democracy operative in, for instance, New Hampshire and South Carolina.

There is much more than political theory behind such differences between the States. But leaving factors such as climatic and cultural variation temporarily aside, it is still obvious that the essence of federalism lies in the re-

servation of a certain degree of sovereignty by the constituent parts. A federation is designed to prevent the full concentration of sovereignty in the central government. Therefore, at the risk of repetition, a federal system is by its very nature out of key with the domination of any "general will" expressed in terms of national majorities or centralized interpretation.

It does not follow, however, that federalism and democracy are necessarily antagonistic. While the United States as a whole is not a democracy, many of the States as units may lay claim to that description if it pleases them. Illustrations are found in the lead given by New York in abolishing imprisonment for debt; by Wisconsin when it established the first State income tax; by Nebraska when it eliminated its State Senate; by Georgia when it lowered the voting age to eighteen. Indeed, one of the great virtues of federalism is the power given to the constituent units to adopt experimental measures in accordance with the wishes of local majorities, without imposing such developments on sections not ready or willing to go along.

Political democracy is thus localized and qualified, but in no sense denied, under the American system. And, as already pointed out, democracy in the United States is actually saved from its suicidal characteristics by being limited. So there is some justification for loosely calling the Republic a "democracy," though it is much more accurate and discerning to prefer the adjective and call it "democratic."

Such discrimination is the more imperative because

there is a point at which conciliation between the advocates of federalism and those of nationalistic democracy becomes impossible. That point was reached in 1861, and since the federal structure was not formally altered by the Civil War, the "irrepressible conflict" can always break forth again, though scarcely in the same sanguinary form. The local termination of services like public education, rather than any breakdown of government as such, is today threatened by disregard for the elements of division and balance in our political system. And such frustration can easily be produced by embittered antagonism between federalists and national democrats—between followers of Madison and followers of Rousseau, to clarify by oversimplification. To avert this frustration is clearly a primary duty of good citizenship, which is certainly assisted by at least some acquaintance with the major conflicts in American constitutional history.

As will now be emphasized, the two contrasting threads of federalism and democracy run through the entire skein of our national evolution. Indeed, their interweaving forms its major pattern, the general beauty of which itself suggests that the threads are by no means necessarily inharmonious. But whenever restraint is absent from our political leadership they tend to become so. This happens when federalists forget that no system which ignores the general welfare can long endure; and when democrats forget that the centralization which they espouse is much more likely to destroy than to advance democracy.

In the formation of our government, Alexander Ham-

ilton was the great exponent of centralization. He attacked the whole idea of a federal republic, which he predicted with accuracy would at best divide loyalty between the "general government" and those of the States and could easily, as it did, produce civil war and national disruption. To avert this outcome he argues that power in the central government should be more fully concentrated in the executive branch, under a President with an absolute veto, holding office not for a set term but "during good behaviour." Failing in his effort to make the President comparable to an elected monarch, Hamilton was nevertheless influential in giving the Senate privileges which made it in some respects comparable to the British House of Lords of that period.¹

Although opposed to federalism, there was certainly nothing even remotely democratic in Hamilton's thought. Whether or not he ever called the public "a great beast," he certainly regarded political democracy as a snare and delusion, roundly denouncing its "vices" on many occasions. Brilliantly and courageously cynical, Hamilton had no faith whatsoever in the ability of the common man to understand even his own immediate political interest. Precisely because of human stupidity, he reasoned, society must accept strong government by an entrenched elite, or else expect to succumb to anarchy. In his speech of June 18, 1787, to the Constitutional Convention, he said, in behalf of a life-term Senate, to be chosen by an electoral

¹ For Hamilton's draft constitution see Ferrand, *Records of the Federal Convention*, Vol. III, pp. 617-30 (Appendix F).

college of landowners: "All communities divide themselves into the few and the many. The first are the rich and well-born; the other the mass of the people . . . turbulent and changing, they seldom judge or determine right. Give therefore to the first class a distinct, permanent share in the Government. . . . Nothing but a permanent body can check the imprudence of democracy."²

To Alexander Hamilton, as this quotation illustrates, the concept of a general will was not merely utterly absurd, but also wholly pernicious. But while his political thinking was poles apart from that of Rousseau, it led to the same institutional conclusion of strongly centralized government. Frequently, in political philosophy, the wheel thus comes full circle, so that extreme right and extreme left approve the same ends, though with different slogans and from opposite motives. The hallmark of authentic liberalism, of which Thomas Jefferson and James Madison are the classic American exemplars, is its continuous awareness of this double jeopardy to the condition of freedom, and its continuous anxiety to steer the narrow course between the two associated extremes—called communism and fascism in modern political parlance.

Jefferson favored federalism because a strongly centralized government is always likely to deprive men of the freedom which he thought, to that extent with Rousseau, should be their birthright. This creed made him demo-

² Ferrand, *op. cit.*, Vol. I, p. 299. The quotation is from the notes of Judge Yates, less condensed in this particular passage than those of Madison, *ibid.*, p. 288.

cratic, and his mistrust of unpopular government was at least as sharply voiced as Hamilton's confidence in the unfettered judgment of aristocrats. But Jefferson drew sharp limits around the doctrine of political democracy, as all who give it any serious consideration must. He disregarded his own "metaphysical subtleties"—as he himself defined them—to ram the Louisiana Purchase down the throat of a Congress which mistrusted both its constitutionality and desirability. In justifying his handling of Aaron Burr's conspiracy Jefferson wrote that "in an encampment expecting daily attack from a powerful enemy, self-preservation is paramount to all law. . . ." Despite his idealistic faith in human nature Jefferson knew that in times of emergency unqualified democracy simply does not work. "Should we have ever gained our Revolution," he asked rhetorically, "if we had bound our hands by manacles of the law . . . ?"³

So Jefferson and Hamilton, the great protagonists of American political division, drew a clear issue between federalism and centralization, but not between federalism and democracy. These do not become opposites until the advocates of centralization demand it in the name of democracy, a nonsequitur which Hamilton was far too intelligent ever to endorse. Democracy and centralization,

³ Letter to Dr. James Brown, Oct. 27, 1808. Commenting on this, Professor Gilbert Chinard says: "if this episode can serve to illustrate the inconsistency of the philosopher, it constitutes also a most striking refutation of the accusations of Jacobinism so often launched against Jefferson, for only the Jacobin is perfectly consistent in all circumstances." *Thomas Jefferson, Apostle of Americanism*, Little, Brown & Co. (Boston 1929) p. 438.

however, began to be equated in popular thinking on the heels of the bitter Presidential election of 1824, which marked the breakup of the "Virginia dynasty." With the passing of the generation that had written, ratified and launched the Constitution a new issue came to the fore in American politics. This was the unnecessary but always easily possible antagonism between those who put federal structure above democratic desires, and vice versa.

In 1824, all of the four Presidential and six Vice-Presidential candidates significantly called themselves "Republican." This so divided the electoral vote that the election was thrown into the House of Representatives (under Article II and the Twelfth Amendment) for the second and as yet the last time in our history. Its election of John Quincy Adams was certainly most undemocratic, for Adams had trailed Andrew Jackson in both the electoral and popular vote, so far as the latter was then tabulated. Irritation over what seemed so unfair an outcome was instrumental in the decision of Jackson's supporters to call their party "Democratic," although the name did not become firmly established until Van Buren ran under that label. For the first time a political party was then implicitly committed to that endorsement of outright majority rule which the founding fathers had so carefully avoided.

Another important political consequence of the 1824 election was the development of the Presidential nominating convention, replacing the Congressional caucus by which the candidates had earlier been selected. By 1840 the convention system was well established and has had

the effective result of placing each party squarely behind one Presidential, and one Vice-Presidential, candidate. The degree of democracy in this method of nomination will be examined later. But the acute comment of Viscount Bryce may be quoted here. The invention of the nominating convention, he wrote:

coincides with and represents the complete democratization of politics in Jackson's time. It suits both the professionals, for whom it finds occupation, and whose power it secures, and the ordinary citizen who, not having leisure to attend to politics, likes to think that his right of selecting candidates is recognized by committing the selection to delegates whom he is entitled to vote for.⁴

Jackson favored the idea of nominating conventions as democratic. His great antagonist, John C. Calhoun, opposed the institution as demagogic. That difference of opinion symbolizes the fundamental antagonism between the two. The opposition between these rival giants was just as sharp as that between Hamilton and Jefferson. It set the stage for the Civil War and established a cleavage in American politics which is clear, and of renewed importance, today.

The strong similarities in the background and character of Calhoun and Jackson make their rivalry the more interesting. Both were of the same Scotch-Irish, Calvinistic, recently immigrant ancestry. They were alike in physique,

⁴ James Bryce, *The American Commonwealth*, 3rd edn., The Macmillan Co. (New York 1897) Vol. II, p. 177.

in energy, in high intelligence and indomitable courage. Both were born, though Calhoun was fifteen years the younger, in the Carolina foothills, under the shadow of the Blue Ridge. But it was the ironic destiny of the puritanical Calhoun to marry into and become the leader of the plantation aristocracy, while the more cavalier Jackson moved West, rising as the spokesman of pioneer democracy with the national reputation brought him by the battle of New Orleans.⁵

Their differences were sharpened by their likenesses. Jackson was preeminently the practical politician and Calhoun the brilliant political theorist, though the older man was by no means devoid of book learning, and though the Yale-trained scholar was certainly not of the cloistered type. Each had the ability and the personality to form and lead a political party. When the exigencies of politics made the younger man Jackson's Vice President, in 1828, the opportunity was also provided, by the sheer inability of these team-mates to agree on any issue—from the social acceptability of that “gorgeous hussy,” Peggy Eaton, up to the basic character of American government.

In the Hamilton versus Jefferson alignment those favoring democracy had been, with Jefferson, opposed to centralization. Now the more ardent the democrat—with a small “d”—the more likely he was to discount federal

⁵ The biographies of the two most utilized are Charles M. Wiltse, *John C. Calhoun—Nationalist, Nullifier, Sectionalist* (3 vols.) Bobbs-Merrill Co. (Indianapolis 1944, '49, '51), and Marquis James, *The Life of Andrew Jackson*, Bobbs-Merrill Co. (Indianapolis 1938).

theory in behalf of centralization. When Jackson raised the banner of nationalistic democracy, Calhoun turned against nationalism and became the sectional leader of strictly Constitutional federalism. It would have made the picture more clear if Calhoun had then formed a southern Constitutionalist party, just as it would have clarified our recent politics if the Southern Democrats had made a clean break on essentially the same issue. But, in the eighteen-forties, this would have handicapped Calhoun's effort to unite the agricultural South and West against the industrial North, thereby offsetting the growing influence of Abolitionist New England in Washington. Then, as now, it was politically advantageous to conceal the fact that the Democratic Party was so deeply split. Then, as now, it would have been inopportune to admit that a large section of that party was not democratic in any national sense.

The work of John Marshall, meantime, had served to alarm all slave owners and develop a cleavage between the advocates of States' Rights and those of nationalistic democracy. As Chief Justice from 1801 to 1835—vital formative years—Marshall most ably confirmed Alexander Hamilton's doctrine of "implied powers" and developed it to give the infant Republic a stronger central government. The opinions of this great jurist were certainly not democratic, but they encouraged that nationalism without which the democratic urge is localized and restricted.

The first and most famous of the Marshall decisions—in *Marbury v. Madison*—established that implied right of

the Court to nullify an Act of Congress which is so clearly an undemocratic principle of our system. Subsequent decisions, built on this, were directed to enlargement of the national power at State expense. In *Fletcher v. Peck* (1810) Marshall annulled an act passed by the Legislature of Georgia, informing the State in prophetic words that it was only "a part of a large empire . . . a member of the American union . . . which opposes limits to the legislatures of the several States." This was followed by *McCullough v. Maryland* (1819) in which the Chief Justice demolished an attempt by that State to tax an agency of the central government. The same year witnessed the *Dartmouth College Case*, whereby Marshall struck down an Act of the New Hampshire Legislature infringing the charter granted to the college under British rule. The implication was that the central government, not those of the States, had inherited sovereignty over corporate charters from the British Crown. Marshall, however, stopped short of suggesting that the State governments were or ever might be superfluous. "No political dreamer," he said—perhaps pointing at Hamilton—"was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass."

Divergent political philosophies do not of themselves stir passionate feelings in human breasts. But if the philosophy is directly associated with an economic interest, or with a racial prejudice, or possibly with both—then personal emotion is fortified and strengthened by use of the abstract idea. It makes individual self-interest collec-

tive and binds the parts firmly together with the mortar of honorable principle.

That was what happened, in both North and South, when the seeds of civil war began to sprout. The centralizing decisions of John Marshall, the democratic tendencies of Andrew Jackson, the rapid industrialization of the North with the help of free immigrant labor—these were primary factors in uniting the agricultural South behind the doctrine of States' Rights and in defense of slavery. We shall not understand the inherited problems that the Union confronts today if we think that the slavery issue did more than exacerbate the constitutional issue. Slavery could have been ended peacefully, for it was actually neither essential to, nor dominant in, the Southern economy.⁶ As fundamental as a cause of conflict were the opposing interpretations of our form of government, foreshadowed in the rivalry of Hamilton and Jefferson, crystallized by the antagonisms of Jackson and Calhoun.

The flame that was to spread like a forest fire—of which the embers are by no means extinct—was sparked by the high protective tariff of 1828. This law might have been written by Hamilton himself, so firmly was it based on the nationalistic principle, laid down in his famous *Report on Manufactures*, that trade barriers are desirable in order to foster domestic industry.

This “tariff of abominations,” as the injured exporters of cotton called it, was actually passed by Congress towards the end of the John Quincy Adams Administra-

⁶ This point is comprehensively sustained, *inter alia*, by Avery Craven, *The Coming of the Civil War*, 2nd edn., Univ. of Chicago Press (Chicago 1957).

tion, under the promptings of his New England support. Its constitutionality, and indeed the constitutionality of any protective tariff law, was immediately questioned by all who had an interest in maintaining the supremacy of King Cotton. Jackson, fearful of losing the agrarian support which had brought him to power, vacillated; and Calhoun immediately pressed his advantage, although in 1816 he had seemed to endorse the principle of a protective tariff as "calculated to bind together more closely our widely-spread Republic." Now Calhoun was agreeing with that misanthropic genius, John Randolph of Roanoke, who observed that: "To ask a State to surrender part of her sovereignty is like asking a lady to surrender part of her chastity."

On November 4, 1832, the South Carolina Nullification Convention assembled in Columbia, most of the delegates wearing the blue cockades that defined them as outright secessionists. Calhoun himself opposed any such intent. But if a State can declare a national law inoperative in its territory, the further claim of a right to complete political independence is at least partially established. "The driveling old dotard in the White House," as South Carolinians called President Jackson, saw this clearly. His reply to the Nullification Resolution was a proclamation declaring that: "The Constitution . . . forms a government, not a league. . . . To say that any State may secede . . . is to say that the United States is not a nation."⁷

⁷ James defines the proclamation as "one of the greatest [state papers] to bear the name of an American President." *Op. cit.*, pp. 611-2.

Calhoun, however, was not denying that the United States is a nation. He was denying that it is a centralized democracy; and he was arguing, with impressive logic, that the more democratic a government becomes, the closer to dictatorship it gets. "The government of the absolute majority," he told the Senate, "is but the government of the strongest interests; and when not effectively checked, is the most tyrannical and oppressive that can be devised." To read the Constitution is to realize that "No free system was ever farther removed from the principle that the absolute majority, without check or limitation, ought to govern." And then, in a conclusion expanding the Jeffersonian doctrine of Interposition:

To maintain the ascendancy of the Constitution over the law-making majority is the great and essential point on which the success of the [American] system must depend; unless that ascendancy can be preserved, the necessary consequence must be that the laws will supersede the Constitution; and, finally, the will of the Executive, by the influence of its patronage, will supersede the laws; indications of which are already perceptible. This ascendancy can only be preserved through the action of the States, as organized bodies, having their own separate governments, and possessed of the rights, under the structure of our system, of judging the extent of their separate powers, and of interposing their authority to arrest the enactments of the General Government within their respective limits.⁸

⁸ This speech (of Feb. 15–16, 1833) is printed in full in *Calhoun, Basic Documents*, John M. Anderson, editor, Bald Eagle Press (State College, Pa. 1952); see esp. pp. 181, 183–5. This collection also contains Calhoun's brilliant *Disquisition on Government*, which gives his conception of federalism in detail.

Thus the heretofore blended issues of federalism and democracy became sharply antagonistic. Even at the risk of civil war the rights of the States must be defended against the will of the absolute majority, for if they are not so defended the United States will in any case be destroyed, becoming first a united state and then an executive dictatorship, as have other democracies before it. Calhoun himself, however, argued that this emphasis on federal structure is not in fact opposed to the theory of democracy, but only to its suicidal aspects. What the federal system does is to refine democracy by requiring a *concurrent* majority. The majority will in the nation as a whole must be endorsed by the majority will in each of its constituent parts, whenever the degree of sovereignty assured those parts by the Constitution is called in question. To assert this is not to support secession, but merely the essential principle of federal union. For none can deny that the sovereign States of their own free will created this union. The union did not create the pre-existent States.

There is no question that Calhoun's argument was both historically sound and strongly reasoned. Its influence, and perhaps also the evidence that South Carolina was ready to fight for its beliefs, compelled Jackson to back down. "The tariff of abominations" was modified to be a revenue measure only, but was coupled with the passage of an act authorizing the national government to collect tariff revenues by force if necessary. The South Carolina convention accepted the concession but reaffirmed the doctrine of Nullification and indeed directed it against the

Revenue Collection Act, which was never enforced, any more than Integration is likely to be enforced by national troops in South Carolina today.

And so the issue was tided over until, eleven years after Calhoun's death, its settlement moved from argument to arms.